Colorado Revised Statutes 2013

TITLE 24

GOVERNMENT - STATE

ADMINISTRATION

ARTICLE 1

Administrative Organization Act of 1968

24-1-101. Legislative declaration. The general assembly declares that this article is necessary to create a structure of state government which will be responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the powers of the governor and provide a reasonable span of administrative and budgetary controls within an orderly organizational structure of state government; to strengthen the role of the general assembly in state government; to encourage greater participation of the public in state government; to effect the grouping of state agencies into a limited number of principal departments primarily according to function; and to eliminate overlapping and duplication of effort. It is the intent of the general assembly to provide for an orderly transfer of powers, duties, and functions of the various state agencies to such principal departments with a minimum of disruption of governmental services and functions and with a minimum of expense. To the ends stated in this section, this article shall be liberally construed.

24-1-102. Short title. This article shall be known and may be cited as the "Administrative Organization Act of 1968".

24-1-103. Head of department defined. When the term "head of a principal department" is used in this article, it means the head of one of the principal departments created by this article. Unless the head of a principal department is a state elected official, he shall have the title of executive director of the department or such other title as specifically designated by this article.

24-1-104. Policy-making authority and administrative powers of governor - delegation. (Repealed)

24-1-105. Types of transfers. (1) Under this article, a **type 1** transfer means the transferring intact of an existing department, institution, or other agency, or part thereof, to a principal department established by this article. When any department, institution, or other agency, or part thereof, is transferred to a principal department under a **type 1** transfer, that department, institution, or other agency, or part thereof, shall be administered under the direction and supervision of that principal department, but it shall exercise its prescribed statutory powers, duties, and functions, including rule-making, regulation, licensing, and registration, the promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications, independently of the head of the principal department. Under a **type 1** transfer, any powers, duties, and functions not specifically vested by statute in the agency being transferred, including, but not limited to, all budgeting, purchasing, planning, and related management functions of any transferred department, institution, or other agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

(2) Under this article, a **type 2** transfer means the transferring of all or part of an existing department, institution, or other agency to a principal department established by this article. When all or part of any department, institution, or other agency is transferred to a principal department under a **type 2** transfer, its statutory authority, powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting, purchasing, and planning, are transferred to the principal department.

(3) Under this article, a **type 3** transfer means the abolishing of an existing department, institution, or other agency and the transferring of all or part of its powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds to a principal department as specified under this article.

(4) When any department, institution, or other agency, or part thereof, is transferred by a **type 2** or **type 3** transfer to a principal department under the provisions of this article, its prescribed powers, duties, and functions, including rule-making, regulation, licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the department, institution, or other agency, or part thereof, has been transferred.

24-1-106. Agencies not enumerated - continuation. Any board, commission, advisory board, or other entity not enumerated in this article, but established by law within or as advisory to an existing department, institution, or other agency shall continue to exercise all its powers, duties, and functions within or as advisory to such department, institution, or other agency under the principal department and the type of transfer to which such department, institution, or other agency is transferred under this article.

24-1-107. Internal organization of department - allocation and reallocation of powers, duties, and functions - limitations. In order to promote economic and efficient administration and operation of a principal department and notwithstanding any other provisions of law, except as provided in section 24-1-105, the head of a principal department, with the approval of the governor, may establish, combine, or abolish divisions, sections, and units other than those specifically created by law and may allocate and reallocate powers, duties, and functions to divisions, sections, and units under the principal department, but no substantive function vested by law in any officer, department, institution, or other agency within the principal department shall be removed from the jurisdiction of such officer, department, institution, or other agency under the provisions of this section.

24-1-107.5. Nonprofit entities created or supported by state agencies and state-level authorities - requirements - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) State agencies and state-level authorities currently benefit from working with nonprofit entities in a variety of areas, including contracting with nonprofit entities to obtain goods or services, developing working relationships with nonprofit entities to further an agency's or authority's goals and objectives, and using nonprofit entities to obtain gifts, bequests, or donations;

(b) Although state agencies also benefit from the ability to create nonprofit entities to assist them in carrying out their statutory powers and duties, the expenditure of state revenues through nonprofit entities created by state agencies hampers the general assembly's ability to adequately perform its duties of monitoring state revenues and ensuring that sufficient revenues are available for appropriations to the executive, legislative, and judicial branches of government;

(c) In order for the general assembly to carry out its duties to plan for and monitor state revenues, it is the intent of the general assembly to establish specific statutory requirements for the creation of nonprofit entities by state agencies to perform their statutory powers and duties and to establish accountability requirements for certain nonprofit entities formed for the benefit of state agencies; and

(d) It is the further intent of the general assembly to:

(I) Monitor the creation of nonprofit entities by state-level authorities where the creation of such entities could affect the purpose for which such authorities were established by imposing specific reporting requirements upon those authorities intending to create such entities; and

(II) Retain the laws applicable to the separate identity of nonprofit entities created by or on behalf of state agencies.

(2) (a) (I) Except as otherwise provided in subsection (3) of this section, commencing July 1, 1999, no state agency or employee or agent acting on behalf of such agency shall establish a nonprofit entity without specific statutory authority if:

(A) The purpose of establishing a nonprofit entity is to carry out the governmental functions of the state agency; and

(B) The state agency or an employee or agent acting on behalf of such agency has actual control over the management and internal operations of the nonprofit entity.

(II) The provisions of this paragraph (a) shall not limit:

(A) The office of the governor;

(B) State-supported institutions of higher education from using nonprofit entities, such as foundations, institutes, or similar organizations, as authorized in section 23-5-112, C.R.S.;

(C) State-supported institutions of higher education from issuing revenue bonds or pledging revenues as authorized in sections 23-5-102, 23-5-103, 23-70-107, and 23-70-108, C.R.S.;

(D) The Colorado educational and cultural facilities authority from financing facilities and capital expenditures or refunding or refinancing outstanding indebtedness as authorized in sections 23-15-107 to 23-15-110, C.R.S.;

(E) State-supported institutions of higher education from creating or using nonprofit entities to issue obligations for or assist in the financing of capital expenditures on behalf of or for the benefit of such institutions; and

(F) The Colorado school for the deaf and the blind, as provided for in article 80 of title 22, C.R.S., from using nonprofit entities, such as foundations, institutes, or similar organizations, as authorized in section 22-80-103, C.R.S.

(b) No later than September 1, 1999, each state agency shall provide to the state auditor a list of all nonprofit entities in existence on July 1, 1999, that were established by the state agency or an employee or agent acting on behalf of such agency and that meet the criteria set forth in sub-subparagraphs (A) and (B) of subparagraph (I) of paragraph (a) of this subsection (2), along with a copy of each nonprofit entity's most recent annual audit report or, if such entity has not been audited, the entity's most recent annual financial statement.

(c) The provisions of this subsection (2) do not apply to:

(I) The Colorado advanced technology institute commission;

(II) Any nonprofit corporation created by the board of regents of the university of Colorado pursuant to section 23-20-114 (2), C.R.S.; or

(III) Any private nonprofit corporation created by any state-supported institution of higher education, as authorized under section 23-5-121, C.R.S., for the purpose of developing discoveries and technology resulting from science and technology research at such institution of higher education.

(3) A state-supported institution of higher education may establish a nonprofit entity that would otherwise require specific statutory authority under paragraph (a) of subsection (2) of this section upon a finding by the governing board of the institution that establishing the nonprofit entity would be in the best interests of the institution.

(4) (a) (I) Except as otherwise provided in sections 23-5-112 (3) and 23-5-121, C.R.S., subparagraph (II) of this paragraph (a), and paragraph (b) of this subsection (4), any nonprofit entity created by or on behalf of a state agency under paragraph (a) of subsection (2) of this section or subsection (3) of this section and any nonprofit entities reported under paragraph (b) of subsection (2) of this section shall be subject to an annual audit by the state auditor or his or her designee as required for state agencies under section 2-3-103 (1), C.R.S.

(II) The provisions of this paragraph (a) do not apply to any nonprofit corporation created by the board of regents of the university of Colorado pursuant to section 23-20-114 (2), C.R.S.

(b) If any nonprofit entity, created for the sole benefit of one or more state-supported institutions of higher education, issues obligations to finance capital expenditures for the benefit of the institution or institutions and pledges payments to be received from the institution or institutions in repayment of such obligations, such capital financing activities are subject to the same audit requirements imposed for gifts and bequests received by a nonprofit entity under section 23-5-112 (3), C.R.S.

(5) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), beginning July 1, 1999, each state-level authority intending to create or participate in the creation of a nonprofit entity shall file a statement with the state auditor regarding its intent to create such entity. The statement shall include information about the purpose and use of the nonprofit entity. The state-level authority shall file such statement at least thirty days prior to the incorporation of the nonprofit entity.

(II) For purposes of the requirements specified in this paragraph (a), the office of the governor, the university of Colorado hospital authority, created in part 5 of article 21 of title 23, C.R.S., and the Denver health and hospital authority created in part 1 of article 29 of title 25, C.R.S., shall not be required to provide notice of its intent to create a nonprofit entity or to disclose any information relating to the modification, initiation, or cessation of patient care programs if the disclosure of such information would give an unfair competitive or bargaining advantage to any person or entity.

(b) For fiscal years ending after June 30, 1999, each state-level authority shall

report the annual financial activities of any nonprofit entity it has created in conjunction with the filing of its annual financial audit report with the state auditor as required under section 29-1-603, C.R.S. The reporting of such financial activities may be a part of the audited financial statements if the financial activities are separately identified or the reporting may be performed separately.

(6) (a) Except as provided in this section or other applicable law, any nonprofit entity supported by or established by or on behalf of a state agency shall not be an agency or department of state government and shall not be subject to any provisions of law affecting only governmental or public entities. The state of Colorado or the applicable state agency shall not be held responsible for any debt or liability incurred by any nonprofit entity supported by or established by or on behalf of a state agency, except as otherwise provided by law.

(b) The provisions of this subsection (6) shall apply to any nonprofit entity supported by or created by or on behalf of a state agency regardless of whether such entity is subject to the requirements specified in this section.

(7) For purposes of this section:

(a) "Nonprofit entity" means a nonprofit corporation created under the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S. "Nonprofit entity" may include, but is not limited to, a corporation, a partnership, a joint venture, a foundation, and an institute.

(b) "State agency" means an agency as defined in section 24-3-101 or an institution of higher education.

(c) "State-level authority" means a special purpose authority as defined in section 24-77-102 (15) and excludes nonprofit entities created by and for local governmental entities, such as municipalities, counties, city and counties, school districts, and special districts.

24-1-108. Appointment of officers and employees. (1) Any provisions of law to the contrary notwithstanding and subject to the provisions of the constitution of the state of Colorado, the head of a principal department shall be appointed by the governor, with the consent of the senate. The head of a principal department shall appoint all subordinate officers and employees of his or her office and the head of each division under his or her department, and the head of each division shall appoint all employees in his or her division, but all appointments made by the head of a principal department and heads of divisions shall be made in accordance with section 24-2-102.

(2) In the event that the lieutenant governor is appointed during his or her term of office to concurrently serve as the head of a principal department:

(a) Acceptance or retention of such an appointment shall not result in a forfeiture of the office of lieutenant governor; and

(b) It shall be deemed that holding the office of lieutenant governor while concurrently serving as the head of a principal department is not incompatible, inconsistent, or in conflict with the duties of the lieutenant governor or with the duties, powers, and functions of the head of a principal department.

24-1-109. Office of the governor. The powers, duties, and functions now vested by law in the office of the governor are continued. Temporary commissions, unless otherwise provided, when established by law or by the governor, shall be units of the office of the governor. Interstate compacts authorized by law shall be administered under the direction of the office of the governor.

24-1-110. Principal departments. (1) In accordance with the provisions of section 22 of article IV of the state constitution, all executive and administrative offices, agencies, and instrumentalities of the executive department of the state government and their respective functions, powers, and duties, except as otherwise provided by law, are allocated among and within the following principal departments created by this article:

(a) Department of state;
(b) Department of the treasury;
(c) Department of law;
(d) Department of higher education;
(e) Department of education;
(f) Repealed.
(g) Department of revenue;
(h) (Deleted by amendment, L. 93, p. 1087, § 3, effective July 1, 1994.)
(i) Department of public health and environment;
(j) (Deleted by amendment, L. 93, p. 1087, § 3, effective July 1, 1994.)
(k) Department of labor and employment;
(l) Department of regulatory agencies;
(m) Department of agriculture;
(n) Department of natural resources;
(o) Department of local affairs;
(p) (Deleted by amendment, L. 91, p. 1054, § 4, effective July 1, 1991.)
(q) Department of military and veterans affairs;
(r) Department of personnel;
(s) Repealed.
(t) Department of corrections;
(u) Department of public safety;
(v) Department of transportation;

(w) Department of human services;

(x) Department of health care policy and financing.

24-1-111. Department of state - creation. (1) There is hereby created a department of state, the head of which shall be the secretary of state.

(2) The department of state and the office of secretary of state, created by article IV of the state constitution, and the powers, duties, and functions vested by law in said department and said office are transferred by a **type 2** transfer to the department of state, subject to the state constitution.

24-1-112. Department of the treasury - creation. (1) There is hereby created a department of the treasury, the head of which shall be the state treasurer.

(2) The powers, duties, and functions of the department of the treasury, created by article 36 of this title, and the powers, duties, and functions vested by law or the state constitution in the office of state treasurer are transferred by a **type 2** transfer to the department of the treasury, subject to the state constitution.

24-1-113. Department of law - creation. (1) There is hereby created a department of law, the head of which shall be the attorney general.

(2) Except as otherwise provided in this article or by law, the powers, duties, and functions of the department of law, created by article 31 of this title, and all other powers, duties, and functions vested by law or the state constitution in the office of attorney general are transferred by a **type 2** transfer to the department of law, subject to the state constitution.

(3) The department of law includes the following:

(a) Division of legal affairs. The division of legal affairs, created by article 31 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of law as the division of legal affairs.

(b) Division of state solicitor general, including the office of state solicitor general, created by part 2 of article 31 of this title. The division of state solicitor general and the office of state solicitor general shall perform their duties and exercise their powers under the department of law, as if the division of state solicitor general and office of state solicitor general were transferred by a **type 2** transfer, as a division thereof.

(c) Repealed.

(d) The peace officers standards and training board created in part 3 of article 31 of this title. The peace officers standards and training board shall exercise its powers and perform its duties under the department of law as if the same were transferred by a **type 2**

transfer.

(4) (a) The collection agency board, created by article 14 of title 12, C.R.S., and its powers, duties, and functions are transferred by a **type 2** transfer to the department of law as a section of the division of legal affairs and shall be under the supervision of the administrator of the "Uniform Consumer Credit Code", whose office is created by section 5-6-103, C.R.S.

(b) Repealed.

24-1-114. Department of higher education - creation. (1) There is hereby created a department of higher education, the head of which shall be the executive director of the Colorado commission on higher education, who shall be appointed by the governor and whose powers and duties are as specified in this section.

(2) The Colorado commission on higher education and the office of executive director thereof, created by article 1 of title 23, C.R.S., and their powers, duties, and functions are transferred by a **type 1** transfer to the department of higher education.

(2.5) Repealed.

(3) The department of higher education shall include the following divisions:

(a) Repealed.

(b) State historical society, created by part 2 of article 80 of this title. Its powers, duties, and functions, are transferred by a **type 1** transfer to the department of higher education as a division thereof.

(c) The student loan division, created by article 3.1 of title 23, C.R.S. The division and the director thereof shall exercise their powers and perform their duties and functions as if transferred to the department by a **type 2** transfer.

(d) The private occupational school division, created by article 59 of title 12, C.R.S. The private occupational school board, created by section 12-59-105.1, C.R.S., shall exercise its powers and perform its duties and functions as if transferred to the department by a **type 1** transfer. The division, except for the private occupational school board, and the director thereof shall exercise their powers and perform their duties and functions as if transferred to the department by a **type 2** transfer.

(4) For the purposes of section 22 of article IV of the state constitution, the following are allocated to the department of higher education but shall otherwise continue to be administered as provided by law:

(a) The regents of the university of Colorado, created by section 12 of article IX of the state constitution, and the university of Colorado, created by section 5 of article VIII of the state constitution;

(b) The board of governors of the Colorado state university system, created by part 1 of article 30 of title 23, C.R.S.; Colorado state university, created by article 31 of title 23, C.R.S.; and Colorado state university - Pueblo, created by article 31.5 of title 23,

C.R.S.;

(c) (Deleted by amendment, L. 2003, p. 792, § 17, effective July 1, 2003.)

(d) The board of trustees for the university of northern Colorado, created by section 23-40-104 (1), C.R.S., and the university of northern Colorado at Greeley, created by article 40 of title 23, C.R.S.;

(e) The board of trustees of the Colorado school of mines, created by article 41 of title 23, C.R.S., and the school of mines at Golden, created by section 5 of article VIII of the state constitution;

(f) State board for community colleges and occupational education and the offices of director of occupational education and director of community and technical colleges, created by article 60 of title 23, C.R.S.;

(g) Repealed.

(h) The board of trustees for Adams state university, created by article 51 of title 23, C.R.S.;

(i) The board of trustees for Colorado Mesa university, created by article 53 of title 23, C.R.S.;

(j) The board of trustees for Metropolitan state university of Denver, created by article 54 of title 23, C.R.S.;

(k) The board of trustees for Western state Colorado university, created by article 56 of title 23, C.R.S.;

(l) The board of trustees for Fort Lewis College, created by article 52 of title 23, C.R.S.

(5) (a) With respect to the divisions of the department specified in subsection (3) of this section, the executive director shall have the powers, duties, and functions prescribed in this article for heads of principal departments.

(b) With respect to the Colorado commission on higher education and the universities, colleges, and boards specified in subsection (4) of this section, the executive director shall have only those powers, duties, and functions prescribed in article 1 of title 23, C.R.S.; except that the executive director of the Colorado commission on higher education is authorized to negotiate, implement, and monitor contracts, as described in sections 23-5-129 and 23-5-130, C.R.S., with universities, colleges, and boards, in consultation with the Colorado commission on higher education.

(6) The office of state archaeologist, created by part 4 of article 80 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the state historical society, as a section thereof.

24-1-115. Department of education - creation. (1) There is hereby created a department of education, the head of which shall be the commissioner of education, who shall be appointed by the state board of education.

(2) The state board of education, created by part 1 of article 2 of title 22, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of education.

(3) The state department of education and the office of the commissioner of education, created by part 1 of article 2 of title 22, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of education subject to the state constitution.

(4) The department of education shall include the state library, the ex officio head of which shall be the commissioner of education. The state library, created by article 90 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of education as a division thereof.

(5) The state board of teacher certification, created by article 1 of chapter 123, C.R.S. 1963, and its powers, duties, and functions are transferred by a **type 3** transfer to the department of education as additional powers, duties, and functions of the state board of education, and the state board of teacher certification is abolished.

(6) Repealed.

(7) (Deleted by amendment, L. 2003, p. 1586, § 19, effective July 1, 2004.)

(8) The Colorado school for the deaf and the blind, as provided for in article 80 of title 22, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of education.

(9) The department of education shall include the state charter school institute established in section 22-30.5-503, C.R.S., and its powers, duties, and functions, as if the institute were transferred by a **type 1** transfer to the department of education.

(10) The department of education shall include the division of on-line learning established in section 22-30.7-103, C.R.S., and its powers, duties, and functions, as if the division were transferred by a **type 2** transfer to the department of education.

(11) (a) The department of education shall include the division of public school capital construction assistance established in section 22-43.7-105, C.R.S., and its powers, duties, and functions, as if the division were transferred by a **type 2** transfer to the department of education.

(b) The department of education shall include the public school capital construction assistance board established in section 22-43.7-106, C.R.S., and its powers, duties, and functions, as if the board were transferred by a **type 1** transfer to the department of education.

(12) The department of education shall include the facility schools unit established in section 22-2-403, C.R.S., and its powers, duties, and functions, as if the unit were transferred by a **type 2** transfer to the department of education.

(13) The department of education shall include the facility schools board established in section 22-2-404, C.R.S., and its powers, duties, and functions, as if the board were transferred by a **type 1** transfer to the department of education.

(14) The department of education shall include the Colorado state advisory council for parent involvement in education created in section 22-7-303, C.R.S., and its powers, duties, and functions, as if the council were transferred by a **type 2** transfer to the department of education.

(15) The department of education shall include the office of dropout prevention and student re-engagement established in section 22-14-103, C.R.S., and its powers, duties, and functions, as if the office were transferred by a **type 2** transfer to the department of education.

(16) The department of education shall include the concurrent enrollment advisory board created in section 22-35-107, C.R.S., and its powers, duties, and functions, as if the board were transferred by a **type 2** transfer to the department of education.

24-1-116. Department of administration - creation. (Repealed)

24-1-117. Department of revenue - creation. (1) There is hereby created a department of revenue, the head of which shall be the executive director of the department of revenue, who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(2) The department of revenue and the office of director of revenue, created by article 35 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of revenue.

(3) The powers, duties, and functions of the secretary of state with respect to fermented malt beverages and malt, vinous, and spirituous liquors under the provisions of articles 46 to 48 of title 12, C.R.S., are transferred by a **type 2** transfer to the department of revenue.

(4) (a) The department of revenue shall consist of the following divisions:

(I) and (II) (Deleted by amendment, L. 2000, p. 1632, § 1, effective June 1, 2000.)

(III) Repealed.

(IV) Liquor enforcement division;

(V) State lottery division;

(VI) Division of racing events, including the Colorado racing commission;

(VII) Division of gaming, including the Colorado limited gaming control commission; and

(VIII) (Deleted by amendment, L. 2005, p. 1185, § 41, effective August 8, 2005.)

(IX) Such other groups, divisions, sections, and units as the executive director of the department of revenue may create pursuant to section 24-35-103.

(b) Repealed.

(c) (I) Whenever any law of this state or any rule promulgated under the laws of this state refers to the division of enforcement of the department of revenue, such law or rule shall be deemed to refer to the department of revenue.

(II) Repealed.

(5) The motor carrier services division, created in section 42-8-103 (1), C.R.S., prior to the repeal of said subsection (1) by House Bill 12-1019, enacted in 2012, is abolished, and its powers, duties, and functions are transferred by **type 3** transfers as follows:

(a) The powers, duties, and functions of its ports of entry section are transferred to the department of public safety and allocated to the Colorado state patrol.

(b) Its powers, duties, and functions relating to commercial driver's licenses and the international registration plan are transferred to the department of revenue.

24-1-118. Department of institutions - creation. (Repealed)

24-1-119. Department of public health and environment - creation. (1) There is hereby created a department of public health and environment. The head of the department shall be the executive director of the department of public health and environment. The governor shall appoint said executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(2) The state board of health, created by part 1 of article 1 of title 25, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of public health and environment as the state board of health.

(3) The state water quality control commission, created by part 2 of article 8 of title 25, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of public health and environment as the state water quality control commission. Anything in this article to the contrary notwithstanding, the state board of health shall have no powers, duties, or functions with respect to water pollution control.

(4) Except for the state board of health, the state department of public health and the office of the executive director thereof, created by part 1 of article 1 of title 25, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of public health and environment.

(5) The department of public health and environment shall consist of the following divisions:

(a) Division of administration. The division of administration, created by part 1 of

article 1 of title 25, C.R.S., except for the office of the executive director of the state department of public health, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of public health and environment as the division of administration.

(b) (Deleted by amendment, L. 93, p. 1089, § 5, effective July 1, 1994.)

(c) The prevention services division, created in article 20.5 of title 25, C.R.S.

(6) The division of administration shall include the following:

(a) The office of state chemist, created by part 4 of article 1 of title 25, C.R.S. Said office and its powers, duties, and functions are transferred by a **type 2** transfer to the department of public health and environment and allocated to the division of administration as a section thereof.

(b) The office of state registrar of vital statistics, created by article 2 of title 25, C.R.S. Said office and its powers, duties, and functions are transferred by a **type 2** transfer to the department of public health and environment and allocated to the division of administration as a section thereof.

(c) Repealed.

(d) The plant operators certification board, created by article 9 of title 25, C.R.S.

(6.3) and (6.5) Repealed.

(7) (a) The air quality control commission, created by part 1 of article 7 of title 25, C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer to the department of public health and environment. Anything in this article to the contrary notwithstanding, the state board of health shall have no powers, duties, or functions with respect to air pollution other than as provided in section 25-7-111 (1), C.R.S.

(b) Repealed.

(c) The office of technical secretary, created by part 1 of article 7 of title 25, C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer to the department of public health and environment and allocated to the air quality control commission.

(8) The solid and hazardous waste commission, created in part 3 of article 15 of title 25, C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer to the department of public health and environment.

(9) and (10) Repealed.

(11) The office of health equity, created by section 25-4-2204, C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 2** transfer to the department of public health and environment.

(12) The primary care office, created by part 4 of article 1.5 of title 25, C.R.S., shall exercise its powers and perform its duties and functions as if it were transferred by a **type 2** transfer to the department of public health and environment.

24-1-119.5. Department of health care policy and financing - creation. (1) There is hereby created a department of health care policy and financing, the head of which shall be the executive director of the department of health care policy and financing, which office is hereby created. The governor shall appoint the executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(2) The powers, duties, and functions relating to the "Colorado Medical Assistance Act", as specified in articles 4, 5, and 6 of title 25.5, C.R.S., are transferred by a **type 2** transfer to the department of health care policy and financing.

(3) Repealed.

(4) The powers, duties, and functions relating to the "Colorado Indigent Care Program", as specified in part 1 of article 3 of title 25.5, C.R.S., are transferred by a **type 2** transfer to the department of health care policy and financing.

(4.5) The powers, duties, and functions relating to the old age pension health and medical care program, as specified in section 25.5-2-101, C.R.S., are transferred by a **type 2** transfer to the department of health care policy and financing.

(5) The medical services board created in part 3 of article 1 of title 25.5, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of health care policy and financing.

(6) (Deleted by amendment, L. 2006, p. 2007, § 68, effective July 1, 2006.)

(7) Repealed.

(8) The powers, duties, and functions relating to programs, services, and supports for persons with intellectual and developmental disabilities, as specified in article 10 of title 25.5, C.R.S., are transferred by a **type 2** transfer to the department of health care policy and financing.

Editor's note: Subsection (8) is effective March 1, 2014.

24-1-120. Department of human services - creation. (1) There is hereby created a department of human services, the head of which shall be the executive director of the department of human services, which office is hereby created. The governor shall appoint the executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(2) Except as otherwise provided in title 26, C.R.S., the powers, duties, and functions of the department of social services and the department of institutions are

transferred by a **type 3** transfer to the department of human services, and the department of social services and the department of institutions are abolished.

(3) The state board of social services, created by article 1 of title 26, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of human services as the state board of human services.

(4) Unless otherwise transferred to the department of health care policy and financing or the department of public health and environment, the department of human services shall exercise the following powers and perform the following duties:

(a) Powers, duties, and functions relating to public assistance and welfare, which are transferred by a **type 2** transfer to the department of human services;

(b) Powers, duties, and functions relating to vocational rehabilitation, which are transferred by a **type 2** transfer to the department of human services.

(c) Repealed.

(5) The department of human services shall include the following:

(a) The Colorado commission on the aging and the office of the director thereof. Said office and director and their powers, duties, and functions are transferred by a **type 2** transfer to the department of human services.

(b) The Colorado state veterans center at Homelake, which is transferred by a **type 2** transfer to the department of human services;

(c) The Colorado state veterans nursing homes, created by part 2 of article 12 of title 26, C.R.S., which are transferred by a **type 2** transfer to the department of human services;

(d) The merit system council, created by article 1 of title 26, C.R.S. Said council and its powers, duties, and functions are transferred by a **type 2** transfer to the department of human services.

(e) The powers, duties, and functions regarding the state information agency under the "Uniform Interstate Family Support Act", created by article 5 of title 14, C.R.S. Said powers, duties, and functions are transferred by a **type 2** transfer to the department of human services.

(f) The state office on aging, created by part 2 of article 11 of title 26, C.R.S. Said state office and its powers, duties, and functions are transferred by a **type 2** transfer to the department of human services.

(g) The adoption intermediary commission, created by part 3 of article 5 of title 19, C.R.S. Said commission and its powers, duties, and functions are transferred by a **type 1** transfer to the department of human services.

(h) The Colorado commission for the deaf and hard of hearing, created by article 21 of title 26, C.R.S. Said commission shall exercise its powers, duties, and functions under the department as if transferred by a **type 2** transfer.

(i) The office of homeless youth services, created by article 5.9 of title 26, C.R.S. Said office and its powers, duties, and functions are transferred by a **type 2** transfer to the

department of human services.

(j) Repealed.

(k) The board of commissioners of state veterans nursing homes, created in section 26-12-402, C.R.S. Said board and its powers, duties, and functions are transferred by a **type 2** transfer to the department of human services.

(l) Repealed.

(m) The early childhood leadership commission created by article 6.2 of title 26, C.R.S.

(6) The department shall consist of the following divisions and units:

(a) and (b) Repealed.

(c) The juvenile parole board, created pursuant to section 19-2-206, C.R.S. The juvenile parole board and its powers, duties, and functions are transferred by a **type 1** transfer to the department of human services as a division thereof.

(d) The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, created pursuant to article 80 of title 27, C.R.S. The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, and its powers, duties, and functions, including the powers, duties, and functions relating to the alcohol and drug driving safety program specified in section 42-4-1301.3, C.R.S., are transferred by a **type 2** transfer to the department of human services.

(e) The division of youth corrections, created pursuant to section 19-2-203, C.R.S. The division of youth corrections and the office of the director of the division of youth corrections and their powers, duties, and functions are transferred by a **type 2** transfer to the department of human services as a division thereof.

(7) The department of human services shall supervise and control the following institutions which are transferred by a **type 2** transfer to the department of human services:

(a) Colorado mental health institute at Pueblo;

(b) Wheat Ridge regional center;

(c) Grand Junction regional center;

(d) Pueblo regional center;

(e) Lookout Mountain school at Golden;

(f) Mount View school at Morrison;

(g) Colorado mental health institute at Fort Logan, in Denver;

(h) Adams youth services center at Brighton;

(i) Gilliam youth services center at Denver;

(j) Grand Mesa youth services center at Grand Junction;

(k) Pueblo youth services center;

(l) Zebulon Pike youth services center at Colorado Springs;

(m) Lookout Mountain youth services center at Golden;

(n) Mount View youth services center at Denver;

(o) Lathrop Park youth camp at Walsenburg.

(8) The state council on developmental disabilities, created by part 2 of article 10.5 of title 27, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of human services.

(9) The powers, duties, and functions of the Colorado traumatic brain injury trust fund board, created in section 26-1-302, C.R.S., are transferred by a **type 2** transfer to the department of human services.

(10) The powers, duties, and functions of the Colorado children's trust fund board, created in section 19-3.5-104, C.R.S., are transferred by a **type 2** transfer to the department of human services.

(11) The powers, duties, and functions of the Tony Grampsas youth services board created in section 26-6.8-103, C.R.S., are transferred by a **type 2** transfer to the department of human services.

24-1-121. Department of labor and employment - creation. (1) There is hereby created the department of labor and employment, the head of which shall be the executive director of the department of labor and employment, which office is hereby created. The governor shall appoint said executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109. The executive director shall have the powers, duties, and functions prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

(1.5) The department of labor and employment shall include, as part of the office of the executive director, the industrial claim appeals office, created by section 8-1-102, C.R.S. Said industrial claim appeals office shall exercise its powers and perform its duties and functions under the department as if transferred thereto by a **type 2** transfer.

(2) The industrial commission of Colorado, created by article 1 of title 8, C.R.S., and its powers, duties, and functions, except those powers, duties, and functions transferred to the state board of pharmacy and the industrial claim appeals office, are transferred by a **type 3** transfer to the department of labor and employment, and the industrial commission of Colorado is abolished.

(3) The department of labor and employment consists of the following divisions:

(a) (I) The division of labor, the head of which shall be the director of the division of labor, which division and office are hereby created. The division and the director shall exercise their powers and perform their duties and functions specified by law under the department of labor and employment as if the same were transferred to the department by

a **type 2** transfer.

(II) (Deleted by amendment, L. 91, p. 1338, § 55, effective July 1, 1991.)

(b) The division of employment and training, the head of which is the director of the division of employment and training. The division, created by article 83 of title 8, C.R.S., and the director of the division shall exercise their powers, duties, and functions under the department of labor and employment as if transferred by a **type 2** transfer.

(c) Repealed.

(d) (I) The division of workers' compensation, the head of which shall be the director of the division of workers' compensation. Said division, created by section 8-47-101, C.R.S., and the director thereof, shall exercise their powers, duties, and functions under the department of labor and employment as if transferred thereto by a **type 2** transfer.

(II) Repealed.

(e) The division of oil and public safety, the head of which shall be the director of the division of oil and public safety, which division and office are created pursuant to section 8-20-101, C.R.S. The division and the director shall exercise their powers and perform their duties and functions specified by law under the department of labor and employment as if the same were transferred to the department by a **type 2** transfer.

(f) The state work force development council, created by article 46.3 of this title, which shall exercise its powers and perform its duties and functions under the department of labor and employment as if the same were transferred to the department by a **type 2** transfer.

(g) The division of unemployment insurance, the head of which is the director of the division of unemployment insurance. The division, created in article 71 of title 8, C.R.S., and the director of the division shall exercise their powers, duties, and functions under the department of labor and employment as if transferred by a **type 2** transfer.

(4) The division of oil and public safety shall include the following:

(a) Repealed.

(b) The division of boiler inspection, created by article 4 of title 9, C.R.S. Said division and its powers, duties, and functions are transferred by a **type 2** transfer to the department of labor and employment and allocated to the division of oil and public safety as a section thereof.

(c) (Deleted by amendment, L. 2001, p. 1113, § 2, effective June 5, 2001.)

(d) and (e) Repealed.

(5) The petroleum storage tank committee shall exercise its powers and perform the duties and functions specified by article 20.5 of title 8, C.R.S., under the department of labor and employment and the executive director thereof as if the same were transferred to the department by a **type 1** transfer.

24-1-122. Department of regulatory agencies - creation. (1) There is hereby created a department of regulatory agencies, the head of which shall be the executive director of the department of regulatory agencies, which office is hereby created. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(1.1) Repealed.

(2) The department of regulatory agencies shall consist of the following divisions:

(a) The public utilities commission, created by article 2 of title 40, C.R.S. Its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as a division thereof. The director of the commission shall serve as the division director.

(a.5) The office of consumer counsel and the utility consumers' board, created by article 6.5 of title 40, C.R.S. The office of consumer counsel and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as a division thereof. The utility consumers' board shall exercise its powers and perform its duties and functions under the department as if the same were transferred to the department by a **type 1** transfer and allocated to the office of consumer counsel.

(b) (I) Division of insurance, the head of which shall be the commissioner of insurance. The division of insurance of the state of Colorado, created by section 10-1-103, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as the division of insurance.

(II) The workers' compensation classification appeals board, created by section 8-55-101 (1), C.R.S., shall exercise its powers and perform duties and functions under the division of insurance as if such workers' compensation classification appeals board were transferred to the division of insurance by a **type 1** transfer.

(c) Division of financial services, the head of which shall be the state commissioner of financial services. The financial services board, created by section 11-44-101.6, C.R.S., and its powers, duties, and functions are transferred as if by a **type 1** transfer to the department of regulatory agencies and allocated to the division of financial services. The office of state commissioner of financial services and the financial services division of the state of Colorado, created by article 44 of title 11, C.R.S., are transferred by a **type 2** transfer to the department of regulatory agencies and allocated to the division of financial services.

(d) Division of banking, the head of which shall be the state bank commissioner. The banking board, created by article 102 of title 11, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies and allocated to the division of banking.

(e) Division of securities, the head of which shall be the commissioner of securities. The securities board, created in section 11-51-702.5, C.R.S., and its powers,

duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies and allocated to the division of securities. The division of securities, and the office of commissioner of securities, created by article 51 of title 11, C.R.S., and their powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as the division of securities.

(f) Repealed.

(g) Division of professions and occupations, the head of which shall be the director of professions and occupations, which office is hereby created. The division of professions and occupations is transferred by a **type 2** transfer to the department of regulatory agencies as the division of professions and occupations.

(h) Colorado civil rights division, the head of which shall be the director of the Colorado civil rights division. The Colorado civil rights commission, the Colorado civil rights division, and the office of director of the Colorado civil rights division, created by part 3 of article 34 of this title, and their powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies as the Colorado civil rights division.

(i) and (j) Repealed.

(k) (I) Division of real estate, the head of which shall be the director of the division. The division of real estate and the director of the division, created by part 1 of article 61 of title 12, C.R.S., shall exercise their powers and perform their duties and functions under the department of regulatory agencies as if they were transferred to the department by a **type 2** transfer. The real estate commission, created by part 1 of article 61 of title 12, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies.

(II) The division shall include the board of real estate appraisers, created by part 7 of article 61 of title 12, C.R.S., which shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if the same were transferred thereto by a **type 1** transfer. The division shall also include the board of mortgage loan originators, created by section 12-61-902.5. The board of mortgage loan originators shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if transferred thereto by a **type 1** transfer.

(3) The following boards and agencies are transferred by a **type 1** transfer to the department of regulatory agencies and allocated to the division of registrations:

(a) Repealed.

(b) State board of accountancy, created by article 2 of title 12, C.R.S.;

(c) (Deleted by amendment, L. 2006, p. 742, § 10, effective July 1, 2006.)

(d) to (g) Repealed.

(h) Colorado state board of chiropractic examiners, created by article 33 of title 12, C.R.S.;

(i) and (j) Repealed.

(k) State board of dental examiners, created by article 35 of title 12, C.R.S.;

(l) Repealed.

(m) (I) Colorado medical board, created by article 36 of title 12, C.R.S.;

(II) Colorado podiatry board, created by article 32 of title 12, C.R.S.;

(n) and (o) Repealed.

(p) State board of optometry, created by article 40 of title 12, C.R.S.;

(q) Passenger tramway safety board, created by part 7 of article 5 of title 25, C.R.S.;

(r) State board of pharmacy, created by part 1 of article 42.5 of title 12, C.R.S.;

(s) and (t) Repealed.

(u) State board of licensure for architects, professional engineers, and professional land surveyors, created by section 12-25-106, C.R.S.;

(v) Colorado state board of psychologist examiners, created by part 3 of article 43 of title 12, C.R.S.;

(w) and (x) Repealed.

(y) State board of veterinary medicine, created by article 64 of title 12, C.R.S.;

(z) Board of examiners of nursing home administrators, created by article 39 of title 12, C.R.S.;

(aa) Examining board of plumbers, created by article 58 of title 12, C.R.S.;

(bb) to (ee) Repealed.

(ff) State electrical board, created by article 23 of title 12, C.R.S.;

(gg) State board of nursing, created by article 38 of title 12, C.R.S.;

(hh) Repealed.

(ii) State board of social work examiners, created by part 4 of article 43 of title 12, C.R.S.;

(jj) State board of marriage and family therapist examiners, created by part 5 of article 43 of title 12, C.R.S.;

(kk) State board of licensed professional counselor examiners, created by part 6 of article 43 of title 12, C.R.S.;

(ll) State board of registered psychotherapists, created by part 7 of article 43 of title 12, C.R.S.;

(mm) State board of addiction counselor examiners, created by part 8 of article 43 of title 12, C.R.S.

(4) The following boards and agencies are transferred by a **type 2** transfer to the department of regulatory agencies and allocated to the division of professions and occupations:

(a) to (e) Repealed.

(5) Repealed.

24-1-123. Department of agriculture - creation. (1) There is hereby created a department of agriculture, the head of which shall be the commissioner of agriculture.

(2) The state agricultural commission, created by article 1 of title 35, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of agriculture.

(3) The state department of agriculture and the office of commissioner of agriculture, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture.

(4) The department of agriculture shall consist of the following divisions:

(a) Division of markets, the head of which shall be the director of the division of markets. The division of markets and the office of chief thereof, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture as the division of markets.

(b) Division of plant industry, the head of which shall be the director of the division of plant industry. The division of plant industry and the office of chief thereof, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture as the division of plant industry.

(c) (I) Division of animal industry, the head of which shall be the director of the division of animal industry. The division of animal industry and the office of chief thereof, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture as the division of animal industry.

(II) The state bureau of animal protection, created by article 42 of title 35, C.R.S., and its powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture and allocated to the division of animal industry as a section thereof.

(d) Division of administrative services, the head of which shall be the director of administrative services division. The division of administrative services and the office of chief thereof, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture as the division of administrative services.

(e) Division of inspection and consumer services, the head of which shall be the director of inspection and consumer services division. The division of inspection and consumer services and the office of chief thereof, created by article 1 of title 35, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of agriculture as the division of inspection and consumer services.

(f) Repealed.

(g) (I) Division of brand inspection, the head of which shall be the brand commissioner. The state board of stock inspection commissioners and the office of brand commissioner, created by article 41 of title 35, C.R.S., and their powers, duties, and

functions are transferred by a **type 1** transfer to the department of agriculture as a part of the division of brand inspection.

(II) and (III) Repealed.

(h) (I) The Colorado state fair authority, the head of which shall be the manager of the Colorado state fair and industrial exposition. The Colorado state fair authority and the office of manager of the Colorado state fair and industrial exposition, created by part 4 of article 65 of title 35, C.R.S., shall exercise their powers, duties, and functions as a division of the department of agriculture as if the same were transferred by a **type 1** transfer to the department of agriculture.

(II) The Colorado state fair authority shall include the board of commissioners of the Colorado state fair authority, created by part 4 of article 65 of title 35, C.R.S., which shall exercise its powers and perform its duties and functions as specified by law under the department of agriculture as a part of the Colorado state fair authority as if the same were transferred by a **type 1** transfer.

(i) The state conservation board, created in article 70 of title 35, C.R.S. All its powers, duties, and functions are transferred by a **type 1** transfer to the department of agriculture as a division thereof. The employees of the state conservation board appointed pursuant to section 35-70-103 (5) (g), C.R.S., are transferred to the department of agriculture by a **type 2** transfer.

(5) The Colorado wine industry development board, created by article 29.5 of title 35, C.R.S., and its powers, duties, and functions are transferred as if by a **type 1** transfer to the department of agriculture.

(6) The aquaculture board, created by article 24.5 of title 35, C.R.S., shall exercise its powers and perform its duties and functions as specified by law under the department of agriculture and the executive director thereof as if the same were transferred to the department by a **type 2** transfer.

(7) The Colorado agricultural value-added development board, created in section 35-75-203, C.R.S., shall exercise its powers and perform its duties and functions as specified by law under the department as if the same were transferred to the department by a **type 1** transfer.

24-1-124. Department of natural resources - creation - divisions. (1) There is hereby created a department of natural resources, the head of which shall be the executive director of the department of natural resources, who shall be the commissioner of mines. The executive director shall be appointed by the governor pursuant to law.

(2) The office of natural resources coordinator, created by article 33 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of natural resources.

(2.1) The department of natural resources shall include, as a part of the office of

the executive director:

(a) The office of commissioner of mines, created by section 1 of article XVI of the state constitution. Its powers, duties, and functions are transferred by a **type 2** transfer to the office of the executive director of the department of natural resources.

(b) Repealed.

(c) The Colorado avalanche information center, created pursuant to section 24-33-116. The powers, duties, and functions are transferred by a **type 2** transfer to the department of natural resources and allocated to the office of the executive director.

(3) The department of natural resources consists of the following divisions:

(a) Division of water resources, the head of which shall be the state engineer;

(b) The Colorado water conservation board and the office of director thereof, created by article 60 of title 37, C.R.S. Their powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources as a division thereof.

(c) (Deleted by amendment, L. 2000, p. 556, § 3, effective July 1, 2000.)

(d) The state board of land commissioners, created by section 9 of article IX of the state constitution. Its powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources as a division thereof, subject to the state constitution.

(e) The division of reclamation, mining, and safety, created by section 34-20-103, C.R.S., the head of which shall be the director of the division of reclamation, mining, and safety, under the supervision of the executive director of the department of natural resources. Said division and director shall exercise their powers, duties, and functions as prescribed by law under the department of natural resources and the executive director thereof as if the same were transferred to the department by a **type 2** transfer. The division of reclamation, mining, and safety shall include the following:

(I) The coal mine board of examiners, created by article 22 of title 34, C.R.S. Its powers, duties, and functions are transferred by a **type 2** transfer to the department of natural resources as a section of the division of reclamation, mining, and safety.

(II) The mined land reclamation board and the office of mined land reclamation, created by article 32 of title 34, C.R.S. The mined land reclamation board and its powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources and allocated to the division of reclamation, mining, and safety. The office of mined land reclamation shall exercise its powers, duties, and functions as if the same were transferred to the department of natural resources and allocated to the division of reclamation, mining, and safety as a section thereof by a **type 2** transfer.

(III) The office of active and inactive mines, created by article 21 of title 34, C.R.S. Said office shall exercise its powers, duties, and functions as prescribed by law under the division of reclamation, mining, and safety as if the same were transferred to the department of natural resources and allocated to the division of reclamation, mining, and safety as a section thereof by a **type 2** transfer.

(IV) (Deleted by amendment, L. 2005, p. 1462, § 1, effective July 1, 2005.)

(V) Repealed.

(f) The oil and gas conservation commission of the state of Colorado and the office of the director thereof, created by article 60 of title 34, C.R.S. Said commission and office and the powers, duties, and functions thereof are transferred by a **type 1** transfer to the department of natural resources as a division thereof.

(g) Repealed.

(h) (I) and (II) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1382, § 3, effective July 1, 2011.)

(III) Repealed.

(i) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1382, § 3, effective July 1, 2011.)

(j) The division of forestry, created in section 24-33-201 (1), the head of which shall be the state forester, appointed pursuant to section 23-31-207, C.R.S. The division of forestry and the state forester shall exercise their powers, duties, and functions as prescribed by law under the department of natural resources and the executive director thereof as if the same were transferred to the department by a **type 2** transfer.

(k) (I) (A) The parks and wildlife commission, created in article 9 of title 33, C.R.S. The powers, duties, and functions of the wildlife commission and the board of parks and outdoor recreation are transferred by a **type 1** transfer to the parks and wildlife commission as powers, duties, and functions of the parks and wildlife commission.

(B) The parks and wildlife commission includes, as an advisory council, the Colorado natural areas council created by article 33 of title 33, C.R.S.

(II) (A) The division of parks and wildlife, the head of which is the director of the division of parks and wildlife. The division of parks and wildlife and the office of the director of the division of parks and wildlife are transferred by a **type 1** transfer to the department of natural resources.

(B) The division of parks and wildlife includes the fish health board created by article 5.5 of title 33, C.R.S. The fish health board shall exercise its powers and perform its duties and functions as specified by law under the department of natural resources and the executive director of the department of natural resources as if the same were transferred to the department by a **type 2** transfer.

(4) The division of water resources shall include the following:

(a) The office of state engineer, created by article 80 of title 37, C.R.S. Said office and its powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources and allocated to the division of water resources as a section thereof.

(b) The division engineers, created by part 2 of article 92 of title 37, C.R.S. Said engineers and their powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources and allocated to the division of water resources as a section thereof.

(c) The ground water commission, created by article 90 of title 37, C.R.S. Said

commission and its powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources and allocated to the division of water resources as a section thereof.

(d) The state board of examiners of water well construction and pump installation contractors, created by article 91 of title 37, C.R.S. Said board and its powers, duties, and functions are transferred by a **type 1** transfer to the department of natural resources and allocated to the division of water resources as a section thereof.

(e) Repealed.

(5) Repealed.

24-1-125. Department of local affairs - creation. (1) There is hereby created a department of local affairs, the head of which shall be the executive director of the department of local affairs, which office is hereby created. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109. The executive director shall have those powers, duties, and functions prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

(2) The department of local affairs shall consist of the following divisions:

(a) Division of local government, the head of which shall be the director of local government. The division of local government and the office of director thereof, created by part 1 of article 32 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of local affairs as the division of local government.

(b) Division of property taxation, the head of which shall be the property tax administrator. The rule-making, administrative, and enforcement powers, duties, and functions, except as provided in subsection (3) of this section, of the Colorado tax commission are transferred by a **type 1** transfer to the department of local affairs, and said powers, duties, and functions shall be exercised or performed by the property tax administrator or the division of property taxation as is otherwise provided by law.

(c) (I) Division of commerce and development, the head of which shall be the director of commerce and development. The division of commerce and development and the office of director thereof, created by part 3 of article 32 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of local affairs as the division of commerce and development.

(II) Repealed.

(d) and (e) Repealed.

(f) The division of housing, created by the "Colorado Housing Act of 1970", part 7 of article 32 of this title. Its powers, duties, and functions are transferred by a **type 1** transfer to the department of local affairs as a division thereof.

(g) Division of planning, the head of which shall be the director of the division of planning. The division of planning and the office of director thereof, created by part 2 of article 32 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of local affairs as a division thereof.

(h) Repealed.

(i) Office of rural development, the head of which shall be the coordinator of rural development. The office of rural development and the position of coordinator of rural development, created by part 8 of article 32 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of local affairs.

(j) Repealed.

(k) The office of the Colorado youth service corps, created by part 20 of article 32 of this title, shall exercise its powers and perform its duties and functions under the department of local affairs as if the same were transferred to said department by a **type 2** transfer.

(l) Repealed.

(m) Repealed.

(3) The board of assessment appeals created by article 2 of title 39, C.R.S., shall be vested with the quasi-judicial powers, duties, and functions of the Colorado tax commission, which board shall constitute a part of the department of local affairs, and said board is transferred by a **type 1** transfer to the department of local affairs.

(4) The advisory committee to the property tax administrator, created by article 2 of title 39, C.R.S., shall constitute a part of the department of local affairs and shall exercise its powers and perform its duties and functions under the department as if it were transferred to said department by a **type 1** transfer.

(5) to (9) Repealed.

24-1-126. State department of highways - creation. (Repealed)

24-1-127. Department of military and veterans affairs - creation. (1) There is hereby created a department of military and veterans affairs, the head of which shall be the adjutant general who shall be appointed by the governor pursuant to law.

(2) The office of the adjutant general, created by part 1 of article 3 of title 28, C.R.S., and its powers, duties, and functions are transferred by a **type 2** transfer to the department of military and veterans affairs.

(3) The department of military and veterans affairs shall consist of the following divisions:

(a) The Colorado National Guard, created by part 2 of article 3 of title 28, C.R.S. Its powers, duties, and functions are transferred by a **type 2** transfer to the department of

military and veterans affairs as a division thereof.

(b) The Colorado department of civil air patrol, created by article 1 of title 28, C.R.S. Its powers, duties, and functions are transferred by a **type 1** transfer to the department of military and veterans affairs as the Colorado division of the civil air patrol.

(c) Repealed.

(d) The Colorado state defense force, when organized by the governor pursuant to article 4 of title 28, C.R.S. If organized, its powers, duties, and functions are transferred by a **type 2** transfer to the department of military and veterans affairs as a division thereof.

(e) Repealed.

(f) The division of veterans affairs, created by part 7 of article 5 of title 28, C.R.S. Its powers, duties, and functions are transferred by a **type 2** transfer to the department of military and veterans affairs as a division thereof.

(g) The Colorado board of veterans affairs, created by section 28-5-702, C.R.S. Its powers, duties, and functions are transferred by a **type 2** transfer to the department of military and veterans affairs as a division thereof.

24-1-128. Department of personnel - creation. (1) Pursuant to the provisions of section 14 of article XII of the state constitution, there is hereby created a department of personnel, the head of which shall be the state personnel director, also referred to as the executive director of personnel, who shall be appointed by the governor, with the consent of the senate, and who shall serve at the pleasure of the governor.

(2) The state personnel board, created by section 14 of article XII of the state constitution, and its powers, duties, and functions are transferred by a **type 1** transfer to the department of personnel, subject to the provisions of the state constitution.

(3) The civil service commission and its powers, duties, and functions are transferred by a **type 3** transfer to the department of personnel and allocated to the state personnel board and the state personnel director, pursuant to the provisions of the state constitution and laws enacted pursuant thereto, and the civil service commission is abolished.

(4) The state employees' and officials' group insurance board of administration, created by part 2 of article 8 of title 10, C.R.S., and its powers, duties, and functions are transferred by a **type 3** transfer to the department of personnel and allocated to the state personnel director, pursuant to the provisions of the state constitution and laws enacted pursuant thereto, and the state employees' and officials' group insurance board of administration is abolished.

(5) Repealed.

(6) The powers, duties, and functions of the department of administration are transferred by a **type 3** transfer to the department of personnel, and the department of

administration is hereby abolished.

(7) The department of personnel shall include the following administrative support services:

(a) The powers, duties, and functions concerning purchasing, specified in part 2 of article 102 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel.

(b) The powers, duties, and functions concerning state archives and public records, specified in part 1 of article 80 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel.

(c) Repealed.

(d) The powers, duties, and functions concerning accounts and control and the office of controller, specified in part 2 of article 30 of this title, except those powers, duties, and functions transferred by paragraph (c) of this subsection (7), shall be administered as if transferred by a **type 2** transfer to the department of personnel.

(e) Repealed.

(f) The office of administrative courts, the head of which shall be the executive director of the department of personnel. The office of administrative courts, created by part 10 of article 30 of this title, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of personnel as an office thereof.

(g) The powers, duties, and functions concerning central services, specified in part 11 of article 30 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel.

(h) The powers, duties, and functions concerning the risk management system, specified in part 15 of article 30 of this title, shall be administered as if transferred by a **type 2** transfer to the department of personnel.

(i) (Deleted by amendment, L. 96, p. 1493, § 1, effective June 1, 1996.)

(j) Repealed.

(k) The powers, duties, and functions concerning state buildings. Such powers, duties, and functions, specified by part 13 of article 30 of this title and formerly vested in the office of state planning and budgeting, are transferred by a **type 2** transfer to the department of personnel.

(l) The state claims board, created by part 15 of article 30 of this title, and its powers, duties, and functions are transferred by a **type 1** transfer to the department of personnel.

(m) Repealed.

24-1-128.1. Office of state planning and budgeting - creation. (Repealed)

24-1-128.5. Department of corrections - creation. (1) There is hereby created a department of corrections, the head of which shall be the executive director of the department of corrections, who shall be appointed by the governor, with the consent of the senate, and who shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(1.5) The department of corrections shall supervise and control each correctional facility, as defined in section 17-1-102, C.R.S. The powers, duties, and functions of the department of institutions relating to honor camps, work release programs, and other adult correctional programs are transferred by a **type 2** transfer to the department of corrections. The powers, duties, and functions of the division of parole in the department of institutions are transferred by a **type 3** transfer to the department of corrections, and the division of parole in the department of institutions is abolished. The executive director of the department of corrections shall have the powers and duties specified in title 17, C.R.S.

(2) The department of corrections shall consist of the following divisions:

(a) The division of adult parole, the head of which shall be the director of the division of adult parole. The division of adult parole shall exercise its powers and perform its duties and functions under the department of corrections as if the same were transferred by a **type 2** transfer.

(b) The division of correctional industries, the head of which shall be the director of the division of correctional industries. The division shall supervise and control correctional industries programs in this state. The division shall exercise its powers and perform its duties and functions under the department of corrections as if the same were transferred by a **type 2** transfer.

(c) (Deleted by amendment, L. 2000, p. 859, § 73, effective May 24, 2000.)

(3) The state board of parole, created by part 2 of article 2 of title 17, C.R.S., is transferred by a **type 1** transfer to the department of corrections.

(3.5) The division of correctional industries shall include, as a section thereof, the Colorado state agency for surplus property, created by part 4 of article 82 of this title. The agency and its powers, duties, and functions are transferred by a **type 2** transfer to the department of corrections and allocated to the division of correctional industries as a section thereof.

(4) Any powers, duties, and functions relating to adult corrections which were previously vested in the department of institutions and are not specifically transferred to the department of corrections shall be assigned thereto by the governor.

24-1-128.6. Department of public safety - creation. (1) There is hereby created a department of public safety, the head of which shall be the executive director of the

department of public safety. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109.

(2) The department of public safety consists of the following divisions:

(a) Colorado state patrol, the head of which shall be the chief of the Colorado state patrol. The Colorado state patrol and the office of chief thereof, created by part 2 of article 33.5 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety. The powers, duties, and functions of the state department of highways relating to the Colorado state patrol are transferred by a **type 2** transfer to the department of public safety and allocated to the Colorado state patrol. The powers, duties, and functions of the ports of entry section of the motor carrier services division of the division of motor vehicles of the department of revenue, which motor carrier services division is abolished pursuant to section 24-1-117 (5), enacted by House Bill 12-1019, enacted in 2012, are transferred by a **type 3** transfer to the department of public safety and allocated to the Colorado state patrol.

(b) Repealed.

(c) Colorado bureau of investigation, the head of which shall be the director of the Colorado bureau of investigation. The Colorado bureau of investigation and the office of director thereof, created by part 4 of article 33.5 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety. The powers, duties, and functions of the department of local affairs relating to the Colorado bureau of investigation are transferred by a **type 2** transfer to the department of public safety and allocated to the Colorado bureau of investigation.

(d) Division of criminal justice, the head of which shall be the director of the division of criminal justice. The division of criminal justice and the office of director thereof, created by part 5 of article 33.5 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety. The powers, duties, and functions of the department of local affairs relating to the division of criminal justice are transferred by a **type 2** transfer to the department of public safety and allocated to the division of criminal justice.

(e) Repealed.

(f) (Deleted by amendment, L. 2002, p. 1204, § 1, effective June 3, 2002.)

(g) Repealed.

(h) (I) Division of homeland security and emergency management, the head of which is the director of the division of homeland security and emergency management. The division of homeland security and emergency management and the office of director thereof, created by part 16 of article 33.5 of this title, shall exercise their powers and perform their duties and functions as if the same were transferred by a **type 2** transfer to the department of public safety and allocated to the division of homeland security and

emergency management.

(II) The division of homeland security and emergency management includes the following agencies, which shall exercise their powers and perform their duties and functions under the department of public safety as if the same were transferred thereto by a **type 2** transfer:

(A) The office of emergency management created by part 7 of article 33.5 of this title, the head of which is the director of the office of emergency management. Effective July 1, 2012, the division of emergency management in the department of local affairs, created by part 21 of article 32 of this title, prior to its repeal in 2012, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety and allocated to the office of emergency management under the division of homeland security and emergency management pursuant to this article.

(B) Office of prevention and security, created in section 24-33.5-1606; and

(C) The office of preparedness, created in section 24-33.5-1606.5.

(i) Division of fire prevention and control, the head of which is the director of the division of fire prevention and control. The division of fire prevention and control and the office of the director thereof, created by part 12 of article 33.5 of this title, and their powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety.

(3) Repealed.

(4) (a) The Colorado emergency planning commission, created by part 15 of article 33.5 of this title, shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 2** transfer to the department of public safety.

(b) Effective July 1, 2012, the Colorado emergency planning commission in the department of local affairs, created by part 26 of article 32 of this title, prior to its repeal in 2012, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of public safety, pursuant to this article.

(5) The witness protection board, created by section 24-33.5-106, shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer to the department of public safety.

(6) The identity theft and financial fraud board, created by section 24-33.5-1703, shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 2** transfer to the department of public safety.

(7) The cold case task force, created in section 24-33.5-109, shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 2** transfer to the department of public safety.

(8) Repealed.

(9) The crime victim services advisory board, created pursuant to section 24-4.1-117.3, shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 2** transfer to the division of criminal justice in the department of

public safety.

24-1-128.7. Department of transportation - creation. (1) There is hereby created a department of transportation, the head of which shall be the executive director of the department of transportation.

(2) The transportation commission, created by part 1 of article 1 of title 43, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of transportation.

(3) The department of transportation shall consist of the following divisions:

(a) Highway operations and maintenance division, the head of which shall be 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, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of transportation.

(b) Aeronautics division, the head of which shall be the director of the aeronautics division. The aeronautics division and the office of the director thereof, created by article 10 of title 43, C.R.S., and their powers, duties, and functions are transferred by a **type 1** transfer to the department of transportation. The powers, duties, and functions of the division of aviation of the department of military and veterans affairs are transferred by a **type 1** transfer to the department of transportation and allocated to the aeronautics division.

(c) Transportation development division, the head of which shall be the director of the transportation development division. The transportation development division and the office of the director thereof, created by part 1 of article 1 of title 43, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of transportation.

(d) Engineering, design, and construction division, the head of which shall be the chief engineer. The transportation development division and the office of the chief engineer, created by part 1 of article 1 of title 43, C.R.S., and their powers, duties, and functions are transferred by a **type 2** transfer to the department of transportation.

(e) The transit and rail division created in part 1 of article 1 of title 43, C.R.S., the head of which shall be the director of the transit and rail division. The transit and rail division and the office of the director of the division shall exercise their powers and perform their duties and functions under the department of transportation and the executive director of the department as if the same were transferred thereto by a **type 2** transfer.

(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, and the state department of highways is abolished.

(5) The statewide bridge enterprise created in section 43-4-805 (2), C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer, as defined in section 24-1-105, to the department of transportation.

(6) (a) The high-performance transportation enterprise created in section 43-4-806 (2) (a), C.R.S., shall exercise its powers and perform its duties and functions as if the same were transferred by a **type 1** transfer, as defined in section 24-1-105, to the department of transportation.

(b) The statewide tolling enterprise, created by the transportation commission pursuant to section 43-4-803 (1), C.R.S., prior to the repeal and reenactment of said section by Senate Bill 09-108, enacted in 2009, and its powers, duties, and functions are transferred by a **type 3** transfer, as defined in section 24-1-105, to the high-performance transportation enterprise created in section 43-4-806 (2) (a), C.R.S., and the statewide tolling enterprise is abolished.

24-1-129. Effect of transfer of powers, duties, and functions. Any principal department to which powers, duties, and functions of any existing department, institution, or other agency are transferred or any division, section, or unit of any principal department to which such powers, duties, and functions are allocated shall be the successor in every way with respect to such powers, duties, and functions of the department, institution, or other agency in which such powers, duties, and functions were vested prior to July 1, 1968, except as otherwise provided by this article. Every act performed in the exercise of such powers, duties, and functions by or under the authority of the principal department or any division, section, or unit thereof to which such powers, duties, and functions are transferred or allocated by this article shall be deemed to have the same force and effect as if performed by the department, institution, or other agency in which such functions were vested prior to July 1, 1968. When any such department, institution, or other agency is referred to or designated by any law, contract, or other document, such reference or designation shall be deemed to apply to the principal department or the division, section, or unit thereof in which the powers, duties, and functions of such department, institution, or other agency so referred to or designated are vested by the provisions of this article.

24-1-130. Actions, suits, or proceedings not to abate by reorganization - maintenance by or against successors. (1) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been lawfully commenced, by or against any department, institution, or other agency or by or against any officer of the state in his official capacity or in relation to the discharge of his official duties shall abate by reason of the taking effect of any reorganization under the provisions of this

article. The court may allow the suit, action, or other proceeding to be maintained by or against the successor of any department, institution, or other agency, or any officer affected.

(2) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this article.

24-1-131. Rules, regulations, and orders adopted prior to article - continuation. All rules, regulations, and orders of departments, institutions, boards, commissions, or other agencies lawfully adopted prior to July 1, 1968, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

24-1-132. Transfer of officers and employees. Effective July 1, 1968, such officers and employees who were engaged prior to said date in the performance of powers, duties, and functions of any department, institution, or other agency transferred to a principal department under the provisions of this article and who, in the opinion of the head of the principal department and the governor, are necessary to perform the powers, duties, and functions of the principal department or of any division, section, or unit thereof shall become officers and employees of such principal department and shall retain all rights to state personnel system and retirement benefits under the laws of the state, and their services shall be deemed to be continuous. All transfers and any abolishment of positions of personnel in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

24-1-133. Transfer of property and records. In all cases where, under the provisions of this article, the powers, duties, and functions of any department, institution, or other agency are transferred to a principal department or divided between any two or more principal departments, such principal department shall succeed to all property and records which were used for or pertain to the performance of the powers, duties, and functions transferred. Any conflict as to the proper disposition of such property or records arising under this section and resulting from the transfer, allocation, abolishment, or division of any department, institution, or other agency or the powers, duties, and functions thereof shall be determined by the governor, whose decision shall be final.

24-1-134. Subsequent powers and functions - assignment. Pursuant to the provisions of section 22 of article IV of the state constitution, all powers and functions of the executive department of state government created or specified by law after July 1,

1968, including the creation of any new division, section, unit, or other agency of said executive department, shall be assigned to a principal department, and such powers and functions shall be exercised under such principal department as if the same were transferred to such department by this article under a **type 2** transfer, unless otherwise specified by such law.

24-1-135. Effect of congressional redistricting. (1) Effective January 1, 1983, the terms of office of persons appointed pursuant to sections 11-2-102, 12-22-104, 12-35-104, 12-65-102, 17-2-102, and 23-60-104, C.R.S., sections 24-32-308 and 24-32-706, and sections 25-1-103, 25-1-902, 25-3.5-104, 26-11-101, 33-11-105, 34-60-104, and 35-65-105, C.R.S., shall terminate. Prior thereto, the appointing authority designated by law shall appoint members to such boards, commissions, and committees for terms to commence on January 1, 1983, and to expire on the date the terms of the predecessors in office of such members would have expired, and any person whose term of office is terminated by this section may be reappointed effective January 1, 1983, and, for the purposes of such reappointment, shall not be deemed to succeed himself. Appointments thereafter shall be made as prescribed by law.

(2) Any member of a board, commission, or committee who was appointed or elected to such office as a resident of a designated congressional district pursuant to section 24 (2) of article VI of the state constitution or section 11-2-102, 12-22-104, 12-35-104, 12-47.1-301, 22-2-105, 23-1-102, 23-20-102, 23-21-503, or 23-60-104, C.R.S., or section 24-32-308 or 24-32-706, or section 25-1-103, 25-1-902, 25-3.5-104, 26-11-101, 33-11-105, 34-60-104, or 35-65-401, C.R.S., and who no longer resides in such congressional district solely because of a change made to the boundaries of such district subsequent to the 1990 federal decennial census is eligible to hold office for the remainder of the term to which the member was elected or appointed, notwithstanding such nonresidency.

24-1-135.1. Effect of congressional redistricting related to 2000 federal decennial census - definition. (1) (a) The appointing authority of the boards, commissions, or committees established pursuant to sections 13-91-104, 14-10-115, 21-2-101, 23-1-102, 23-21-503, 23-60-104, 24-32-706, 25-1-103, 25-1-902, 25.5-1-301, 26-11-101, 33-11-105, and 35-65-401, C.R.S., which require members to be appointed as residents of designated congressional districts, shall determine whether the current appointments to such boards, commissions, or committees adequately represent Colorado's new congressional districts. Notwithstanding any provision of law to the contrary, such appointing authority shall terminate the terms of current members and appoint new members to replace such members on the boards, commissions, or

committees as is necessary to ensure proper representation from the new congressional districts; except that the term of a member who continues to reside in the district that such member was designated to represent shall not be terminated. Such changes shall be made no later than January 1, 2003. If the current members adequately represent the new congressional districts, the membership of the board, commission, or committee shall remain unchanged. Any member who continues to serve on a board, commission, or committee shall not be required to be reappointed.

(b) If the appointing authority of the boards, commissions, or committees set forth in paragraph (a) of this subsection (1) is the governor, with the consent of the senate, the governor alone shall determine whether the current appointments to such boards, commissions, or committees adequately represent the new congressional districts and terminate the terms of current members as is necessary to ensure proper representation from such districts, but senate consent shall still be required for the appointment of any new members.

(c) As used in this section, "new congressional districts" means the congressional districts for the state of Colorado as they exist after the changes that occurred as a result of the 2000 federal decennial census, including the addition of a seventh congressional district and the changes in boundaries of the other six congressional districts.

(2) The term of any new appointee who is appointed to replace a person on a board, commission, or committee pursuant to subsection (1) of this section shall expire on the date that the term of the person that such new appointee replaced would have expired, and such member shall not be deemed to have served a full term for purposes of calculating any applicable term limits. If the total size of a board, commission, or committee was increased as a result of the new congressional districts, a new member to such board, commission, or committee shall serve for a term as prescribed by law.

(3) Notwithstanding any provision of law to the contrary, the appointing authority of the boards, commissions, or committees set forth in subsection (1) shall not be required to make any changes to such boards, commissions, and committees in order to accommodate the new congressional districts, except as required by this section.

(4) Any member of a board or commission who was appointed to such office as a resident of a designated congressional district pursuant to section 24 (2) of article VI and section 6 (1) of article XXVII of the state constitution, and who no longer resides in such congressional district solely because of a change made to the boundaries of such district subsequent to the 2000 federal decennial census, is eligible to hold office for the remainder of the term to which the member was appointed, notwithstanding such nonresidency.

(5) Except as otherwise provided in this section, all appointments to the boards, commissions, and committees set forth in subsection (1) of this section shall be made as prescribed by law.

24-1-136. "Information Coordination Act" - policy - functions of the heads of principal departments. (1) This section shall be known and may be cited as the "Information Coordination Act". The legislative policy with reference to the coordination of information is hereby declared to be that:

(a) The operational reports of the executive agencies should provide complete, concise, and useful information about executive operations to the governor and the general assembly;

(b) The publications of executive agencies should be clearly related to agency functions and cost no more than is necessary to accomplish the purpose for which the material is published;

(c) Executive agencies should recover the full cost of those publications not necessary to the agency's function but issued for the convenience of the users;

(d) Publication activities of executive agencies should be responsive to the direction of the governor; and

(e) Operational reports and publications of executive agencies should continue to be produced as long as they are useful, but the need for them should be reviewed periodically to ensure that public resources are not misdirected toward the fulfillment of outmoded directives.

(2) There is assigned to the heads of the principal departments the function of coordination and control of operational and administrative information within the executive branch.

(3) The heads of the principal departments shall jointly have the following responsibilities of coordination and control:

(a) Development and direction of a system for the collection, coordination, control, and distribution of state operational and administrative reports and information;

(b) (I) Preparation for the governor of annual reports by the principal departments, accounting to the general assembly for the operations of all agencies in the executive branch, which shall include the results of any actions in furtherance of measurable annual objectives in the areas of operational efficiency and effectiveness set forth in the budget request of each department pursuant to section 24-37-304 (1) (a); and

(II) Publication of such reports subject to the approval of the governor;

(c) Preparation of operational and administrative reports and bringing to the attention of the governor special problems of agencies as disclosed through the reporting system;

(d) Delivery to the custody of the executive director of the department of personnel, as chief administrative officer of the state archives and public records, of two official archival copies of original published and processed agency reports, studies, and other publications and distribution of other copies of the original reports as directed by the governor. Colleges and universities shall forward a monthly listing of publications in the form and manner prescribed by the executive director of the department of personnel.

(e) Delivery to the custody of the state librarian of four copies of all state publications pursuant to section 24-90-204;

(f) Effecting economies in the publication of operational and administrative information consistent with the purpose of the publication and without interference to the discharge of the agency's statutory responsibilities.

(4) The governor or the general assembly may at any time require that the heads of the principal departments collect and from time to time publish certain regular or special reports, in whole or in part.

(5) The provisions of this section shall not apply to reports and publications of the legislative and judicial branches of state government nor to the publications of executive agencies in connection with research they perform under contract.

(6) Nothing in this section shall be construed to change or supersede the present authority and responsibility of the executive director of the department of personnel to act as official custodian and trustee of permanent public documents and to respond to all reasonable requests for reference, research, and information and to provide facsimiles thereof concerning the contents of original agency reports.

(7) The authority of the heads of the principal departments over the issuance of publications as prescribed in this section shall in no way be construed as being in contravention of those administrative procedure laws which elsewhere either grant powers to executive agencies to promulgate and issue agency rules and regulations or define legal notice and publication with reference to such rules and regulations.

(8) Nothing in this section shall be construed to empower anyone to restrict or inhibit the free flow of news or the release of public information, or to establish censorship or control over news or information of actions by public employees or public bodies, or to restrict public access to public records; nor shall any part of this section be construed as restricting, amending, superseding, or contravening any existing law, order, or requirement relating to any required or permitted official or public notice or legal advertisement.

(9) Whenever any report is required or allowed to be made to the general assembly, including any report required to be made to any committee of the general assembly or legislative staff, the reporting entity shall file one electronic copy of the report with the joint legislative library, and four hard copies with the state librarian for the state publications depository and distribution center. Such filing is sufficient to comply with the direction or authority to make such report. The electronic filing shall be by means of a portable document format and shall include a hyperlink to the web site where the report is located, if the report is directly accessible via the internet. If the reporting entity cannot provide an electronic copy of the report to the joint legislative library, then the reporting entity shall deliver six hard copies to the joint legislative library. The joint legislative library is responsible for delivering an electronic or hard copy of the report to the legislators, legislative committees, or legislative staff, as applicable, who are to

receive the report. A legislator may request from the joint legislative library delivery of a hard copy of any report.

(10) An agency or department not having an appropriation for producing publications to be sold to the public shall obtain the approval of the controller prior to making any disbursements for said publications. The request for approval shall include the proposed procedures for control of the proceeds of sales.

(11) (a) (I) Effective July 1, 1996, whenever any report is required 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 such report is due unless the general assembly, acting by bill, continues the requirement.

(II) All requirements for reports to the general assembly by executive agencies or the judicial branch that were in existence before July 1, 1996, or that otherwise are not covered by subparagraph (I) of this paragraph (a), shall expire on the following dates:

(A) to (F) Repealed.

(b) Among the matters to be considered by the sunrise and sunset review committee, created by joint rule of the senate and house of representatives, during each interim shall be an inventory and review of all existing requirements for reports by executive agencies or the judicial branch to the general assembly that are due to expire on or before July 1 of the following year pursuant to paragraph (a) of this subsection (11); except that, if House Bill 96-1159 is enacted at the second regular session of the sixtieth general assembly and becomes law or if, for any other reason, the sunrise and sunset review committee ceases to exist, such inventory and review shall be conducted by the several committees of reference as directed by the president of the senate and the speaker of the house of representatives, or otherwise as follows:

(I) The agriculture, livestock, and natural resources committee in the house of representatives and the agriculture, natural resources, and energy committee in the senate, or any successor committees, shall consider reporting requirements contained in titles 33 to 37, C.R.S.;

(II) The appropriations committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in articles 75 to 114 of this title;

(III) The business affairs and labor committee in the house of representatives and the business, labor, and technology committee in the senate, or any successor committees, shall consider reporting requirements contained in titles 4 to 12 and 40, C.R.S.;

(IV) The education committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in titles 22 and 23, C.R.S.;

(V) The finance committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in titles 38

and 39, C.R.S.;

(VI) The health and human services committees in the house of representatives and the senate, or any successor committees, shall consider reporting requirements contained in titles 25 to 27, C.R.S.;

(VII) The judiciary committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in titles 13 to 21, C.R.S.;

(VIII) The local government committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in titles 30 to 32, C.R.S.;

(IX) The state, veterans, and military affairs committees, or any successor committees, in the house of representatives and the senate shall consider reporting requirements contained in titles 1 to 3, C.R.S., titles 28 and 29, C.R.S., and this title with the exception of articles 75 to 114 and, in addition, any reporting requirement not otherwise assigned to a committee of reference under this paragraph (b); and

(X) The transportation and energy committee in the house of representatives and the transportation committee in the senate, or any successor committees, shall consider reporting requirements contained in titles 41 to 43, C.R.S.

24-1-136.5. Capital construction and long-range planning - policy - heads of principal departments. (1) The executive director of each department, after consultation with the directors of the subordinate agencies, divisions, or offices within the department, shall have authority to prescribe uniform policies, procedures, and standards of space utilization in department facilities, except for office space, for the development and approval of capital construction projects for the department. Nothing in this subsection (1) shall be construed to alter the authority of the department of personnel to prescribe uniform standards for office space pursuant to section 24-30-1303 (1) (h).

(2) The executive director shall review and, with the approval of the governor, approve facilities master planning and facilities program planning for all capital construction projects of the department on state-owned or state-controlled land, regardless of the source of funds, and no capital construction shall commence except in accordance with an approved facilities master plan, facilities program plan, and physical plan.

(3) The executive director shall ensure conformity of facilities master planning with approved department operational master plans, facilities program plans with approved facilities master plans, and physical plans with approved facilities program plans.

(4) Plans for any capital construction project for the department shall be subject to the approval of the executive director, regardless of the source of funds. The executive director may exempt any project which requires less than five hundred thousand dollars of

state moneys from the requirements for master planning and program planning.

(5) The executive director shall annually request from the director of each subordinate agency, division, or office within the department a five-year projection of capital development projects. The projection shall include the estimated cost, the method of funding, a schedule for project completion, and the director's priority for each project. The executive director shall determine whether a proposed project is consistent with operational master planning and facilities master planning of the department and conforms to space utilization standards established pursuant to subsection (1) of this section and section 24-30-1303 (1) (h).

(6) (a) The executive director shall annually establish a department five-year capital improvements plan coordinated with department operational master plans and facilities master plans and shall transmit to the office of state planning and budgeting, the governor, and the general assembly, consistent with the executive budget timetable, a recommended priority of funding of capital construction projects for the department.

(b) Except as provided in subsection (4) of this section, it is the policy of the general assembly to appropriate funds only for projects approved by the executive director.

(7) Any acquisition or utilization of real property by a department which is conditional upon or requires expenditures of state-controlled funds or federal funds shall be subject to the approval of the executive director, regardless of whether the acquisition is by lease, lease-purchase, purchase, gift, or otherwise.

(8) Prior to approving the facilities master plan and facilities program plan for any capital construction project to be constructed, operated, and maintained solely from fees, gifts and bequests, grants, revolving funds, or a combination of such sources, the executive director shall request and consider recommendations from the capital development committee and the joint budget committee. The executive director, the capital development committee, and the joint budget committee shall by agreement adopt procedures for the review of such projects by the capital development committee and joint budget committee. The agreement shall provide that, whenever possible, the capital development committee and joint budget committee will submit their recommendations to the executive director within thirty days after each committee receives the information prescribed in the agreement as necessary for its review.

(9) This section shall not apply to the department of higher education, nor shall it be construed to alter the duties of the Colorado commission on higher education set forth in section 23-1-106, C.R.S.

24-1-137. Effect of decrease in length of terms of office for certain state boards, commissions, authorities, and agencies. Persons who are holding office on June 15, 1987, and who were appointed to terms of office pursuant to sections 11-2-102,

12-4-103, 12-22-104, 12-32-103, 12-33-103, 12-36-103, 12-40-106, 12-60-102, 22-80-104, 23-9-103, 23-15-104, 23-40-104, 23-41-102, 24-32-706, 24-42-102, 25-25-104, 29-1-503, 29-4-704, 34-60-104, 35-41-101, 35-65-401, 35-75-104, 39-2-123, and 40-2-101, C.R.S., as said sections existed prior to June 15, 1987, shall continue to serve in such office, but such service shall be at the pleasure of the governor, who may appoint a replacement to serve for the unexpired term of any member. However, if the governor has not appointed any such replacement on or before November 15, 1987, then the person who is holding such office on June 15, 1987, shall no longer be subject to replacement pursuant to this section but shall be subject to whatever removal provisions may otherwise apply for such office. Any such member for whom a replacement has been appointed shall continue to serve until his or her successor is duly qualified. Appointments to new terms of office made after June 15, 1987, shall be made for terms of four years or as otherwise prescribed by law; except that such provision shall not apply to terms of office of persons appointed pursuant to section 23-9-103, C.R.S., as it existed prior to July 1, 2006, or to section 24-48.5-303, which is the former section 23-9-103, C.R.S.

ARTICLE 1.5

State Administrative Organization Board

24-1.5-101. Legislative declaration. The general assembly hereby finds and declares that the proliferation of **type 1** agencies in state government has increased the number of state government programs through the adoption of administrative rules and regulations and that the level of accountability within each principal department of state government has decreased due to the independence of the **type 1** agencies. The general assembly therefore adopts this article in order to evaluate existing **type 1** agencies and to determine whether agencies created in the future should be so designated.

24-1.5-102. State administrative organization board - creation - duties. (1) There is hereby created the state administrative organization board, referred to in this article as the "board", to be comprised of eleven members. Two members of the board shall be appointed by the speaker of the house of representatives, one of whom shall be a member of the general assembly. One member shall be appointed by the minority leader of the house of representatives and shall not be a member of the general assembly and shall not be a state government employee. The other member appointed by the speaker shall not be a member of the general assembly and shall not be a state

government employee. Two members of the board shall be appointed by the president of the senate, one of whom shall be a member of the senate. One member shall be appointed by the minority leader of the senate and shall not be a member of the general assembly and shall not be a state government employee. The other member appointed by the president shall not be a member of the general assembly and shall not be a state government employee. Five members of the board shall be appointed by the governor, three of whom shall not be members of the general assembly or state government employees.

(2) The board shall develop a procedure to systematically and regularly review the functions and duties of all **type 1** agencies in accordance with a schedule that the board shall devise. The board shall establish criteria for **type 1** agencies to determine whether all existing **type 1** agencies should continue as **type 1** agencies and to evaluate the designation of proposed new **type 1** agencies.

(3) The board shall select a chairman from among its members, and it shall meet as often as necessary to carry out the duties specified in this section.

ARTICLE 1.7

Restructuring the Health
and Human Services Delivery System

24-1.7-101. Legislative declaration. The general assembly hereby declares its support for local flexibility in the planning and delivery of health and human services and states its intent to foster continuing coordination, communication, and collaboration at the local level. The general assembly further states its support for local decisions to utilize people and resources at the local level in a more efficient, effective, and economical manner through consolidation of local advisory boards. The general assembly further declares its intent to streamline local planning and community input mechanisms.

24-1.7-102. Local health and human services advisory boards - creation - functions. (1) In order to accomplish the intent of prior legislation on human services delivery that there be an ongoing process or forum for continued coordination and collaboration at the local level concerning the delivery of human services, this article authorizes the creation of local health and human services advisory boards. A local health and human services advisory board may serve a single county, two or more counties jointly, one or more judicial districts, or other service areas. Members of an advisory board shall be appointed by the governing body or bodies of the counties included.

Membership shall be locally determined and shall include appropriate geographic, ethnic, and cultural representation and representation from the public and from consumers of services. Membership shall also include persons who have program expertise for the types of programs the advisory board advises.

(2) In addition to, in combination with, or in lieu of creating a local health and human services advisory board, a county, judicial district, or other service area may elect to consolidate its advisory board with that of one or more other counties, judicial districts, or service areas as specified in section 24-1.7-103.

24-1.7-103. Consolidation of local boards - process - requirements. (1) The general assembly hereby finds that there are many advisory types of boards in the human services delivery system that have similar functions and purposes and have members with similar qualifications and expertise. The general assembly finds that greater efficiency and flexibility would be achieved by allowing counties, judicial districts, and other service areas to combine and consolidate some or all of these boards into one board that serves as a broad-based local planning group and carries out all of the functions and responsibilities of the previous boards through a consolidated board.

(2) Any combination of the following boards or groups may be consolidated into a single advisory board:

(a) Placement alternatives commissions, created pursuant to section 19-1-116 (2) (a), C.R.S.;

(b) Juvenile community review boards, as defined in section 19-1-103 (69), C.R.S., and described in section 19-2-210, C.R.S.;

(c) Local juvenile services planning committees, created pursuant to section 19-2-211, C.R.S.;

(d) Child protection teams, created pursuant to section 19-3-308 (6), C.R.S.;

(e) Family preservation commissions, established pursuant to section 26-5.5-106, C.R.S.;

(f) A local health and human services advisory board, created pursuant to section 24-1.7-102.

(3) The consolidation of, and appointments to, local boards or groups that have different appointing authorities set in statute, are subject to the agreement of each appointing authority. Each of the separate functions and responsibilities of each board or group as specified in statute must continue to be met by the consolidated board.

ARTICLE 1.9

Collaborative Management of Multi-agency Services
Provided to Children and Families

24-1.9-101. Legislative declaration. (1) The general assembly hereby finds that children and families who receive child welfare services often benefit from treatment and services that involve multiple agencies, divisions, units, and sections of departments at the state and county level.

(2) The general assembly further finds that the development of a uniform system of collaborative management is necessary for agencies at the state and county levels to effectively and efficiently collaborate to share resources or to manage and integrate the treatment and services provided to children and families who benefit from multi-agency services.

(3) (a) The development of a more uniform system of collaborative management that includes the input, expertise, and active participation of parent advocacy or family advocacy organizations may reduce duplication and eliminate fragmentation of services; increase the quality, appropriateness, and effectiveness of services provided; encourage cost-sharing among service providers; and ultimately lead to better outcomes and cost-reduction for the services provided to children and families in the child welfare system, including the foster care system, in the state of Colorado.

(b) In addition, the general fund moneys saved through utilizing a collaborative approach and consolidating various sources of agency funding will allow for reinvestment of these moneys by the agencies participating in the systems of collaborative management to provide appropriate support to children and families who would benefit from collaborative management of treatment and services.

(4) The general assembly therefore finds that because a collaborative approach may lead to the provision of more appropriate and effective delivery of services to children and families and may ultimately allow the agencies providing treatment and services to provide appropriate services to children and families within existing consolidated resources, it is in the best interests of the state of Colorado to establish systems of collaborative management of multi-agency services provided to children and families.

24-1.9-102. Memorandum of understanding - local-level interagency oversight groups - individualized service and support teams - coordination of services for children and families - requirements - waiver. (1) (a) Local representatives of each of the agencies specified in this paragraph (a) and county departments of social services may enter into memorandums of understanding that are designed to promote a collaborative system of local-level interagency oversight groups and individualized service and support teams to coordinate and manage the provision of

services to children and families who would benefit from integrated multi-agency services. The memorandums of understanding entered into pursuant to this subsection (1) shall be between interested county departments of social services and local representatives of each of the following agencies or entities:

(I) The local judicial districts, including probation services;

(II) The health department, whether a county or district public health agency;

(III) The local school district or school districts;

(IV) Each community mental health center;

(V) Each behavioral health organization;

(VI) The division of youth corrections;

(VII) A designated managed service organization for the provision of treatment services for alcohol and drug abuse pursuant to section 27-80-107, C.R.S.; and

(VIII) A domestic abuse program as defined in section 26-7.5-102, C.R.S., if representation from such a program is available.

(a.5) In addition to the parties specified in paragraph (a) of this subsection (1), the memorandums of understanding entered into pursuant to this subsection (1) may include family resource centers created pursuant to article 18 of title 26, C.R.S.

(b) The general assembly strongly encourages the agencies specified in paragraphs (a) and (a.5) of this subsection (1) to enter into memorandums of understanding that are regional.

(c) Notwithstanding the provisions of paragraph (b) of this subsection (1), the agencies specified in paragraphs (a) and (a.5) of this subsection (1) may enter into memorandums of understanding involving only one or more county departments of social services, not necessarily by region, as may be appropriate to ensure the effectiveness of local-level interagency oversight groups and individualized service and support teams in the county or counties.

(d) In developing the memorandums of understanding, the general assembly strongly encourages the parties to the memorandums of understanding to seek input, support, and collaboration from key stakeholders in the private and nonprofit sector, as well as parent advocacy or family advocacy organizations that represent family members or caregivers of children who would benefit from multi-agency services.

(e) Nothing shall preclude the agencies specified in paragraphs (a) and (a.5) of this subsection (1) from including parties in addition to the agencies specified in paragraphs (a) and (a.5) of this subsection (1) in the memorandums of understanding developed for purposes of this section.

(2) (a) Each memorandum of understanding entered into shall include, but is not limited to, the requirements specified in paragraphs (b) to (j) of this subsection (2). On or before October 1, 2004, utilizing moneys in the performance incentive cash fund created in section 26-5-105.5 (3.2) (a), C.R.S., the state department of human services, in conjunction with the judicial department, shall develop and make available to the parties

specified in paragraph (a) of subsection (1) of this section, a model memorandum of understanding based on the requirements specified in paragraphs (b) to (j) of this subsection (2).

(b) **Identification of services and funding sources.** The memorandum of understanding shall specify the legal responsibilities and funding sources of each party to the memorandum of understanding as those responsibilities and funding sources relate to children and families who would benefit from integrated multi-agency services, including the identification of the specific services that may be provided. Specific services that may be provided may include, but are not limited to: Prevention, intervention, and treatment services; family preservation services; family stabilization services; out-of-home placement services; services for children at imminent risk of out-of-home placement; probation services; services for children with mental illness; public assistance services; medical assistance services; child welfare services; and any additional services which the parties deem necessary to identify.

(c) **Definition of the population to be served.** The memorandum of understanding shall include a functional definition of "children and families who would benefit from integrated multi-agency services".

(d) **Creation of an oversight group.** The memorandum of understanding shall create a local-level interagency oversight group and identify the oversight group's membership requirements, procedures for selection of officers, procedures for resolving disputes by a majority vote of those members authorized to vote, and procedures for establishing any necessary subcommittees of the interagency oversight group. Each interagency oversight group shall include a local representative of each party to the memorandum of understanding specified in paragraphs (a) and (a.5) of subsection (1) of this section, each of whom shall be a voting member of the interagency oversight group. In addition, the interagency oversight group may include, but is not limited to, the following advisory nonvoting members:

(I) Representatives of interested local private sector entities; and

(II) Family members or caregivers of children who would benefit from integrated multi-agency services or current or previous consumers of integrated multi-agency services.

(e) **Establishment of collaborative management processes.** The memorandum of understanding shall require the interagency oversight group to establish collaborative management processes to be utilized by individualized service and support teams authorized pursuant to paragraph (f) of this subsection (2) when providing services to children and families served by the parties to the memorandum of understanding. The collaborative management processes required to be established by the interagency oversight group shall address risk-sharing, resource-pooling, performance expectations, outcome-monitoring, and staff-training, and shall be designed to do the following:

(I) Reduce duplication and eliminate fragmentation of services provided to

children or families who would benefit from integrated multi-agency services;

(II) Increase the quality, appropriateness, and effectiveness of services delivered to children or families who would benefit from integrated multi-agency services to achieve better outcomes for these children and families; and

(III) Encourage cost-sharing among service providers.

(f) **Authorization to create individualized service and support teams.** The memorandum of understanding shall include authorization for the interagency oversight group to establish individualized service and support teams to develop a service and support plan and to provide services to children and families who would benefit from integrated multi-agency services.

(g) **Authorization to contribute resources and funding.** The memorandum of understanding shall specify that each party to the memorandum of understanding has the authority to contribute time, resources, and funding to solve problems identified by the local-level interagency oversight group in order to create a seamless, collaborative system of delivering multi-agency services to children and families, upon approval by the head or director of each agency or department specified in paragraphs (a) and (a.5) of subsection (1) of this section.

(h) **Reinvestment of moneys saved to serve additional children and families.** (I) The memorandum of understanding shall require the interagency oversight group to create a procedure, subject to approval by the head or director of each agency or department specified in paragraphs (a) and (a.5) of subsection (1) of this section, to allow any moneys resulting from waivers granted by the federal government and any state general fund savings realized as a result of the implementation of the collaborative system of management of multi-agency services provided to children and families related to the funding sources specified by the parties to the memorandum of understanding pursuant to paragraph (b) of this subsection (2) to be reinvested by the parties to the memorandum of understanding to provide appropriate services to children and families who would benefit from integrated multi-agency services, as the population is defined by the memorandum of understanding pursuant to paragraph (c) of this subsection (2). The general fund savings realized, as referenced in this section, shall be determined in accordance with rules established by the state board of human services.

(II) A county that has implemented a collaborative management process for services to children and families, which services are not included as services to be provided to children and families who would benefit from integrated multi-agency services in the memorandum of understanding pursuant to paragraph (b) of this subsection (2), and that underspends the general fund portion of its capped or targeted allocation may use the portion of general fund savings realized, as referenced in this section, of its underspent capped or targeted allocation for provision of existing services for such children and families in the county.

(i) **Performance-based measures.** The memorandum of understanding shall

include a provision stating whether the parties to the memorandum of understanding will attempt to meet performance measures specified by the department of human services and elements of collaborative management, as defined by rule of the state board of human services. If the parties to the memorandum of understanding agree to attempt to meet the performance measures and elements of collaborative management, the memorandum of understanding shall require the interagency oversight group to create a procedure, subject to the approval of the head or director of each agency or department specified in paragraphs (a) and (a.5) of subsection (1) of this section, to allow any incentive moneys received by the department of human services and allocated pursuant to section 24-1.9-104 to be reinvested by the parties to the memorandum of understanding to provide appropriate services to children and families who would benefit from integrated multi-agency services, as such population is defined by the memorandum of understanding pursuant to paragraph (c) of this subsection (2).

(j) **Confidentiality compliance.** The memorandum of understanding shall include a provision specifying that state and federal law concerning confidentiality shall be followed and that records used or developed by the interagency oversight group or its members or the individualized service and support teams that relate to a particular person are to be kept confidential and may not be released to any other person or agency except as provided by law.

(3) Each department or division, section, unit, or agency within a department that is a party to the memorandum of understanding shall enter into the memorandum of understanding and all revisions to the memorandum. Revisions to the memorandum shall be developed as necessary to reflect department reorganizations or statutory changes affecting the departments that are parties to the memorandum.

(4) The departments and agencies that provide oversight to the parties to the memorandum of understanding specified in paragraphs (a) and (a.5) of subsection (1) of this section are authorized to issue waivers of any rules to which the departments and agencies are subject and that would prevent the departments from effective implementation of the memorandums of understanding; however, the departments and agencies are prohibited from waiving a rule in violation of federal law or that would compromise the safety of a child.

24-1.9-102.5. Evaluation. The department of human services is authorized to utilize moneys in the performance-based collaborative management incentive cash fund created in section 24-1.9-104 for ongoing external evaluations of the counties participating in memorandums of understanding pursuant to section 24-1.9-102, also known as the collaborative management program, as well as those counties that opted to not participate in the collaborative management program. The external evaluation shall include an evaluation that may be required in connection with a waiver authorized

pursuant to section 24-1.9-102 (4). The department of human services, with input from the counties, agencies as listed in section 24-1.9-102 (1) (a) and (1) (a.5), the division of youth corrections in the department of human services, participating stakeholders in the private and nonprofit sector, and participating parent or family advocacy organizations that represent family members or caregivers of children who would benefit from multi-agency services participating in the collaborative management program, shall develop the criteria and components of the external evaluation. Each county participating in the collaborative management program shall participate fully in the annual external evaluation. The department of human services is authorized to perform an evaluation pursuant to this section on an ongoing basis as needed, as determined by the department of human services and subject to available appropriations.

24-1.9-102.7. Technical assistance. The department of human services shall develop and implement training for counties participating in or interested in participating in the collaborative management program. The department of human services shall utilize moneys in the performance-based collaborative management incentive cash fund created in section 24-1.9-104 to develop and implement training for counties. The training shall identify management strategies to collaborate effectively and efficiently to share resources or to manage and integrate the treatment and services provided to children and families receiving collaborative management services pursuant to this article.

24-1.9-103. Reports - executive director review. (1) Commencing January 1, 2007, and on or before each January 1 thereafter, each interagency oversight group shall provide a report to the executive director of each department and agency that is a party to any memorandum of understanding entered into that includes:

(a) The number of children and families served through the local-level individualized service and support teams and the outcomes of the services provided, including a description of any reduction in duplication or fragmentation of services provided and a description of any significant improvement in outcomes for children and families;

(b) A description of estimated costs of implementing the collaborative management approach and any estimated cost-shifting or cost-savings that may have occurred by collaboratively managing the multi-agency services provided through the individualized service and support teams;

(c) An accounting of moneys that were reinvested in additional services provided to children or families who would benefit from integrated multi-agency services due to cost-savings that may have resulted or due to meeting or exceeding performance measures specified by the department of human services and elements of collaborative management

established by rule of the state board;

(d) A description of any identified barriers to the ability of the state and county to provide effective services to persons who received multi-agency services; and

(e) Any other information relevant to improving the delivery of services to persons who would benefit from multi-agency services.

(2) (a) Utilizing the reports created pursuant to subsection (1) of this section, the persons specified in paragraph (b) of this subsection (2) shall meet at least annually with the governor, or his or her designee, to review the activities and progress of counties and agencies engaged in collaborative management of multi-agency services provided to children and families. The purpose of the meeting shall be to identify barriers encountered in collaborative management development or implementation or reinvestment of moneys and to discuss and effectuate solutions to these barriers to achieve greater efficiencies and better outcomes for the state, for local communities, and for persons who would benefit from multi-agency services.

(b) The following persons or their designees shall attend the annual meeting required pursuant to paragraph (a) of this subsection (2):

(I) The commissioner of education;

(II) A superintendent of a school district that has entered into a memorandum of understanding and has met or exceeded the performance measures specified by the department of human services and the elements of collaborative management established by rule of the state board, as such superintendent is selected by the commissioner of education;

(III) A director of a county department of social services that has entered into a memorandum of understanding and has met or exceeded the performance measures specified by the department of human services and the elements of collaborative management established by rule of the state board, as such director is selected by the executive director of the department of human services;

(IV) The executive director of the department of health care policy and financing;

(V) The executive director of the department of human services;

(VI) A director of a local mental health center that has entered into a memorandum of understanding and has met or exceeded the performance measures specified by the department of human services and the elements of collaborative management established by rule of the state board, as such director is selected by the executive director of the department of human services;

(VII) A representative from a statewide parent advocacy or family advocacy organization who participated in the development of a memorandum of understanding, as such representative is selected by a director of a county department of social services chosen by the state department of human services;

(VIII) The executive director of the department of public health and environment; and

(IX) The chief justice of the Colorado supreme court.

24-1.9-104. Cash fund - creation - grants, gifts, and donations. (1) On July 1, 2005, there shall be created in the state treasury the performance-based collaborative management incentive cash fund, which shall be referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of human services for state fiscal year 2005-06 and each fiscal year thereafter. On July 1, 2006, the state treasurer shall transfer the moneys in the performance incentive cash fund created pursuant to section 26-5-105.5 (3.2) (a), C.R.S., to the fund. In addition, on July 1, 2006, the state treasurer shall transfer the moneys remaining in the family stabilization services fund created pursuant to section 19-1-125, C.R.S., to the fund. The fund shall also consist of moneys received from docket fees in civil actions and transferred as specified in section 13-32-101 (5) (a) (II), C.R.S.

(2) The executive director of the department of human services is authorized to accept and expend on behalf of the state any grants, gifts, or donations from any private or public source for the purposes of this section. All private and public funds received through grants, gifts, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund in addition to moneys credited pursuant to subsection (1) of this section and any moneys that may be appropriated to the fund directly by the general assembly. All investment earnings derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred or revert to the general fund of the state or any other fund at the end of any fiscal year.

(2.5) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct three hundred thousand dollars from the fund and transfer such sum to the general fund.

(3) (a) On and after July 1, 2005, the executive director of the department of human services shall allocate the moneys in the fund to provide incentives to parties to a memorandum of understanding who have agreed to performance-based collaborative management pursuant to section 24-1.9-102 (2) (i) and who have successfully implemented the elements of collaborative management specified by rule of the state board and also met or exceeded the performance measures specified by the department of human services. The incentives shall be used to provide services to children and families who would benefit from integrated multi-agency services, as such population is defined by the memorandum of understanding pursuant to section 24-1.9-102 (2) (c).

(a.5) On and after July 1, 2008, the executive director of the department of human services is authorized to allocate moneys in the fund to be used to cover the direct and indirect costs of the external evaluation of the performance-based collaborative management program described in section 24-1.9-102 and the technical assistance and training for counties as described in section 24-1.9-102.7.

(b) For purposes of allocating incentive moneys in the fund pursuant to this subsection (3), the executive director of the department of human services shall submit an accounting of moneys in the fund available for incentives and a proposal for the allocation of incentive moneys to the state board of human services for review and approval prior to the allocation of the moneys. The state board of human services shall approve the proposal not later than thirty days after receipt of the proposal from the executive director of the department of human services.

ARTICLE 2

Organization of Administrative Departments

24-2-101. Application. The provisions of this article, parts 2 and 11 of article 30, and articles 31, 35, and 36 of this title shall not be construed to apply to the judiciary nor the legislature, except when expressly specified.

24-2-102. Appointment of officers and employees. (1) Except as otherwise provided by law, such officers and employees as may be necessary in each principal department or institution of higher education shall be appointed by the head of each such department or institution in conformity with section 13 of article XII of the constitution of the state and the laws enacted in accordance therewith.

(2) The head of each principal department shall certify to the governor the number of officers and employees needed or required for the operation of his or her department for the ensuing twelve-month period in accordance with article 37 of this title.

(3) If, after appointments have been made to any principal department, the governor is of the opinion that the appointed personnel of any such department is in excess of its needs, the governor may require the separation of any of said appointees if ten days' prior notice of the proposed action is given by the governor to the head of any such department affected and opportunity given to such head within said ten-day period to be heard as to the necessity for the retention of all or any of said appointees proposed to be separated. The decision of the governor after such hearing shall be final and conclusive.

(4) If, during any fiscal period, there are not sufficient revenues available for expenditure during such period to carry on the functions of the state government and to support its agencies and institutions and such fact is made to appear to the governor, in the exercise of his discretion, by executive order, he may suspend or discontinue, in whole or in part, the functions or services of any department, board, bureau, or agency of

the state government; except that the authority of the governor to restrict the expenditure of moneys appropriated from the capital construction fund shall be determined by the provisions of section 24-75-201.5. Such discontinuance or suspension shall become effective upon the first day of the calendar month following the entry of such executive order and shall continue for such period of time, not to exceed three months, as shall be determined by such executive order. If, during any such period of time, it again appears to the governor that such deficiency of revenues still persists, from time to time, he may extend the operation of such executive order for a like period of time not to exceed three months; but the state shall not be liable for the payment of any claim for salaries or expenses purporting to have accrued against any such department, board, bureau, or agency during any such period of suspension, and the controller shall not issue nor may the state treasurer honor any warrant therefor. Elective officers shall not be subject to the provisions of this article, parts 2 and 11 of article 30, and articles 31, 35, 36, and 101 to 111 of this title.

24-2-103. Compensation of heads of departments and other officers and employees. (1) (a) Except as provided in paragraph (b) of this subsection (1), officers and employees of the state who are exempt from the state personnel system shall receive compensation as fixed by law. Any officer or employee who receives compensation as fixed by law shall not receive compensation or fees from more than one department or institution of higher education or in more than one capacity; except that the lieutenant governor may be compensated for any additional duties and functions relating to a department or institution of higher education as may be authorized by law.

(b) If the compensation of an officer or employee who is exempt from the state personnel system is not fixed by law, the officer's or employee's compensation shall be determined as follows:

(I) The governor shall determine the compensation for the head of each principal department, and the head of each principal department shall determine the compensation for officers and employees of the department.

(II) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., shall determine the compensation for the head of the institution, and the head of each institution shall determine the compensation for officers and employees of the institution.

(c) Officers and employees in the state personnel system shall receive compensation pursuant to section 13 of article XII of the state constitution and the compensation system established by the state personnel director pursuant to article 50 of this title. Officers and employees in the state personnel system shall not receive compensation or fees from more than one department or institution of higher education except as permitted by rules adopted by the state personnel director in accordance with

article 4 of this title that are consistent with the overtime provisions of section 24-50-104.5.

(d) Nothing in this subsection (1) shall prevent departments and institutions of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., from sharing personnel if the terms and conditions of the personnel sharing agreement are in writing and include a provision concerning the distribution of compensation.

(2) Upon declaration of a fiscal emergency made pursuant to section 24-50-109.5 (1) and the subsequent imposition of mandatory furloughs or other measures to reduce personnel expenditures, such measures shall apply not only to state personnel system employees but shall be likewise imposed upon all other officers and employees of the executive branch, if exempt from the state personnel system, except as otherwise provided by law or prohibited by contract.

24-2-104. Bonds. The head of each principal department or any subordinate officer or employee under the same who may be required to handle state funds shall give bond executed by a responsible surety company, authorized to do business within the state, in such sum as may be fixed by law or, in the absence of any such law, such as shall be fixed by the governor as he deems adequate to safeguard the state funds. All such bonds shall be conditioned upon the faithful performance by such head of department, officer, or employee of his duties and, when approved by the governor, shall be filed in the office of the secretary of state. The premiums on all such bonds shall be paid as an ordinary expense of the principal department or the division, section, or unit under the department to which such head of department, officers, or employees are appointed, and due appropriation therefor shall be made by the general assembly.

24-2-105. Rules and regulations. The head of each principal department is empowered, subject to the written approval of the governor, to prescribe rules and regulations, not inconsistent with law, for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto.

24-2-106. Restriction of number of employees. It is the duty of the governor as the supreme executive power of the state to restrict the number of employees in the various offices, boards, divisions, and agencies of the executive department to the lowest number required for efficient operation thereof. In making any appointment or in

approving any appointment made by any other official of the executive department, the governor shall certify in writing that he deems such appointment necessary and for the best interests of the public service. In the exercise of his responsibility, the governor may delegate in writing to some other official the power to approve or disapprove appointments made by other officials of the executive department, subject always to final review by the governor at his option.

24-2-107. Transfer of employees. For the purpose of providing necessary flexibility to meet working conditions and seasonal demands, the governor has power, when he is of the opinion and so certifies in writing that it is necessary or desirable so to do, to transfer any employee of any office, board, division, or agency of the state government to any other office, board, division, or agency of the state government for such time as in the opinion of the governor is necessary.

24-2-108. Departments to share information and mailings. For the convenience of the citizens of this state and to promote economy in state government, it is the intent of the general assembly that all principal departments, when feasible and not contrary to federal or state law, shall share as much information as possible and, when reasonably feasible to do so, shall coordinate forms, both federal and state, and shall eliminate multiple mailings to addressees.

ARTICLE 3

Agencies as Parties in Actions

24-3-101. Agency defined. As used in this article, the term "agency" means every agency in the executive branch of the state government which is required by the constitution or statutes of the state to exercise discretion or to perform judicial or quasi-judicial functions. As so qualified, the term "agency" includes, but is not limited to, boards, commissions, departments, divisions, offices, and officers.

24-3-102. Party in original action. (1) Except as otherwise specifically provided and subject to applicable provisions of the constitution, statutes, and rules of civil procedure of the state of Colorado, every agency is authorized:

(a) To institute and appear as a party in original actions in the supreme court of the

state of Colorado and the United States supreme court in all causes, matters, and proceedings involving the functions and duties of such agency where such courts have original jurisdiction;

(b) To prosecute appeals in all cases, causes, matters, and proceedings in which such agency is a party in the courts of this state and its subdivisions, federal courts, and courts in other jurisdictions.

24-3-103. Provisions procedural and remedial. The provisions of this article shall be construed as procedural and remedial and shall not be construed as extending, conferring, or granting such agencies any substantive powers, duties, or functions, nor shall this article be construed as granting permission to sue the sovereign state of Colorado or any agency thereof.

ARTICLE 3.5

Meetings of Boards and Commissions

24-3.5-101. Legislative declaration relating to meetings of state boards and commissions. The general assembly declares that public participation in government produces better government; therefore, to promote as much public participation in government as possible, every state board and commission established by law is encouraged to hold at least one-third of its regularly scheduled meetings outside the Denver metropolitan area each year, taking their budgetary constraints into account.

ARTICLE 3.7

Statutory Requirements for
Creation of Boards and Commissions

24-3.7-101. Statutory language required for creation of state boards and commissions. When the general assembly statutorily creates any board or commission in state government, such statutory provision shall specify a termination date for such board or commission, the appointing authority for each member, any requirement for senate confirmation of appointments, the number and type of members, any per diem or allowance for expenses, the state department in which the board or commission shall be

located, any explicit powers possessed by such board or commission, including but not limited to advisory authority, rule-making authority, or authority regarding the control of revenues, and any staffing, funding, or reporting requirements.

ARTICLE 4

Rule-making and Licensing Procedures
by State Agencies

24-4-101. Short title. This article shall be known and may be cited as the "State Administrative Procedure Act".

24-4-101.5. Legislative declaration. The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state. The general assembly also finds that many government programs may be adopted without stating the direct and indirect costs to consumers and businesses and without consideration of such costs in relation to the benefits to be derived from the programs. The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment. The general assembly further finds that agency rules can negatively impact the state's business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.

24-4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Action" includes the whole or any part of any agency rule, order, interlocutory order, license, sanction, relief, or the equivalent or denial thereof, or failure

to act. Any agency rule, order, license, sanction, relief, or the equivalent or denial thereof which constitutes final agency action shall include a list of all parties to the agency proceeding and shall specify the date on which the action becomes effective.

(2) "Adjudication" means the procedure used by an agency for the formulation, amendment, or repeal of an order and includes licensing.

(3) "Agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except:

(a) State educational institutions administered pursuant to title 23, C.R.S., except article 8, parts 2 and 3 of article 21, and parts 2 to 4 of article 31 of title 23, C.R.S.;

(b) Repealed.

(c) The adjutant general of the National Guard, whose powers and duties are set forth in section 28-3-106, C.R.S.

(3.5) "Aggrieved", for the purpose of judicial review of rule-making, means having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.

(4) "Counsel" means an attorney admitted to practice before the supreme court of this state.

(5) "Decision" means the determinative action in adjudication and includes order, opinion, sanction, and relief.

(5.5) "Economic competitiveness" means the ability of the state of Colorado to attract new business and the ability of the businesses currently operating in Colorado to create new jobs and raise productivity.

(6) "Initial decision" means a decision made by a hearing officer or administrative law judge which will become the action of the agency unless reviewed by the agency.

(6.2) "Interested person" includes any person who may be aggrieved by agency action.

(6.5) "Legislative committees of reference" means the committees established by the rules of the house of representatives and rules of the senate of the general assembly having jurisdiction over subject matter regulated by state agencies.

(7) "License" includes the whole or any part of any agency permit, certificate, registration, charter, membership, or statutory exemption.

(8) "Licensing" includes the procedure used by an agency respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license.

(9) "Opinion" means the statement of reasons, findings of fact, and conclusions of law in explanation or support of an order.

(10) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter

other than rule-making.

(11) "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding subject to the provisions of this article.

(12) "Person" includes an individual, limited liability company, partnership, corporation, association, county, and public or private organization of any character other than an agency.

(13) "Proceeding" means any agency process for any rule or rule-making, order or adjudication, or license or licensing.

(14) "Relief" includes the whole or any part of any agency grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; recognition of any claim, right, immunity, privilege, exemption, exception, or remedy; or any other action upon the application or petition of, and beneficial to, any person.

(14.5) "Representative group" means a diverse group convened by an agency prior to rule-making or invited to participate in the rule-making hearing to give input and to comment on the effect of the proposed rules. The group should represent different points of view and may include representatives of persons, businesses, advocacy groups, trade associations, labor organizations, environmental advocacy groups, consumer advocates, or the regulated industry or profession affected negatively or positively by proposed rules.

(15) "Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation".

(16) "Rule-making" means agency process for the formulation, amendment, or repeal of a rule.

(17) "Sanction" includes the whole or any part of any agency prohibition, requirement, limitation, or other condition affecting the freedom of any person; withholding of relief; imposition of any form of penalty or fine; destruction, taking, seizure, barring access to, or withholding of property; assessment of damages; reimbursement; restitution; compensation; costs; charges or fees; requirement; revocation or suspension of a license or the prescription or requirement of terms, conditions, or standards of conduct thereunder; or other compulsory or restrictive action.

(18) "Small business" means a business with fewer than five hundred employees.

24-4-103. Rule-making - procedure - definitions - repeal. (1) When any agency is required or permitted by law to make rules, in order to establish procedures and to accord interested persons an opportunity to participate therein, the provisions of this section shall be applicable. Except when notice or hearing is otherwise required by law, this section does not apply to interpretative rules or general statements of policy, which

are not meant to be binding as rules, or rules of agency organization.

(1.5) If an agency reinterprets an existing rule in a manner that is substantially different than previous agency interpretations of the rule or if there has been a change in a statute that affects the interpretation or the legality of a rule, the office of legislative legal services shall review the rule in the same manner as rules that have been newly adopted or amended under paragraph (d) of subsection (8) of this section upon receiving a request for such a review of the rule by any member of the general assembly.

(2) When rule-making is contemplated, public announcement thereof may be made at such time and in such manner as the agency determines. The agency shall establish a representative group of participants with an interest in the subject of the rule-making to submit views or otherwise participate informally in conferences on the proposals under consideration or to participate in the public rule-making proceedings on the proposed rules. In establishing the representative group, the agency shall make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules. If the agency convenes a representative group prior to issuing a notice of proposed rule-making as provided in paragraph (a) of subsection (3) of this section, the agency shall add those persons who participated in the representative group to the list of persons who receive notification of proposed rule-making as provided in paragraph (b) of subsection (3) of this section.

(2.5) (a) At the time of filing a notice of proposed rule-making with the secretary of state as the secretary may require, an agency shall submit a draft of the proposed rule or the proposed amendment to an existing rule and a statement, in plain language, concerning the subject matter or purpose of the proposed rule or amendment to the office of the executive director in the department of regulatory agencies. The executive director, or his or her designee, shall distribute the proposed rule or amendment, the agency's statement concerning the subject matter or purpose of the proposed rule or amendment, and any cost-benefit analysis prepared pursuant to this section to all persons who have submitted a request to receive notices from the department of regulatory agencies about proposed rule-making. Any person may, within five days after publication of the notice of proposed rule-making in the Colorado register, request that the department of regulatory agencies require the agency submitting the proposed rule or amendment to prepare a cost-benefit analysis. The executive director, or his or her designee, shall determine, after consultation with the agency proposing the rule or amendment, whether to require the agency to prepare a cost-benefit analysis. If the executive director, or his or her designee, determines that a cost-benefit analysis is required, the agency shall complete a cost-benefit analysis at least ten days before the hearing on the rule or amendment, shall make the analysis available to the public by posting the analysis on the agency's official web site, and shall submit a copy to the executive director or his or her designee. The executive director, or his or her designee, shall post the analysis on the department of

regulatory agencies' official web site. By filing an additional notice published in the Colorado register, the agency may postpone the hearing on the rule or amendment to comply with the requirement to complete the cost-benefit analysis at least ten days before the hearing. Failure to complete a requested cost-benefit analysis pursuant to this subsection (2.5) shall preclude the adoption of such rule or amendment. Such cost-benefit analysis shall include the following:

(I) The reason for the rule or amendment;

(II) The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

(III) The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

(IV) Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

(V) At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

(b) The executive director, or his or her designee, shall study the cost-benefit analysis and may urge the agency to revise the rule or amendment to eliminate or reduce the negative economic impact. The executive director, or his or her designee, may inform the public about the negative impact of the proposed rule or the proposed amendment to an existing rule.

(c) Any proprietary information provided to the department of revenue by a business or trade association for the purpose of preparing a cost-benefit analysis shall be confidential.

(d) If the agency has made a good faith effort to comply with the requirements of paragraph (a) of this subsection (2.5), the rule or amendment shall not be invalidated on the ground that the contents of the cost-benefit analysis are insufficient or inaccurate.

(e) This subsection (2.5) shall not apply to orders, licenses, permits, adjudication, or rules affecting the direct reimbursement of vendors or providers with state funds.

(f) (I) This subsection (2.5) is repealed, effective September 1, 2018.

(II) Prior to such repeal, the provisions regarding the preparation of a cost-benefit analysis pursuant to this subsection (2.5) shall be reviewed as provided for in section 24-34-104, C.R.S.

(2.7) (a) As used in this subsection (2.7):

(I) "Director" means the director of the office of state planning and budgeting.

(II) "State mandate" has the same meaning as set forth in section 29-1-304.5 (3) (d), C.R.S.

(b) No agency shall promulgate a rule creating a state mandate on a local

government unless the agency complies with the requirements of section 29-1-304.5, C.R.S.

(c) (I) Except as provided in paragraph (g) of this subsection (2.7), beginning January 1, 2014, for each proposed rule that includes a state mandate, an agency shall provide to the director a description of:

(A) The proposed rule;

(B) The nature and extent of any consultations that the agency had with elected officials or other representatives of the local governments that would be affected by the proposed state mandate;

(C) The nature of any concerns of the elected officials or other representatives of the local governments;

(D) Any written communications or comments submitted to the agency by an elected official or other representative of a local government; and

(E) The agency's reasoning supporting the need to promulgate the rule containing the state mandate.

(II) The director shall review the information provided pursuant to subparagraph (I) of this paragraph (c) and, if it complies with the requirements of this paragraph (c), the director shall send a written notice of compliance to the agency. An agency shall not conduct a public rule-making proceeding unless the agency has received the written notice of compliance from the director.

(d) Each agency shall develop a process to actively solicit the meaningful and timely input of elected officials and other representatives of local governments into the development of proposed rules with state mandates affecting local governments. Each agency shall implement its process no later than January 1, 2014, and post the process on the agency's web site.

(e) The executive director of each department shall be responsible for ensuring implementation of and compliance with this subsection (2.7).

(f) The general assembly shall appropriate any moneys necessary for the implementation of this subsection (2.7) to the office of state planning and budgeting in the annual general appropriation act for the fiscal year 2013-14.

(g) Beginning January 1, 2014, for each proposed rule of the state board of education that imposes a new state mandate or an increase in the level of service for an existing state mandate beyond that required by statute, the department of education shall comply with the provisions of paragraph (c) of this subsection (2.7).

(3) (a) Notice of proposed rule-making shall be published as provided in subsection (11) of this section and shall state the time, place, and nature of public rule-making proceedings that shall not be held less than twenty days after such publication, the authority under which the rule is proposed, and either the terms or the substance of the proposed rule or a description of the subjects and issues involved.

(a.5) If the agency proposes a rule to increase fees or fines, at the time of giving

notice of proposed rule-making or within ten days following the adoption of an emergency or temporary rule that increases fees or fines, the agency shall send a written or electronic notification to each member of the general assembly notifying the members of the general assembly of the proposed rule or the adoption of an emergency rule and specifying the amount of the increase in the fees or fines.

(b) Each rule-making agency shall maintain a list of all persons who request notification of proposed rule-making, including temporary or emergency rule-making. Any person on such list who requests a copy of the proposed rules shall submit to the agency a fee that shall be set by such agency based upon the agency's actual cost of copying and mailing the proposed rules to such person. All fees collected by the agency are hereby appropriated to the agency solely for the purpose of defraying such cost. On or before the date of the publication of notice of proposed rule-making in the Colorado register, the agency shall mail the notice of proposed rule-making to all persons on such list. If a person requests to be notified by electronic mail, notice is sufficient by such means if a copy of the proposed rules is attached or included in the electronic mail or if the electronic mail provides the location where the proposed rules may be viewed on the internet. No fees shall be charged for notification by electronic mail. A person may only request notification on his or her own behalf, and a request for notification by one person on behalf of another person need not be honored.

(4) (a) At the place and time stated in the notice, the agency shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the agency deems it unnecessary. The agency shall consider all such submissions. Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing, together with a proposed statement of basis, specific statutory authority, purpose, and the regulatory analysis required in subsection (4.5) of this section, shall be made available to any person at least five days prior to said hearing. The rules promulgated by the agency shall be based on the record, which shall consist of proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written comments or briefs filed.

(a.5) Subject to the provisions of section 24-72-204 (3) (a) (IV), any study or other documentation utilized by an agency as the basis of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection. Subject to the provisions of section 24-72-204 (3) (a) (IV), all information, including, but not limited to, the conclusions and underlying research data from any studies, reports, published papers, and documents, used by the agency in the development of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection.

(b) All proposed rules shall be reviewed by the agency. No rule shall be adopted

unless:

(I) The record of the rule-making proceeding demonstrates the need for the regulation;

(II) The proper statutory authority exists for the regulation;

(III) To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation;

(IV) The regulation does not conflict with other provisions of law; and

(V) The duplication or overlapping of regulations is explained by the agency proposing the rule.

(c) Rules, as finally adopted, shall be consistent with the subject matter as set forth in the notice of proposed rule-making provided in subsection (11) of this section. After consideration of the relevant matter presented, the agency shall incorporate by reference on the rules adopted a written concise general statement of their basis, specific statutory authority, and purpose. The written statement of the basis, specific authority, regulatory analysis required by subsection (4.5) of this section, and purpose of a rule which involves scientific or technological issues shall include an evaluation of the scientific or technological rationale justifying the rule. Each agency shall maintain a copy of its currently effective rules and the current status of each published proposal for rules and minutes of all its action upon rules, as well as any attorney general's opinion rendered on any adopted or proposed rule. Such materials shall be available for inspection by any person during regular office hours.

(d) Within one hundred eighty days after the last public hearing on the proposed rule, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Colorado register.

(4.5) (a) Upon request of any person, at least fifteen days prior to the hearing, the agency shall issue a regulatory analysis of a proposed rule. The regulatory analysis shall contain:

(I) A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(II) To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;

(III) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

(b) Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.

(c) The regulatory analysis shall be available to the public at least five days prior to the rule-making hearing.

(d) If the agency has made a good faith effort to comply with the requirements of paragraphs (a) to (c) of this subsection (4.5), the rule shall not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

(e) Nothing in paragraphs (a) to (c) of this subsection (4.5) shall limit an agency's discretionary authority to adopt or amend rules.

(f) The provisions of this subsection (4.5) shall not apply to rules and regulations promulgated by the department of revenue regarding the administration of any tax which is within the authority of said department.

(5) A rule shall become effective twenty days after publication of the rule as finally adopted, as provided in subsection (11) of this section, or on such later date as is stated in the rule. Once a rule becomes effective, the rule-making process shall be deemed to have become final agency action for judicial review purposes.

(6) (a) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. A temporary or emergency rule may be adopted without compliance with subsections (2.5) and (2.7) of this section, but shall not become permanent without compliance with such subsections (2.5) and (2.7). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than one hundred twenty days after its adoption or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section.

(b) The period of effectiveness provided by this subsection (6) does not apply to temporary or emergency rules adopted by the public utilities commission under section 40-2-108 (2), C.R.S.

(7) Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action

on such petition shall be within the discretion of the agency; but when an agency undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matter shall be considered and acted upon in the same proceeding.

(8) (a) No rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule issued by any agency, including state institutions of higher education administered pursuant to title 23, C.R.S., which conflicts with a statute shall be void.

(b) On and after July 1, 1967, no rule shall be issued nor existing rule amended by any agency unless it is first submitted by the issuing agency to the attorney general for his opinion as to its constitutionality and legality. Any rule or amendment to an existing rule issued by any agency without being so submitted to the attorney general shall be void.

(c) (I) Notwithstanding any other provision of law to the contrary and the provisions of section 24-4-107, all rules adopted or amended on or after January 1, 1993, and before November 1, 1993, shall expire at 11:59 p.m. on May 15 of the year following their adoption unless the general assembly by bill acts to postpone the expiration of a specific rule, and commencing with rules adopted or amended on or after November 1, 1993, all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 shall expire at 11:59 p.m. on the May 15 that follows such one-year period unless the general assembly by bill acts to postpone the expiration of a specific rule; except that a rule adopted pursuant to section 25.5-4-402.3 (5) (b) (III), C.R.S., shall expire at 11:59 p.m. on the May 15 following the adoption of the rule unless the general assembly acts by bill to postpone the expiration of a specific rule. The general assembly, in its discretion, may postpone such expiration, in which case, the provisions of section 24-4-108 or 24-34-104 shall apply, and the rules shall expire or be subject to review as provided in said sections. The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The postponement of the expiration date of a specific rule shall not prohibit any action by the general assembly pursuant to the provisions of paragraph (d) of this subsection (8) with respect to such rule.

(II) It is the intent of the general assembly that, in the event of a conflict between this paragraph (c) and any other provision of law relating to suspension or extension of rules by joint resolution (whether said provision was adopted prior to or subsequent to this paragraph (c)), this paragraph (c) shall control, notwithstanding the rule of law that a specific provision of law controls over a general provision of law.

(d) All rules adopted or amended on or after July 1, 1976, including temporary or emergency rules, shall be submitted by the adopting agency to the office of legislative legal services in the form and manner prescribed by the committee on legal services. Said

rules and amendments to existing rules shall be filed by and in such office and shall be first reviewed by the staff of said committee to determine whether said rules and amendments are within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rules conform with paragraph (a) of this subsection (8). The committee on legal services shall direct the staff of the committee to review the rules submitted by adopting agencies using graduated levels of review based on criteria established by the committee. The criteria developed by the committee shall provide that every rule shall be reviewed as to form and compliance with filing procedures and that, upon request of any member of the committee or any other member of the general assembly, the staff shall provide full legal review of any rule during the time period that such rule is subject to review by the committee. The official certificate of the director of the office of legislative legal services as to the fact of submission or the date of submission of a rule as shown by the records of his office, as well as to the fact of nonsubmission as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained therein. Records regarding the review of rules pursuant to this section shall be retained by the office of legislative legal services in accordance with policies established pursuant to section 2-3-303 (2), C.R.S. Any such rule or amendment to an existing rule issued by any agency without being so submitted within twenty days after the date of the attorney general's opinion rendered thereon to the office of legislative legal services for review by the committee on legal services shall be void. The staff's findings shall be presented to said committee at a public meeting held after timely notice to the public and affected agencies. The committee on legal services shall, on affirmative vote, submit such rules, comments, and proposed legislation at the next regular session of the general assembly. The committee on legal services shall be the committee of reference for any bill introduced pursuant to this paragraph (d). Any member of the general assembly may introduce a bill which rescinds or deletes portions of the rule. Rejection of such a bill does not constitute legislative approval of the rule. Only that portion of any rule specifically disapproved by bill shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. A rule which has been allowed to expire by action of the general assembly pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute shall not be repromulgated by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated shall be void. Such revision shall be transmitted to the secretary of state for publication pursuant to subsection (11) of this section. Passage of a bill repealing a rule does not result in revival of a predecessor rule. This paragraph (d) and subsection

(4.5) of this section do not apply to rules of agency organization or general statements of policy which are not meant to be binding as rules. For the purpose of performing the functions assigned it by this paragraph (d), the committee on legal services, with the approval of the speaker of the house of representatives and the president of the senate, may appoint subcommittees from the membership of the general assembly.

(e) For rules adopted on or after November 1, 2013, the staff of the committee on legal services shall identify the rules that were adopted during each applicable one-year period as a result of legislation enacted during any legislative session, regular or special, commencing on or after January 1, 2013. After such rules have been identified, the staff of the committee on legal services shall notify in writing any prime sponsors and cosponsors of the enacted legislation who are still serving in the general assembly, and the current members of the applicable committees of reference in the senate and house of representatives for that enacted legislation that a rule has been adopted as a result of the legislation.

(8.1) (a) An agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rule-making has been published in the Colorado register. Such rule-making record shall be maintained by the agency until all administrative and judicial review procedures have been completed pursuant to the provisions of this article. The rule-making record shall be available for public inspection.

(b) The agency rule-making record shall contain:

(I) Copies of all publications in the Colorado register with respect to the rule or the proceeding upon which the rule is based;

(II) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

(III) All written petitions, requests, submissions, and comments received by the agency as of the date of the hearing on the rule and all other written materials, or a listing of such materials, considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, which materials shall be available for public inspection during working hours;

(IV) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(V) A copy of any regulatory analysis or cost-benefit analysis prepared for the proceeding upon which the rule was based, if applicable, and any formal statement made to the agency promulgating the rule by the executive director of the department of regulatory agencies regarding such cost-benefit analysis;

(VI) A copy of the rule and explanatory statement filed in the office of the secretary of state;

(VII) All petitions for exceptions to, amendments of, or repeal or suspension of

the rule;

(VIII) A copy of any objection to the rule presented to the committee on legal services of the general assembly by its staff pursuant to paragraph (d) of subsection (8) of this section and the agency's response;

(IX) A copy of any filed executive order with respect to the rule; and

(X) A copy of any information provided to the director pursuant to paragraph (c) of subsection (2.7) of this section and the written notice of compliance from the director.

(c) Upon judicial review, the record required by this section constitutes the official rule-making record with respect to a rule. The agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof; except that, this paragraph (c) shall not be interpreted to allow the introduction of evidence or information into such rule-making record from outside of the public rule-making hearing, or to allow such introduction of evidence or information without notice to all parties to such hearing and opportunity to respond.

(d) If an agency includes information required by subparagraph (X) of paragraph (b) of this subsection (8.1) in the rule-making record, the agency shall provide a copy of the portion of the record that includes such information with the executive committee of the legislative council in accordance with the provisions of section 24-1-136 (9).

(8.2) (a) A rule adopted on or after September 1, 1988, shall be invalid unless adopted in substantial compliance with the provisions of this section. However, inadvertent failure to mail a notice of proposed rule-making to any person as required by subsection (3) of this section shall not invalidate a rule.

(b) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of this section shall be commenced within thirty days after the effective date of the rule.

(8.3) (a) On or after August 11, 2010, all new or amended rules or regulations promulgated pursuant to this section that refer to persons with disabilities shall comply with the provisions of section 2-2-802, C.R.S., as applicable to the new or amended rule.

(b) Violation of this subsection (8.3) shall not be grounds to invalidate any new or amended rule; however, such rules shall be amended to reflect the provisions of section 2-2-802, C.R.S., in any subsequent revision.

(c) Nothing in this subsection (8.3) shall constitute a requirement to change the name of any department, agency, or program of the state.

(9) Each agency shall make available to the public and shall deliver to anyone requesting it a copy of any notice of proposed rule-making proceeding in which action has not been completed. Upon request, such copy shall be certified. The agency may make a reasonable charge for supplying any such copy.

(10) No rule shall be relied upon or cited against any person unless, if adopted after May 1, 1959, it has been published and, whether adopted before or after said date, it has been made available to the public in accordance with this section.

(11) (a) There is hereby established the code of Colorado regulations for the publication of rules of agencies of the executive branch and the Colorado register for the publication of notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The code and the register shall be the sole official publications for such rules, notices of rule-making, proposed rules, and attorney general's opinions. The code and the register shall contain, where applicable, references to court opinions and recommendations of the legal services committee of the general assembly that relate to or affect such rules and references to any action of the general assembly relating to the extension, expiration, deletion, or rescission of such rules and may contain other items that, in the opinion of the editor, are relevant to such rules. The register may also include other public notices, including annual departmental regulatory agendas submitted by principal departments to the secretary of state pursuant to section 2-7-203, C.R.S.; however, except as specifically permitted by law, the inclusion of such notices in the register shall be in addition to and not in substitution for existing public notice requirements.

(b) The secretary of state shall cause to be published in electronic form, and may cause to be published in printed form, at the least cost possible to the state, the code of Colorado regulations and the Colorado register no less often than once each calendar month. In the event of any discrepancy between the electronic and printed form of the code or the register, the electronic form shall prevail unless it is conclusively shown, by reference to the rule-making filings made with the secretary of state pursuant to this section, that the electronic form contains an error in publication.

(c) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(d) (I) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(II) Each rule adopted, together with the attorney general's opinion rendered in connection therewith, shall be filed pursuant to subsection (12) of this section within twenty days after adoption with the secretary of state for publication in the Colorado register. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by such agency that occur after final adoption of the rules by the agency during the preparation of such rules for publication in order to conform the published rules with the adopted rules. Notices of rule-making proceedings pursuant to subsection (3) of this section shall also be filed with the secretary of state in sufficient time for publication pursuant to subsection (5) of this section in the register. Rules revised to conform with action taken by the general assembly shall be filed with the secretary of state for publication in the register and in the code of Colorado regulations. The legal services committee of the general assembly shall notify the secretary of state whenever a rule published in the code is rescinded or a portion thereof is deleted by the general assembly and whenever a rule or a

portion thereof is allowed to expire in accordance with section 24-4-108 or with subparagraph (I) of paragraph (c) of subsection (8) of this section, and the secretary of state shall direct the removal from the code of material so deleted, rescinded, or allowed to expire.

(e) The secretary of state shall establish and maintain an accurate docket system for recording the time and date of the filing of each document, the agency filing the same, and the title or description of such document required to be filed for publication under the provisions of this section, which docket system shall be cross-indexed as to such time, date, agency, and title or description.

(f) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(g) Publication of notices and other required information related to proposed and adopted rules shall be by electronic publication.

(h) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(i) (I) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(II) The Colorado register shall contain only such notices, proposed rules, adopted rules, opinions, and other relevant information and materials as are filed pursuant to law with the secretary of state.

(III) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(j) Repealed.

(k) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(12) All rules of any agency that have been submitted to the attorney general under the provisions of subsection (8) of this section and the opinion of the attorney general, when issued, shall be filed in the office of the secretary of state. The secretary of state shall require that all rules of any agency that have been submitted to the attorney general under the provisions of subsection (8) of this section and the opinion of the attorney general, when issued, be filed in an electronic format that complies with any requirements established pursuant to sections 24-37.5-106 and 24-71.3-118.

(12.5) (a) A rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, if:

(I) Repeating verbatim the text of the code, standard, guideline, or rule in the rule would be unduly cumbersome, expensive, or otherwise inexpedient;

(II) The reference fully identifies the incorporated code, standard, guideline, or rule by citation and date, identifies the address of the agency where the code, standard,

guideline, or rule is available for public inspection, and states that the rule does not include any later amendments or editions of the code, standard, guideline, or rule;

(III) The code, standard, guideline, or rule is readily available to the public in written or electronic form;

(IV) The rule states where copies of the code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule; and

(V) The agency maintains a copy of the code, standard, guideline, or rule readily available for public inspection at the agency office during regular business hours.

(b) The agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requestor with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule.

(c) If any agency incorporates or proposes to incorporate any material by reference in a rule and the version or edition of the material to be incorporated has not previously been provided to the state publications depository and distribution center, and if the rule or proposed rule does not identify where the incorporated material is available to the public on the internet at no cost, then the agency shall provide one copy of the material in either paper or electronic format to the state publications depository and distribution center. The state librarian shall retain the copy of the material and shall make the copy available to the public.

(13) Any agency conducting a hearing shall have authority on its own motion or upon the motion of any interested person for good cause shown to: Administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of appropriate documents; take depositions or have depositions taken; issue appropriate orders which shall control the subsequent course of the proceedings; and take any other action authorized by agency rule consistent with this article. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform the functions of this subsection (13) and subsection (14) of this section as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(14) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary or chief administrative officer thereof, or, with respect to any hearing for which a hearing officer or an administrative law judge has been appointed, the hearing officer or administrative law judge. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting

forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court. A witness shall be entitled to the fees and mileage provided for a witness in sections 13-33-102 and 13-33-103, C.R.S.

24-4-103.5. Rule-making affecting small business - procedure. (Repealed)

24-4-104. Licenses - issuance, suspension or revocation, renewal. (1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3) (a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (3) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(4) (a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and

determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (4) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) No previously issued license shall be revoked, suspended, annulled, limited, or modified, except as provided in subsection (3) of this section, until after hearing as provided in section 24-4-105.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13) (a) Any applicant who, under oath, supplies false information to an agency in

an application for a license commits perjury in the second degree, as defined in section 18-8-503, C.R.S. Any such application shall bear notice, in accordance with section 18-8-501 (2) (a) (I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

24-4-104.5. Permits - rules in effect at time of submission of application for a permit control. (1) For purposes of this section, unless the context otherwise requires, "permit" means a grant of authority by an agency that authorizes the holder of the permit to do some act not forbidden by law but not allowed to be performed without such authority. "Permit" does not include a professional license issued by a licensing board or an agency to conduct a profession or occupation. "Permit" does not include a registration or certification issued by a board or state agency to an individual to pursue a profession, practice, or occupation. "Permit" does not include a water well permit issued by the state engineer pursuant to title 37, C.R.S.

(2) (a) The rules and any written statements of agency interpretation of the statutes of an agency that are in effect on the date that a person applies for issuance or renewal of a permit govern the application process and any permit eligibility requirement. If the rules or any written statements of agency interpretation of the statutes governing the agency's permit process or the requirements to qualify for a permit have been amended, the agency shall process the application under the rules and any written statements of agency interpretation of the statutes in effect on the date of the application, unless the agency determines in writing that:

(I) (A) The new rules materially affect the health and safety of the public; and

(B) Use of the rules in effect on the date of application is likely to result in an unsafe situation if the applicant does not comply with the new rules; or

(II) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of federal law and federal regulations; or

(III) New rules or new requirements are necessary to ensure that the agency and the permit will not be in conflict with state statutes; or

(IV) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of a court order.

(b) If the agency determines that one of the exceptions to the requirements of paragraph (a) of this subsection (2) will occur if the applicant does not comply with the new rules or new requirements, the agency shall:

(I) Treat the application as pending;

(II) Provide a written notice to the applicant stating the reasons the application is incomplete; and

(III) Give the applicant a reasonable opportunity to comply with the new rules or new requirements.

(3) If an agency adopts or amends rules that govern or impact the application process or any permit eligibility requirements after a person has applied for a permit or renewal of a permit and while the application is pending with the agency, the person shall have the option to have the application processed under the rules in existence at the time of the filing of the application or under the new rules.

24-4-105. Hearings and determinations. (1) In order to assure that all parties to any agency adjudicatory proceeding are accorded due process of law, the provisions of this section shall be applicable.

(2) (a) In any such proceeding in which an opportunity for agency adjudicatory hearing is required under the state constitution or by this or any other statute, the parties are entitled to a hearing and decision in conformity with this section. Any person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served personally or by mailing by first-class mail to the last address furnished the agency by the person to be notified at least thirty days prior to the hearing. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

(b) Any person given such notice shall file a written answer thirty days after the service or mailing of such notice. If such person fails to answer, any agency, administrative law judge, or hearing officer, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry.

(c) A person who may be affected or aggrieved by agency action shall be admitted as a party to the proceeding upon his filing with the agency a written request therefor, setting forth a brief and plain statement of the facts which entitle him to be admitted and the matters which he claims should be decided. Nothing in this subsection (2) shall prevent an agency from admitting any person or agency as a party to any agency proceeding for limited purposes.

(3) At a hearing only one of the following may preside: The agency, an administrative law judge from the office of administrative courts, or, if otherwise authorized by law, a hearing officer who if authorized by law may be a member of the body which comprises the agency. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias of an administrative law judge or a hearing officer or a member of the agency or the agency, the administrative law judge, hearing officer, or agency shall forthwith rule upon the allegations in such affidavit as part of the record in

the case. An administrative law judge or a hearing officer may at any time withdraw if he or she deems himself or herself disqualified or for any other good reason in which case another administrative law judge or hearing officer may be assigned to continue the case, and he or she shall do so in such manner that no substantial prejudice to any party results therefrom. An agency or a member of an agency may withdraw for any like reason and in like manner, unless his or her withdrawal makes it impossible for the agency to render a decision.

(4) Any agency conducting a hearing, any administrative law judge, and any hearing officer shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(5) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary, or chief administrative officer thereof or, with respect to any hearing for which an administrative law judge or a hearing officer has been appointed, the administrative law judge or the hearing officer. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other

evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court and may award attorney fees under the Colorado rules of civil procedure. A witness shall be entitled to the fees and mileage provided for a witness in a court of record.

(6) No person engaged in conducting a hearing or participating in a decision or an initial decision shall be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigatory or prosecuting functions for the agency.

(7) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof, and every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person so conducting the hearing may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(8) An agency may take notice of general, technical, or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

(9) (a) Any party, or the agent, servant, or employee of any party, permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a person may appear on their own behalf. An attorney who is a witness may not act as counsel for the party calling the attorney as a witness. Any party, upon payment of a reasonable charge therefor, shall be entitled to procure a copy of the transcript of the record or any part thereof. Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of such person's own choosing and, upon payment of a reasonable charge therefor, to procure a copy of the transcript of such

person's testimony if it is recorded.

(b) (I) Except as provided in subparagraph (III) of this paragraph (b), no attorney shall submit a document concerning an adjudicatory proceeding after January 1, 1994, unless such document is submitted on recycled paper. The provisions of this section shall apply to all papers appended to each such document.

(II) (A) Any state agency that adopts policies, procedures, rules, or regulations for the purpose of implementing the provisions of this section shall ensure that the conduct of state business is not impeded and that no person is denied access to the services or programs of a state agency as a result of such implementation.

(B) No document shall be refused by a state agency solely because it was not submitted on recycled paper.

(III) Nothing in this section shall be construed to apply to:

(A) Photographs;

(B) An original document that was prepared or printed prior to January 1, 1994;

(C) A document that was not created at the direction or under the control of the submitting attorney;

(D) Facsimile copies concerning an adjudicatory proceeding otherwise permitted to be filed in lieu of the original document; however, if the original is also required to be filed, such original shall be submitted in compliance with this section;

(E) Existing stocks of nonrecycled paper and preprinted forms acquired or printed prior to January 1, 1994.

(IV) The provisions of this section shall not be applicable if recycled paper is not readily available.

(V) For purposes of this paragraph (b), unless the context otherwise requires:

(A) "Attorney" means an attorney-at-law admitted to practice law before any court of record in this state.

(B) "Document" means any pleading or any other paper submitted as an appendix to such pleading by an attorney, which document is required or permitted to be filed with a state agency concerning any action to be commenced or which is pending before such agency.

(C) "Recycled paper" means paper with not less than fifty percent of its total weight consisting of secondary and postconsumer waste and with not less than ten percent of such total weight consisting of postconsumer waste.

(10) Every agency shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives, giving precedence to rehearing proceedings after remand by court order. Prompt notice shall be given of the refusal to accept for filing or the denial in whole or in part of any written application or other request made in connection with any agency proceeding or action, with a statement of the grounds therefor. Upon application made to any court of competent jurisdiction by a party to any agency proceeding or by a person adversely

affected by agency action and a showing to the court that there has been undue delay in connection with such proceeding or action, the court may direct the agency to decide the matter promptly.

(11) Every agency shall provide by rule for the entertaining, in its sound discretion, and prompt disposition of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency. The order disposing of the petition shall constitute agency action subject to judicial review.

(12) Nothing in this article shall affect statutory powers of an agency to issue an emergency order where the agency finds and states of record the reasons for so finding that immediate issuance of the order is imperatively necessary for the preservation of public health, safety, or welfare and observance of the requirements of this section would be contrary to the public interest. Any person against whom an emergency order is issued, who would otherwise be entitled to a hearing pursuant to this section, shall be entitled upon request to an immediate hearing in accordance with this article, in which proceeding the agency shall be deemed the proponent of the order.

(13) The administrative law judge or the hearing officer shall cause the proceedings to be recorded by a reporter or by an electronic recording device. When required, the administrative law judge or the hearing officer shall cause the proceedings, or any portion thereof, to be transcribed, the cost thereof to be paid by the agency when it orders the transcription or by any party seeking to reverse or modify an initial decision of the administrative law judge or the hearing officer. If the agency acquires a copy of the transcription of the proceedings, its copy of the transcription shall be made available to any party at reasonable times for inspection and study.

(14) (a) For the purpose of a decision by an agency which conducts a hearing or an initial decision by an administrative law judge or a hearing officer, the record shall include: All pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of fact and conclusions of law proposed by any party, and any written brief filed. The agency, administrative law judge, or hearing officer may permit oral argument. No ex parte material or representation of any kind offered without notice shall be received or considered by the agency, the administrative law judge, or by the hearing officer. The agency, an administrative law judge, or hearing officer, with the consent of all parties, may eliminate or summarize any part of the record where this may be done without affecting the decision. In any case in which the agency has conducted the hearing, the agency shall prepare, file, and serve upon each party its decision. In any case in which an administrative law judge or a hearing officer has conducted the hearing, the administrative law judge or the hearing officer shall prepare and file an initial decision which the agency shall serve upon each party, except where all parties with the consent of the agency have expressly waived their right to have an initial decision rendered by such

administrative law judge or hearing officer. Each decision and initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof. An appeal to the agency shall be made as follows:

(I) With regard to initial decisions regarding agency action by the department of health care policy and financing, the state department of human services, or county department of social services, or any contractor acting for any such department, under section 26-1-106 (1) (a) or 25.5-1-107 (1) (a), C.R.S., by filing exceptions within fifteen days after service of the initial decision upon the parties, unless extended by the department of health care policy and financing, or the state department of human services, as applicable, or unless a review has been initiated in accordance with this subparagraph (I) upon motion of the applicable department within fifteen days after service of the initial decision. In the event a party fails to file an exception within fifteen days, the applicable department may allow, upon a showing of good cause by the party, for an extension of up to an additional fifteen days to reconsider the final agency action.

(II) With regard to initial decisions regarding agency action of any other agency, by filing exceptions within thirty days after service of the initial decision upon the parties, unless extended by the agency or unless review has been initiated upon motion of the agency within thirty days after service of the initial decision.

(b) (I) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the department of health care policy and financing shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the medical services board pursuant to section 25.5-1-107 (1), C.R.S.

(II) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the state department of human services shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the state board of human services pursuant to section 26-1-106 (1), C.R.S.

(III) In the absence of an exception filed pursuant to subparagraph (II) of paragraph (a) of this subsection (14), the initial decision of any other agency shall become the decision of the agency, and, in such case, the evidence taken by the administrative law judge or the hearing officer need not be transcribed.

(c) Failure to file the exceptions prescribed in this subsection (14) shall result in a waiver of the right to judicial review of the final order of such agency, unless that portion of such order subject to exception is different from the content of the initial decision.

(15) (a) Any party who seeks to reverse or modify the initial decision of the administrative law judge or the hearing officer shall file with the agency, within twenty days following such decision, a designation of the relevant parts of the record described in subsection (14) of this section and of the parts of the transcript of the proceedings

which shall be prepared and advance the cost therefor. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefor. The transcript or the parts thereof which may be designated by the parties or the agency shall be prepared by the reporter or, in the case of an electronic recording device, the agency and shall thereafter be filed with the agency. No transcription is required if the agency's review is limited to a pure question of law. The agency may permit oral argument. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision of the administrative law judge or the hearing officer was based, the rulings upon the proposed findings and conclusions, the initial decision of the administrative law judge or the hearing officer, and any other exceptions and briefs filed.

(b) The findings of evidentiary fact, as distinguished from ultimate conclusions of fact, made by the administrative law judge or the hearing officer shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence. The agency may remand the case to the administrative law judge or the hearing officer for such further proceedings as it may direct, or it may affirm, set aside, or modify the order or any sanction or relief entered therein, in conformity with the facts and the law.

(16) (a) Each decision and initial decision shall be served on each party by personal service or by mailing by first-class mail to the last address furnished the agency by such party and, except as provided in paragraph (b) of this subsection (16), shall be effective as to such party on the date mailed or such later date as is stated in the decision.

(b) Upon application by a party, and prior to the expiration of the time allowed for commencing an action for judicial review, the agency may change the effective date of a decision or initial decision.

24-4-106. Judicial review. (1) In order to assure a plain, simple, and prompt judicial remedy to persons or parties adversely affected or aggrieved by agency actions, the provisions of this section shall be applicable.

(2) Final agency action under this or any other law shall be subject to judicial review as provided in this section, whether or not an application for reconsideration has been filed, unless the filing of an application for reconsideration is required by the statutory provisions governing the specific agency. In the event specific provisions for rehearing as a basis for judicial review as applied to any particular agency are in effect on or after July 1, 1969, then such provisions shall govern the rehearing and appeal procedure, the provisions of this article to the contrary notwithstanding.

(3) An action may be commenced in any court of competent jurisdiction by or on

behalf of an agency for judicial enforcement of any final order of such agency. In any such action, any person adversely affected or aggrieved by such agency action may obtain judicial review of such agency action.

(4) Except as provided in subsection (11) of this section, any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective; but, if such agency action occurs in relation to any hearing pursuant to section 24-4-105, then the person must also have been a party to such agency hearing. A proceeding for such review may be brought against the agency by its official title, individuals who comprise the agency, or any person representing the agency or acting on its behalf in the matter sought to be reviewed. The complaint shall state the facts upon which the plaintiff bases the claim that he or she has been adversely affected or aggrieved, the reasons entitling him or her to relief, and the relief which he or she seeks. Every party to an agency action in a proceeding under section 24-4-105 not appearing as plaintiff in such action for judicial review shall be made a defendant; except that, in review of agency actions taken pursuant to section 24-4-103, persons participating in the rule-making proceeding need not be made defendants. Each agency conducting a rule-making proceeding shall maintain a docket listing the name, address, and telephone number of every person who has participated in a rule-making proceeding by written statement, or by oral comment at a hearing. Any person who commences suit for judicial review of the rule shall notify each person on the agency's docket of the fact that a suit has been commenced. The notice shall be sent by first-class certified mail within fourteen days after filing of the action and shall be accompanied by a copy of the complaint for judicial review bearing the action number of the case. Thereafter, service of process, responsive pleadings, and other matters of procedure shall be controlled by the Colorado rules of civil procedure. An action shall not be dismissed for failure to join an indispensable party until an opportunity has been afforded to an affected party to bring the indispensable party into the action. The residence of a state agency for the purposes of this subsection (4) shall be deemed to be the city and county of Denver. In any action in which the plaintiff seeks judicial review of an agency decision made after a hearing as provided in section 24-4-105, the parties after issue is joined shall file briefs within the time periods specified in the Colorado appellate rules.

(4.5) Subject to the limitation set forth in section 39-8-108 (2), C.R.S., the board of county commissioners of any county of this state may commence an action in the Denver district court within the time limit set forth in subsection (4) of this section for judicial review of any agency action which is directed to any official, board, or employee of such county or which involves any duty or function of any official, board, or employee of such county with the consent of said official, board, or employee, and to the extent that said official, board, or employee could maintain an action under subsection (4) of this section. In addition, in any action brought against any official, board, or employee of a

county of this state for judicial enforcement of any final order of any agency, the defendant official, board, or employee may obtain judicial review of such agency action. In any such action for judicial review, the county official, board, or employee shall not be permitted to seek temporary or preliminary injunctive relief pending a final decision on the merits of its claim.

(5) Upon a finding that irreparable injury would otherwise result, the agency, upon application therefor, shall postpone the effective date of the agency action pending judicial review, or the reviewing court, upon application therefor and regardless of whether such an application previously has been made to or denied by any agency, and upon such terms and upon such security, if any, as the court shall find necessary and order, shall issue all necessary and appropriate process to postpone the effective date of the agency action or to preserve the rights of the parties pending conclusion of the review proceedings.

(6) In every case of agency action, the record, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the agency, rulings upon exceptions, and the decision, findings, and action of the agency. Any person initiating judicial review shall designate the relevant parts of such record and advance the cost therefor. As to alleged errors, omissions, and irregularities in the agency record, evidence may be taken independently by the court.

(7) If the court finds no error, it shall affirm the agency action. If it finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken which has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford such other relief as may be appropriate. In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party. In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply such interpretation to the facts duly found or established.

(8) Upon a showing of irreparable injury, any court of competent jurisdiction may enjoin at any time the conduct of any agency proceeding in which the proceeding itself or the action proposed to be taken therein is clearly beyond the constitutional or statutory jurisdiction or authority of the agency. If the court finds that any proceeding contesting the jurisdiction or authority of the agency is frivolous or brought for the purpose of delay,

it shall assess against the plaintiff in such proceeding costs and a reasonable sum for attorney fees (or an equivalent sum in lieu thereof) incurred by other parties, including the state.

(9) The decision of the district court shall be subject to appellate review as may be permitted by law or the Colorado appellate rules, but a notice of intent to seek appellate review must be filed with the district court within forty-nine days after its decision becomes final. If no notice of intent to seek appellate review is filed with the trial court within forty-nine days after its decision becomes final, the trial court shall immediately return to the agency its record. Upon disposition of a case in an appellate court which requires further proceedings in the trial court, the agency's record shall be returned to the trial court. On final disposition of the case in the appellate court when no further proceedings are necessary or permitted in the trial court, the agency's record shall be returned by the appellate court to the agency with notice of such disposition to the trial court or to the trial court, in which event the agency's record shall be returned by the trial court to the agency.

(10) In any judicial review of agency action, the district court or the appellate court shall advance on the docket any case which in the discretion of the court requires acceleration.

(11) (a) Whenever judicial review of any agency action is directed to the court of appeals, the provisions of this subsection (11) shall be applicable except for review of orders of the industrial claim appeals office.

(b) Such proceeding shall be commenced by the filing of a notice of appeal with the court of appeals within forty-nine days after the date of the service of the final order entered in the action by the agency, together with a certificate of service showing service of a copy of said notice of appeal on the agency and on all other persons who have appeared as parties to the action before the agency. The date of service of an order is the date on which a copy of the order is delivered in person or, if service is by mail, the date of mailing.

(c) The record on appeal shall conform to the provisions of subsection (6) of this section. The designation and preparation of the record and its transmission to the court of appeals shall be in accordance with the Colorado appellate rules. A request for an extension of time to transmit the record shall be made to the court of appeals and may be granted only by that court.

(d) The docketing of the appeal and all procedures thereafter shall be as set forth in the Colorado appellate rules. The agency shall not be required to pay a docket fee. All persons who have appeared as parties to the action before the agency who are not designated as appellants shall, together with the agency, be designated as appellees.

(e) The standard for review as set forth in subsection (7) of this section shall apply to appeals brought under this subsection (11).

24-4-107. Application of article. This article applies to every agency of the state having statewide territorial jurisdiction except those in the legislative or judicial branches, courts-martial, military commissions, and arbitration and mediation functions. It applies to every other agency to which it is made to apply by specific statutory reference; but, where there is a conflict between this article and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.

24-4-108. Legislative consideration of rules. (1) Unless extended by the general assembly acting by bill, all of the rules and regulations of the principal departments shall expire on the dates specified in this section.

(2) The rules and regulations of the following principal departments shall expire on July 1, 1980:

(a) to (c) Repealed.

(3) The rules and regulations of the following principal departments shall expire on July 1, 1981:

(a) to (d) Repealed.

(4) The rules and regulations of the following principal departments shall expire on July 1, 1982:

(a) to (c) Repealed.

(5) The rules and regulations of the following principal departments shall expire on July 1, 1983:

(a) to (d) Repealed.

(6) The rules and regulations of the following principal departments shall expire on July 1, 1984:

(a) Department of the treasury;

(b) Repealed.

(c) Office of state planning and budgeting;

(d) to (h) Repealed.

(6.1) Repealed.

(7) The general assembly, in its discretion, may postpone by bill the expiration of rules and regulations, or any portion thereof. Nothing in this section shall prohibit any action by the general assembly pursuant to section 24-4-103 (8) (d). The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The committee on legal services is authorized to establish procedures for the implementation of review of rules and regulations contemplated by this section including, but not limited to, a procedure for annual review of rules and regulations which may conflict with statutes or statutory changes adopted subsequent to review of a department's rules and regulations pursuant to this section.

(8) This section shall not apply to rules and regulations of any agency in the department of regulatory agencies, which rules shall be subject to the provisions of section 24-34-104 (9) (b) (II).

ARTICLE 4.1

Crime Victim Compensation and
Victim and Witness Rights

PART 1

CRIME VICTIM COMPENSATION ACT

24-4.1-100.1. Short title. This part 1 shall be known and may be cited as the "Colorado Crime Victim Compensation Act".

24-4.1-101. Legislative declaration. The general assembly hereby finds that an effective criminal justice system requires the protection and assistance of victims of crime and members of the immediate families of such victims in order to preserve the individual dignity of victims and to encourage greater public cooperation in the apprehension and prosecution of criminal defendants. The general assembly hereby intends to provide protection and assistance to victims and members of the immediate families of such victims by declaring and implementing the rights of such persons and by lessening the financial burden placed upon victims due to the commission of crimes. This article shall be liberally construed to accomplish such purposes.

24-4.1-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Applicant" means any victim of a compensable crime who applies to the fund for compensation under this part 1. In the case of such victim's death, the term includes any person who was his dependent at the time of the death of that victim.

(2) "Board" means the crime victim compensation board in each judicial district.

(3) "Child" means an unmarried person who is under eighteen years of age. The term includes a posthumous child, a stepchild, or an adopted child.

(4) (a) "Compensable crime" means:

(I) An intentional, knowing, reckless, or criminally negligent act of a person or any act in violation of section 42-4-1301 (1) or (2), C.R.S., that results in residential

property damage to or bodily injury or death of another person or results in loss of or damage to eyeglasses, dentures, hearing aids, or other prosthetic or medically necessary devices and which, if committed by a person of full legal capacity, is punishable as a crime in this state; or

(II) An act in violation of section 42-4-1402, C.R.S., that results in the death of another person or section 42-4-1601, C.R.S., where the accident results in the death of another person.

(b) "Compensable crime" includes federal offenses that are comparable to those specified in paragraph (a) of this subsection (4) and are committed in this state.

(5) "Dependent" means relatives of a deceased victim who, wholly or partially, were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

(6) "Economic loss" means economic detriment consisting only of allowable expense, net income, replacement services loss, and, if injury causes death, dependent's economic loss. The term does not include noneconomic detriment.

(7) "Fund" means the crime victim compensation fund as established in each judicial district.

(8) "Injury" means impairment of a person's physical or mental condition and includes pregnancy.

(8.5) "Property damage" means damage to windows, doors, locks, or other security devices of a residential dwelling and includes damage to a leased residential dwelling.

(9) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a victim.

(10) (a) "Victim" means any of the following persons who suffer property damage, economic loss, injury, or death as a result of a compensable crime perpetrated or attempted in whole or in part in this state:

(I) Any person against whom a compensable crime is perpetrated or attempted. Such person shall be referred to as a "primary victim".

(II) Any person who attempts to assist or assists a primary victim;

(III) Any person who is a relative of a primary victim.

(b) "Victim" also means a person who suffers injury or death, the proximate cause of which is a compensable crime perpetrated or attempted in the person's presence against a primary victim.

(c) "Victim" also means a person who is a resident of this state and who is a victim of a crime that occurred outside of this state, where the crime would be a compensable crime had it occurred in this state and where the state or country in which the crime occurred does not have a crime victim compensation program for which the

person would be eligible.

(d) "Victim" also means a person who is a resident of this state who is injured or killed by an act of international terrorism, as defined in 18 U.S.C. sec. 2331, committed outside of the United States.

24-4.1-103. Crime victim compensation board - creation. (1) There is hereby created in each judicial district a crime victim compensation board. Each board shall be composed of three members to be appointed by the district attorney. The district attorney shall designate one of the members as chairman. To the extent possible, members shall fairly reflect the population of the judicial district.

(2) The term of office of each member of the board shall be three years; except that, of those members first appointed, one shall be appointed for a three-year term, one for a two-year term, and one for a one-year term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. Each member may be reappointed once and serve two consecutive terms. A person may be reappointed to the board thereafter if it has been at least one year since such person served on the board.

(3) Members of the board shall receive no compensation but are entitled to be reimbursed for travel expenses at the rate authorized for state employees.

24-4.1-104. District attorney to assist board. The district attorney and his legal and administrative staff shall assist the board in the performance of its duties pursuant to this part 1.

24-4.1-105. Application for compensation. (1) A person who may be eligible for compensation under this part 1 may apply to the board in the judicial district in which the crime was committed. In a case in which the person entitled to apply is a minor, the application may be made on his behalf by his parent or guardian. In a case in which the person entitled to apply is mentally incompetent, the application may be made on his behalf by his parent, conservator, or guardian or by any other individual authorized to administer his estate.

(2) (a) In order to be eligible for compensation under this part 1, the applicant shall submit reports, if reasonably available, from any physician who has treated or examined the victim at the time of or subsequent to the victim's injury or death. The report shall be in relation to the injury for which compensation is claimed. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or the report on the cause of death of the victim by a medical expert would be of material aid to its determination, the board may order the

reports.

(b) In order to be eligible for compensation for property damage under this part 1, the applicant shall submit a report or case number, if reasonably available, from a law enforcement agency which shall set forth the nature of the property damage which is the result of a compensable crime.

(3) If the applicant makes any false statement as to a material fact, he shall be ineligible for an award pursuant to this part 1.

24-4.1-106. Hearings. (1) The board, in its discretion, may conduct a hearing upon any application submitted to it. All hearings conducted by the board and appeals therefrom shall be held pursuant to sections 24-4-105 and 24-4-106.

(2) The burden of proof is upon the applicant to show that the claim is reasonable and is compensable under the terms of this part 1. The standard of proof is by a preponderance of the evidence.

(3) If a person has been convicted of an offense with respect to an act on which a claim is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending. The fact that the identity of the assailant is unknown or that the assailant has not been prosecuted or convicted shall not raise a presumption that the claim is invalid.

(4) Orders and decisions of the board are final.

(5) Review of an order or decision of the board may be made in accordance with the Colorado rules of civil procedure.

24-4.1-107. Regulations. In the performance of its functions, the board, pursuant to article 4 of this title, is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this part 1.

24-4.1-107.5. Confidentiality of materials. (1) For purposes of this section, unless the context otherwise requires:

(a) "In camera review" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the contents of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed, until and unless the contents are ordered to be disclosed by a court having jurisdiction over the matter.

(b) "Materials" means any records, claims, writings, documents, or information.

(2) Any materials received, made, or kept by a crime victim compensation board or a district attorney concerning an application for victim's compensation made under this article are confidential. Any such materials shall not be discoverable unless the court conducts an in camera review of the materials sought to be discovered and determines that the materials sought are necessary for the resolution of an issue then pending before the court. The district attorney shall have standing in any action to oppose the disclosure of any such materials.

24-4.1-108. Awarding compensation. (1) A person is entitled to an award of compensation under this part 1 if:

(a) The person is a victim or a dependent of a victim or a successor in interest under the "Colorado Probate Code" of a victim of a compensable crime which was perpetrated on or after July 1, 1982, and which resulted in a loss;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death of or injury to the victim within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate;

(d) Repealed.

(e) The death of or injury to the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant; and

(f) The application for an award of compensation under this part 1 is filed with the board within one year of the date of injury to the victim or within such further extension of time as the board, for good cause shown, allows. For purposes of this paragraph (f), "good cause" may include but is not limited to circumstances in which a crime has remained unsolved for more than one year.

(1.5) A person is entitled to an award of compensation for property damage under this part 1 if:

(a) The person is a victim of a compensable crime which was perpetrated on or after July 1, 1983, and which resulted in property damage;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime causing property damage within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate; and

(d) The application for an award of compensation for property damage under this part 1 is filed with the board within six months of the date of property damage or within

such further extension of time as the board, for good cause shown, allows.

(2) The board may waive any of the requirements set forth in this section, or the limitations set forth in section 24-4.1-109 (1), or order a denial or reduction of an award if, in the interest of justice, it is so required.

(3) Upon a finding by the board that compensation should be awarded, the board shall submit a statement of award to the court administrator who shall remit payment in accordance with the statement of award.

(4) Consistent with approved standards established pursuant to section 24-4.1-117.3 (3) for the administration of crime victim compensation funds, the board may develop policies to ensure that primary victims are compensated and to ensure that available moneys in the fund are not exceeded.

24-4.1-109. Losses compensable. (1) Losses compensable under this part 1 resulting from death of or injury to a victim include:

(a) Reasonable medical and hospital expenses and expenses incurred for dentures, eyeglasses, hearing aids, or other prosthetic or medically necessary devices;

(b) Loss of earnings;

(c) Outpatient care;

(d) Homemaker and home health services;

(e) Burial expenses;

(f) Loss of support to dependents;

(g) Mental health counseling.

(1.5) (a) Losses compensable under this part 1 resulting from property damage include:

(I) (A) Repair or replacement of property damaged as a result of a compensable crime; or

(B) Payment of the deductible amount on a residential insurance policy; and

(II) Any modification to the victim's residence that is necessary to ensure victim safety.

(b) (Deleted by amendment, L. 98, p. 517, §2, effective April 30, 1998.)

(2) Compensable losses do not include:

(a) Pain and suffering or property damage other than residential property damage; or

(b) Aggregate damages to the victim or to the dependents of a victim exceeding twenty thousand dollars; or

(c) Aggregate damages of less than twenty-five dollars.

24-4.1-110. Recovery from collateral source. (1) The board shall deduct from

compensation it awards under this part 1 any payments received by the applicant from the offender or from a person on behalf of the offender, from the United States or any state, or any subdivision or agency thereof, from a private source, or from an emergency award under this part 1 for injury or death compensable under this part 1, excluding death or pension benefits.

(2) If compensation is awarded under this part 1 and the person receiving it also receives a collateral sum under subsection (1) of this section which has not been deducted from it, he shall refund to the board the lesser of the sums or the amount of compensation paid to him under this part 1 unless the aggregate of both sums does not exceed his losses. The fund shall be the payor of last resort.

(3) If a defendant is ordered to pay restitution under article 18.5 of title 16, C.R.S., to a person who has received compensation awarded under this part 1, an amount equal to the compensation awarded shall be transmitted from such restitution to the board for allocation to the fund.

24-4.1-111. Compensation to relatives. (1) A relative of a victim, even though he was not a dependent of the victim, is eligible for compensation for reasonable medical or burial expenses for the victim, if:

(a) Such expenses were paid by him; and

(b) He files a claim in the manner provided in this part 1.

24-4.1-112. Emergency awards. (1) The board may order an emergency award to the applicant pending a final decision in the claim if it appears to the board, prior to taking action upon the claim, that undue hardship will result to the applicant if immediate payment is not made. Awards pursuant to this section are intended to cover expenses incurred by crime victims in meeting their immediate short-term needs. The amount of such award shall not exceed one thousand dollars and shall be deducted from any final award made as a result of the claim.

(2) If the amount of such emergency award exceeds the sum the board would have awarded pursuant to this part 1, such excess shall be repaid by the recipient.

24-4.1-113. Fees. No fee may be charged to the applicant by the board in any proceeding under this article.

24-4.1-114. Assignment, attachment, or garnishment of award. No compensation payable under this article, prior to actual receipt thereof by the person or

beneficiary entitled thereto or his legal representative, shall be assignable or subject to execution, garnishment, attachment, or any other process, including process to satisfy an order or judgment for support or alimony.

24-4.1-114.5. Limitations on characterization of award as income. No compensation payable to an applicant under this part 1 shall be included in the applicant's income for purposes of the Colorado income tax imposed in article 22 of title 39, C.R.S.; nor shall it be considered as income, property, or support for the purposes of determining the eligibility of the applicant for public assistance or the amount of assistance payments pursuant to section 26-2-108, C.R.S.

24-4.1-115. Survival of rights. The rights to compensation created by this part 1 are personal and shall not survive the death of the person or beneficiary entitled to them; except that, if death occurs after an application for compensation has been filed with the board, the proceeding shall not abate but may be continued by the legal representative of the decedent's estate.

24-4.1-116. Subrogation. The acceptance of an award made pursuant to this part 1 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant.

24-4.1-117. Fund created - control of fund. (1) The crime victim compensation fund is hereby established in the office of the court administrator of each judicial district for the benefit of eligible applicants under this part 1.

(1.5) In any judicial district where a separate juvenile court exists, all moneys collected by such juvenile court shall be deposited in the fund and administered by the district court administrator.

(2) The fund shall consist of all moneys paid as a cost or surcharge levied on criminal actions, as provided in section 24-4.1-119; any federal moneys available to state or local governments for victim compensation; all moneys received from any action or suit to recover damages from an assailant for a compensable crime which was the basis for an award of, and limited to, compensation received under this part 1; and any restitution paid by an assailant to a victim for damages for a compensable crime which was the basis for an award received under this part 1 and for damages for which the victim has received an award of, and limited to, compensation received under this part 1.

(3) All moneys deposited in the fund shall be deposited in an interest-bearing

account, which shall be no less secure than those used by the state treasurer, and which shall yield the highest interest possible. All interest earned by moneys in the fund shall be credited to the fund.

(4) At the conclusion of each fiscal year, all moneys remaining in the fund shall remain in the fund for use the succeeding year.

(5) All moneys deposited in the fund shall be used solely for the compensation of victims pursuant to this part 1; except that the district attorney and the court administrator may use an aggregate of no more than twelve and one-half percent of the total amount of moneys in the crime victim compensation fund for administrative costs incurred pursuant to this part 1. The district attorney shall be permitted to use no more than ten percent of the total amount of moneys in the fund for administrative costs. The court administrator shall be permitted to use no more than two and one-half percent of the total amount of moneys in the fund for administrative costs.

(6) Grants of federal funds that are accepted pursuant to this part 1 for the purpose of assisting crime victims shall not be used to supplant state funds available to assist crime victims.

24-4.1-117.3. Crime victim services advisory board - creation - duties. (1) There is hereby created in the division of criminal justice in the department of public safety the crime victim services advisory board, referred to in this section as the "advisory board". The advisory board shall exercise its powers and perform its duties and functions under the division of criminal justice in the department of public safety and the executive director of the department of public safety, referred to in this section as the "executive director", as if the same were transferred to the department of public safety by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(2) (a) The advisory board shall consist of at least seventeen members appointed by the executive director, including but not limited to:

(I) A judge;

(II) An elected district attorney, the assistant district attorney, or a chief deputy district attorney;

(III) A member of a crime victim compensation board created in section 24-4.1-103;

(IV) A member of a local victims and witnesses assistance and law enforcement board created in section 24-4.2-101;

(V) An administrator of crime victim compensation from a district attorney's office;

(VI) An administrator of victims and witnesses assistance from a district attorney's office;

(VII) A representative of a statewide victims' organization;

(VIII) A judicial district administrator or judicial district representative;

(IX) A representative of a domestic violence program;

(X) A representative of a sexual assault program;

(XI) A sheriff or sheriff's representative;

(XII) A police chief or police representative;

(XIII) A deputy district attorney;

(XIV) A victim of a crime of violence; and

(XV) Three members of the community at large.

(b) The executive director may consider geographic diversity when making appointments to the advisory board.

(c) The term of office for each member of the advisory board shall be three years; except that, of the members first appointed, six members shall be appointed to serve one-year terms and six members shall be appointed to serve two-year terms.

(d) Members of the advisory board shall serve at the pleasure of the executive director or until the member no longer serves in the position for which he or she was appointed to the advisory board, at which time a vacancy shall be deemed to exist on the advisory board. If a vacancy arises on the advisory board, the executive director shall appoint an appropriate person to serve for the remainder of the unexpired term.

(e) The executive director shall appoint the initial members of the advisory board on or before August 1, 2009. The executive director may reappoint a person to serve an unlimited number of consecutive terms. The executive director shall annually appoint a chairperson of the advisory board who shall preside over the advisory board's meetings.

(f) Members of the advisory board shall serve without compensation but may be reimbursed for actual travel expenses incurred in the performance of their duties.

(3) The advisory board's powers and duties shall include, but need not be limited to, the following:

(a) To develop and revise, when necessary, standards for the administration of the crime victim compensation fund established in section 24-4.1-117 in each judicial district and the victims and witnesses assistance and law enforcement fund established in section 24-4.2-103 in each judicial district, and to develop, revise when necessary, and impose sanctions for violating these standards;

(b) To review, pursuant to section 24-4.1-303 (17), any reports of noncompliance with this article;

(c) To distribute profits from crime pursuant to section 24-4.1-201;

(d) To advise and make recommendations to the division of criminal justice in the department of public safety concerning the award of grants pursuant to sections 24-33.5-506 and 24-33.5-507; and

(e) To establish subcommittees of the advisory board from within the membership of the advisory board, which subcommittees shall include, but need not be limited to:

(I) A standards subcommittee that shall make recommendations to the advisory board concerning the development and revision, when necessary, of standards and sanctions for the violation of standards to assist the advisory board in implementing paragraph (a) of this subsection (3); and

(II) A victim rights subcommittee that shall review, pursuant to section 24-4.1-303 (17), any reports of noncompliance with this article to assist the advisory board in implementing paragraph (b) of this subsection (3).

(4) The advisory board shall not release to the public any records submitted to or generated by the advisory board or a subcommittee of the advisory board for the purposes of the advisory board's or the subcommittee's review, pursuant to paragraph (b) of subsection (3) of this section, of a report of noncompliance with this article until the report of noncompliance has been reviewed and resolved by the advisory board. The advisory board shall redact all victim-identifying information from any document released to the public.

24-4.1-117.5. Standards for administration of funds - sanctions. (Repealed)

24-4.1-118. Court administrator custodian of fund - disbursements. The court administrator of each judicial district shall be the custodian of the fund, and all disbursements from the fund shall be paid by him upon written authorization of the board or the court.

24-4.1-119. Costs and surcharges levied on criminal actions and traffic offenses. (1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), a cost of one hundred sixty-three dollars for felonies, seventy-eight dollars for misdemeanors, forty-six dollars for class 1 misdemeanor traffic offenses, and thirty-three dollars for class 2 misdemeanor traffic offenses is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section 18-1.3-102, C.R.S., which criminal action is charged pursuant to state statute. These costs shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the costs so received to the court administrator of the judicial district in which the offense occurred for credit to the crime victim compensation fund established in that judicial district.

(b) The costs required by paragraph (a) of this subsection (1) shall not be levied on criminal actions which are charged pursuant to the penalty assessment provisions of section 42-4-1701, C.R.S., or to any violations of articles 1 to 15 of title 33, C.R.S.

(c) A cost of thirty-three dollars is hereby levied on each criminal action resulting

in a conviction or in a deferred judgment and sentence, as provided for in section 18-1.3-102, C.R.S., of a violation of section 42-4-1301 (1) or (2), C.R.S. This cost shall be paid to the clerk of the court, who shall deposit the same in the crime victim compensation fund established in section 24-4.1-117.

(d) A cost, in an amount determined pursuant to paragraph (a) of this subsection (1), is hereby levied on every action upon the filing of a petition alleging a child is delinquent which results in a finding of guilty pursuant to part 8 of article 2 of title 19, C.R.S., or a deferral of adjudication pursuant to section 19-2-709, C.R.S. This cost shall be paid to the clerk of the court, who shall deposit the same in the fund established in section 24-4.1-117.

(e) Repealed.

(f) (I) A surcharge is hereby levied against each penalty assessment imposed for a violation of a class A or class B traffic infraction or class 1 or class 2 misdemeanor traffic offense pursuant to section 42-4-1701, C.R.S. The amount of the surcharge shall be one half of the amount specified in the penalty and surcharge schedule in section 42-4-1701 (4), C.R.S., or, if no surcharge amount is specified, the surcharge shall be calculated as thirty-seven percent of the penalty imposed. All moneys collected by the department of revenue pursuant to this paragraph (f) shall be transmitted to the court administrator of the judicial district in which the infraction occurred for credit to the crime victim compensation fund established in that judicial district as provided in section 42-1-217, C.R.S.

(II) All calculated surcharge amounts pursuant to this paragraph (f) resulting in dollars and cents shall be rounded down to the nearest whole dollar.

(III) The surcharges levied pursuant to this paragraph (f) are separate and distinct from surcharges levied pursuant to section 24-4.2-104 for the victims and witnesses assistance and law enforcement fund.

(1.5) A cost or surcharge levied pursuant to this section may not be suspended or waived by the court unless the court determines that the defendant against whom the cost or surcharge is levied is indigent.

(2) For purposes of determining the order of priority for payments required of a defendant pursuant to section 18-1.3-204 (2.5), C.R.S., the payments to the victim compensation fund required under this part 1 shall be the first obligation of the defendant.

(3) The provisions of sections 18-1.3-701 and 18-1.3-702, C.R.S., shall be applicable as to the collection of costs levied pursuant to this part 1.

24-4.1-120. Effective dates of provisions of this article. Sections 24-4.1-117 to 24-4.1-120 originally took effect July 1, 1981. Sections 24-4.1-101 to 24-4.1-116 originally took effect July 1, 1982.

24-4.1-121. Repeal. (Repealed)

24-4.1-122. Reports. On or before October 1, 1985, and on or before each October 1 thereafter, the court administrator of each judicial district shall report to the state court administrator the amount of moneys collected by the judicial district in the prior fiscal year and the amount of moneys distributed to crime victims in the prior fiscal year by the board.

24-4.1-123. When redistribution of moneys required. (Repealed)

24-4.1-124. State crime victim compensation fund - creation - allocation of moneys. (Repealed)

PART 2

COMPENSATION FROM BENEFITS OF CRIME

24-4.1-201. Distribution of profits from crime - escrow account - civil suit by victim - definitions. (1) The general assembly hereby finds that the state has a compelling interest in preventing any person who is convicted of a crime from profiting from the crime and in recompensing victims of the crime. It is therefore the intent of the general assembly to provide a mechanism whereby any profits from a crime that are received by the person convicted of the crime are available as restitution to the victims of the crime.

(1.3) For purposes of this part 2, "victim" means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode or plan or if such person is deceased or incapacitated, the person's spouse, parent, child, sibling, grandparent, significant other, or other lawful representative. For purposes of this part 2, any person under the age of eighteen years is considered incapacitated, unless that person is emancipated.

(1.5) (a) For purposes of this part 2, "profits from the crime" means:

(I) Any property obtained through or income generated from the commission of the crime of which the defendant was convicted;

(II) Any property obtained by or income generated from the sale, conversion, or exchange of proceeds of the crime of which the defendant was convicted, including any gain realized by such sale, conversion, or exchange; and

(III) Any property that the defendant obtained or income generated as a result of having committed the crime of which the defendant was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange.

(b) (I) Any person who contracts with a person convicted of a crime in this state, or such person's representative or assignee, for payment of any profits from the crime of which such person is convicted shall pay to the crime victim services advisory board created in section 24-4.1-117.3 (1), referred to in this part 2 as the "board", any money that would otherwise by terms of the contract be paid to the convicted person or such person's representatives or assignees. The board shall deposit the money in an escrow account for the benefit of any victim of the crime of which the person was convicted.

(II) Any person or any person's agent or other legal representative who contracts with a convicted person, or the convicted person's representative or assignee, in the manner described in subparagraph (I) of this paragraph (b), shall:

(A) Submit a copy of the contract or a summary of the terms of an oral agreement to the board;

(B) Pay over to the board any moneys or consideration not subject to an order of restitution and that by the terms of the contract would be otherwise owing to the convicted person or owing to a representative or assignee of the convicted person.

(c) Any person who is a victim of the crime from which a convicted person receives profits under paragraph (b) of this subsection (1.5) may, within five years of establishment of the escrow account, enforce any order of restitution entered against the convicted person against the moneys on deposit in the escrow account. If no order of restitution has been entered, the victim may bring a civil action in a court of competent jurisdiction to recover a judgment against the convicted person or such person's representatives or designees.

(d) (I) Upon establishing an escrow account pursuant to paragraph (b) of this subsection (1.5), the board shall notify any victims of the crime of which the person was convicted at such victims' last known addresses of the establishment of the escrow account.

(II) The board, in addition, shall publish at least once annually from the date of the establishment of the escrow account, a notice of the escrow account's establishment in a newspaper having general circulation throughout the county in which the crime was committed. The expenses of notification shall be paid from the amount received in the escrow account. The board, in its discretion, may provide for such additional notice as it deems necessary.

(III) The notice required under subparagraphs (I) and (II) of this paragraph (d) shall specify the existence of the escrow account, the amount on deposit, and the victim's

right to execute an order of restitution or bring a civil action to recover against the moneys in the escrow account within five years after the date the escrow account is established.

(e) (I) Any person who knowingly fails to comply with any requirement of subparagraph (II) of paragraph (b) of this subsection (1.5) shall be liable for a civil penalty of not less than ten thousand dollars nor more than three times the contract amount.

(II) If two or more persons are adjudged liable for the civil penalty imposed, such persons shall be jointly and severally liable.

(III) After notice and opportunity to be heard is provided, the court, by order of judgment, may assess the penalty described in this paragraph (e). All moneys received from the payment of these penalties shall be paid over to the board.

(IV) In any action or proceeding brought to enforce the contract provisions of this subsection (1.5), the court shall have jurisdiction to grant the attorney general, without bond or other undertaking, any injunctive relief necessary to prevent any payment under a contract that is prohibited under this subsection (1.5).

(1.7) For purposes of this section, "person" means any natural person, firm, corporation, partnership, association, or other legal entity.

(2) If funds remain in the escrow account after payment of a money judgment pursuant to subsection (1) of this section and if no civil actions are pending under this section after five years from the establishment of an escrow account, the board shall notify the department of corrections of the existence of such escrow account. The department of corrections shall certify to the board a statement of the costs of maintenance of the person in the state correctional institution or institutions at which the person was incarcerated. A statement of the cost of maintenance shall be submitted annually for payment to the department of corrections by the board until such time as the person is released from custody of the state. No such payment shall be made upon the dismissal of the charges against any individual whose proceeds are placed in the escrow account.

(3) Upon the dismissal of the charges against any individual whose proceeds are placed in the escrow account or upon a showing by the defendant that five years have elapsed from the establishment of an escrow account and that no civil actions are pending against him or her under this section, the board shall immediately pay any money in the escrow account to the defendant except for funds paid to the department of corrections and anticipated as necessary for future payment to the department of corrections as set forth in subsection (2) of this section.

(4) If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which civil action may be brought bars action by a victim of a crime committed by the person accused or convicted of the crime, as to a claim resulting from the crime, until five years have elapsed from the time the escrow

account was established.

(4.5) The escrow account shall be established for a period of five years. If an action is filed by a victim to recover the victim's interest in the escrow account within such five-year period, the escrow account shall continue until the conclusion of such action.

(5) The board shall make payments from an escrow account to the accused upon an order of the court after a showing by the accused that:

(a) The money will be used for the exclusive purpose of retaining legal representation at any stage of the civil or criminal proceedings against him, including the appeals process; and

(b) He has insufficient assets, other than funds in the escrow account and assets which could be claimed as exempt from execution under state law, to provide for payment of the expenses of legal representation.

(6) The attorney general, at the request of the board, shall bring an action to cause profits from the crime to be paid over and held in an escrow account established by the board.

24-4.1-202. Notification of board. It shall be the duty of the victim, the victim's attorney, or the victim's representative to notify the board within thirty days of the filing of any compensable claim under section 24-4.1-201.

24-4.1-203. More than one claim. If more than one claim is filed against the moneys in escrow pursuant to section 24-4.1-201, the board shall disburse payments from the escrow account on a pro rata basis of all judgments obtained, according to the amount of money in the escrow account as compared to the amount of each claim. No compensation shall be disbursed until all pending claims have been settled or reduced to judgment.

24-4.1-204. Actions null and void. Any action taken by a person who is accused or convicted of a crime or who enters a plea of guilty, whether by way of the execution of a power of attorney, the creation of corporate entities, or any other action, to defeat the purpose of this part 2 shall be null and void as against the public policy of this state.

24-4.1-205. Interest on moneys in the account. Interest earned on the moneys deposited in the escrow account pursuant to section 24-4.1-201 shall accrue to the benefit of the payee of the account.

24-4.1-206. Annual reports of funds. No later than February 15 of each year, the board shall make available a report to the general assembly for the previous calendar year of an accounting of all funds received and disbursed under this part 2. The board shall notify, in the most cost-effective manner available, each member of the general assembly of the availability of such report and offer to provide each member with a copy of the report.

24-4.1-207. Applicability. This part 2 shall apply to offenses committed on or after January 1, 1985.

PART 3

GUIDELINES FOR ASSURING THE RIGHTS OF VICTIMS OF AND WITNESSES TO CRIMES

24-4.1-301. Legislative declaration. The general assembly hereby finds and declares that the full and voluntary cooperation of victims of and witnesses to crimes with state and local law enforcement agencies as to such crimes is imperative for the general effectiveness and well-being of the criminal justice system of this state. It is the intent of this part 3, therefore, to assure that all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded criminal defendants.

24-4.1-302. Definitions. As used in this part 3, and for no other purpose, including the expansion of the rights of any defendant:

(1) "Crime" means any of the following offenses, acts, and violations as defined by the statutes of the state of Colorado, whether committed by an adult or a juvenile:

(a) Murder in the first degree, in violation of section 18-3-102, C.R.S.;

(b) Murder in the second degree, in violation of section 18-3-103, C.R.S.;

(c) Manslaughter, in violation of section 18-3-104, C.R.S.;

(d) Criminally negligent homicide, in violation of section 18-3-105, C.R.S.;

(e) Vehicular homicide, in violation of section 18-3-106, C.R.S.;

(f) Assault in the first degree, in violation of section 18-3-202, C.R.S.;

(g) Assault in the second degree, in violation of section 18-3-203, C.R.S.;

(h) Assault in the third degree, in violation of section 18-3-204, C.R.S.;

(i) Vehicular assault, in violation of section 18-3-205, C.R.S.;

(j) Menacing, in violation of section 18-3-206, C.R.S.;

(k) (Deleted by amendment, L. 95, p. 1256, § 22, effective July 1, 1995.)

(l) First degree kidnapping, in violation of section 18-3-301, C.R.S.;

(m) Second degree kidnapping, in violation of section 18-3-302, C.R.S.;

(n) (I) Sexual assault, in violation of section 18-3-402, C.R.S.; or

(II) Sexual assault in the first degree, in violation of section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(o) Sexual assault in the second degree, in violation of section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(p) (I) Unlawful sexual contact, in violation of section 18-3-404, C.R.S.; or

(II) Sexual assault in the third degree, in violation of section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(q) Sexual assault on a child, in violation of section 18-3-405, C.R.S.;

(r) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.;

(s) Sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.;

(s.3) Invasion of privacy for sexual gratification, in violation of section 18-3-405.6, C.R.S.;

(t) Robbery, in violation of section 18-4-301, C.R.S.;

(u) Aggravated robbery, in violation of section 18-4-302, C.R.S.;

(v) Aggravated robbery of controlled substances, in violation of section 18-4-303, C.R.S.;

(w) Repealed.

(x) Incest, in violation of section 18-6-301, C.R.S.;

(y) Aggravated incest, in violation of section 18-6-302, C.R.S.;

(z) Child abuse, in violation of section 18-6-401, C.R.S.;

(aa) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.;

(bb) Crimes against at-risk adults or at-risk juveniles, in violation of section 18-6.5-103, C.R.S.;

(bb.3) Any crime identified by law enforcement prior to the filing of charges as domestic violence, as defined in section 18-6-800.3 (1), C.R.S.;

(bb.7) An act identified by a district attorney in a formal criminal charge as domestic violence, as defined in section 18-6-800.3 (1), C.R.S.;

(cc) Any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., pursuant to section 18-6-801 (1), C.R.S.;

(cc.1) (I) Stalking, in violation of section 18-3-602, C.R.S.;

(II) Stalking, in violation of section 18-9-111 (4), C.R.S., as it existed prior to August 11, 2010;

(cc.3) A bias-motivated crime, in violation of section 18-9-121, C.R.S.;

(cc.5) Careless driving, in violation of section 42-4-1402, C.R.S., that results in the death of another person;

(cc.6) Failure to stop at the scene of an accident, in violation of section 42-4-1601, C.R.S., where the accident results in the death of another person;

(dd) Any criminal attempt, as described in section 18-2-101, C.R.S., any conspiracy, as described in section 18-2-201, C.R.S., any criminal solicitation, as described in section 18-2-301, C.R.S., and any accessory to a crime, as described in section 18-8-105, C.R.S., involving any of the crimes specified in this subsection (1);

(ee) Retaliation against a witness or victim, in violation of section 18-8-706, C.R.S.;

(ee.3) Intimidating a witness or a victim, in violation of section 18-8-704, C.R.S.;

(ee.7) Aggravated intimidation of a witness or a victim, in violation of section 18-8-705, C.R.S.;

(ff) Tampering with a witness or victim, in violation of section 18-8-707, C.R.S.;

(gg) Indecent exposure, in violation of section 18-7-302, C.R.S.;

(hh) Violation of a protection order issued under section 18-1-1001, C.R.S., against a person charged with committing sexual assault, in violation of section 18-3-402, C.R.S.; sexual assault on a child, in violation of section 18-3-405, C.R.S.; sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3, C.R.S.; or sexual assault on a client by a psychotherapist, in violation of section 18-3-405.5, C.R.S.

(ii) Trafficking in adults, in violation of section 18-3-501, C.R.S.; or trafficking in children, in violation of section 18-3-502, C.R.S.;

(jj) First degree burglary, in violation of section 18-4-202, C.R.S.; or

(kk) Retaliation against a judge, in violation of section 18-8-615, C.R.S.; or retaliation against a juror, in violation of section 18-8-706.5, C.R.S.

(1.2) "Cold case" means a felony crime reported to law enforcement that has remained unsolved for over one year after the crime was initially reported to law enforcement and for which the applicable statute of limitations has not expired.

(1.3) "Correctional facility" means any private or public entity providing correctional services to offenders pursuant to a court order including, but not limited to a county jail, a community corrections provider, the division of youth corrections, and the department of corrections.

(1.5) "Correctional official" means any employee of a correctional facility.

(2) "Critical stages" means the following stages of the criminal justice process:

(a) The filing of charges against a person accused of a crime;

(a.5) The decision not to file charges against a person accused of a crime;

(a.7) The decision to enter into a diversion agreement pursuant to section 18-1.3-101, C.R.S.;

(b) The preliminary hearing;

(c) (I) Any court action involving a bond reduction or modification at which the

following occurs:

(A) A bond is set lower than the scheduled or customary amount for the specific charge, including any adjustments made by the court to the amount of bond to correspond to the specific charge to which the defendant pled guilty or for which the defendant was convicted, if the adjusted bond is lower than the scheduled or customary amount for the specific charge;

(B) A change in the type of bond;

(C) A modification to a condition of the bond;

(D) A defendant is permitted to appear without posting a bond;

(E) In a case involving a capital offense, the court grants the defendant's motion for admission to bail pursuant to section 16-4-101 (3), C.R.S.; or

(F) For jurisdictions that do not have a bond schedule or customary amount for bond, a bond is modified to a lower amount than that set at the initial bond hearing.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), the following shall not constitute a bond reduction or modification:

(A) The initial setting of a bond, whether set by the court at the first appearance or by another entity authorized to do so by the court prior to the first appearance;

(B) The setting of a new bond upon the filing of charges by the district attorney, so long as the bond is set at or above the scheduled or customary amount for the specific charge filed; and

(C) For nonbailable offenses pursuant to section 16-4-101, C.R.S., the subsequent setting of a bond by the court.

(d) The arraignment of a person accused of a crime;

(e) Any hearing on motions concerning evidentiary matters or pre-plea or post-plea relief;

(e.5) Any subpoena for records concerning the victim's medical history, mental health, education, or victim's compensation;

(f) Any disposition of the complaint or charges against the person accused;

(g) The trial;

(h) Any sentencing hearing;

(i) Any appellate review or appellate decision;

(j) Any subsequent modification of the sentence;

(k) Any probation revocation hearing;

(k.3) The filing of any complaint, summons, or warrant by the probation department for failure to report to probation or because the location of a person convicted of a crime is unknown;

(k.5) The change of venue or transfer of probation supervision from one jurisdiction to another;

(k.7) The request for any release from probation supervision prior to the expiration of the defendant's sentence;

(l) An attack on a judgment or conviction for which a court hearing is set;

(m) Any parole application hearing;

(n) The parole, release, or discharge from imprisonment of a person convicted of a crime;

(o) Any parole revocation hearing;

(p) The transfer to or placement of a person convicted of a crime in a nonsecured facility;

(q) The transfer, release, or escape of a person charged with or convicted of a crime from any state hospital;

(r) Any petition by a sex offender to terminate sex offender registration;

(r.3) Any hearing concerning a petition for expungement as described in section 19-1-306 (5) (a), C.R.S.;

(s) The execution of an offender in a capital case;

(t) A hearing held pursuant to section 18-1-414 (2) (b), C.R.S.; and

(u) The decision, whether by court order, stipulation of the parties, or otherwise, to conduct postconviction DNA testing to establish the actual innocence of the person convicted of a crime against the victim; the results of any such postconviction DNA testing; and court proceedings initiated based on the result of the postconviction DNA testing. An inmate's written or oral request for such testing is not a "critical stage".

(3) "Lawful representative" means any person who is designated by the victim or appointed by the court to act in the best interests of the victim.

(3.5) "Modification of sentence" means an action taken by the court to modify the length, terms, or conditions of an offender's sentence pursuant to rule 35 (a) or (b) of the Colorado rules of criminal procedure. Action taken by the court includes an order by the court modifying an offender's sentence upon review of the written motion without a hearing but does not include an order denying a motion to modify a sentence without a hearing.

(4) "Significant other" means any person who is in a family-type living arrangement with a victim and who would constitute a spouse of the victim if the victim and such person were married.

(5) "Victim" means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as crime is defined under the laws of this state or of the United States, or, if such person is deceased or incapacitated, the person's spouse, parent, child, sibling, grandparent, grandchild, significant other, or other lawful representative. For purposes of notification under this part 3, any person under the age of eighteen years is considered incapacitated, unless that person is legally emancipated. It is the intent of the general assembly that this definition of the term "victim" shall apply only to this part 3 and shall not be applied to any other provision of the laws of the state of Colorado that refer to the term "victim".

(6) "Victim's immediate family" means the spouse, any child by birth or adoption, any stepchild, the parent, the stepparent, a sibling, a legal guardian, significant other, or a lawful representative of the victim.

(7) "Witness" means any natural person:

(a) Having knowledge of the existence or nonexistence of facts relating to any crime;

(b) Whose declaration under oath is received or has been received as evidence for any purpose;

(c) Who has reported any crime to any peace officer, correctional officer, or judicial officer;

(d) Who has been served with a subpoena issued under the authority of any court in this state, of any other state, or of the United States; or

(e) Who would be believed by any reasonable person to be an individual described in paragraph (a), (b), (c), or (d) of this subsection (7).

24-4.1-302.5. Rights afforded to victims. (1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime shall have the following rights:

(a) The right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(b) The right to be informed of and present for all critical stages of the criminal justice process as specified in section 24-4.1-302 (2); except that the victim shall have the right to be informed of, without being present for, the critical stages described in section 24-4.1-302 (2) (a), (2) (a.5), (2) (a.7), (2) (e.5), (2) (k.3), (2) (n), (2) (p), (2) (q), and (2) (u);

(b.5) The right to be informed of and present for the critical stages described in section 24-4.1-302 (2) (k) to (2) (q) and (2) (s), upon the written request of the victim; except that the victim shall have the right to be informed of the critical stage described in section 24-4.1-302 (2) (l) without submitting a written request for notification;

(b.7) For a victim of a sex offense, the right to be informed of the filing of a petition by the perpetrator of the offense to terminate sex offender registration pursuant to section 16-22-113 (2) (c), C.R.S.;

(c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c):

(A) The right to be informed, upon request by the victim, when a person who is accused or convicted of a crime against the victim is released or discharged from county jail;

(B) The right to be informed, upon written request by the victim, when a person who is accused or convicted of a crime against the victim is released or discharged from custody other than county jail, is paroled, escapes from a secure or nonsecure correctional

facility or program, or absconds from probation or parole.

(II) With respect to the release, discharge, or permanent transfer of a person from a county jail or correctional facility, the provisions of subparagraph (I) of this paragraph (c) shall apply when the person released, discharged, or permanently transferred is no longer within the care and control of the supervising law enforcement or correctional agency. The provisions of subparagraph (I) of this paragraph (c) shall not apply to the temporary transfer of the care and control of a person from a county jail or a correctional facility by the supervising law enforcement or correctional agency to another equally or more secure county jail or correctional facility, so long as the person will return to the care and control of the transferring supervisory agency.

(d) The right to be heard at any court proceeding:

(I) Involving the defendant's bond as specified in section 24-4.1-302 (2) (c);

(II) At which the court accepts a plea of nolo contendere;

(III) At which the court accepts a negotiated plea agreement;

(IV) At which a person accused or convicted of a crime against the victim is sentenced;

(V) At which the sentence of a person accused or convicted of a crime against the victim is modified;

(VI) At which the defendant requests a modification of the no contact provision of the mandatory criminal protection order under section 18-1-1001, C.R.S., or section 19-2-707, C.R.S.;

(VII) Involving a subpoena for records concerning the victim's medical history, mental health, education, or victim compensation, or any other records that are privileged pursuant to section 13-90-107, C.R.S.; or

(VIII) Involving a petition for expungement as described in section 19-1-306 (5) (a), C.R.S.

(d.5) (I) If a victim or a victim's designee is unavailable to be present for the critical stages described in paragraph (d) of this subsection (1) and the victim or the victim's designee wishes to address the court, the right to request that the court, within the court's resources, arrange and provide the means for the victim and the victim's designee to provide input to the court beyond a written victim impact statement.

(II) For purposes of this paragraph (d.5), "unavailable" means that the victim or the victim's designee is physically unable to attend the court hearing, may sustain a financial hardship to attend the court hearing, is concerned for his or her safety if he or she attends the court hearing, may suffer significant emotional impact by attending the hearing, or is unavailable for other good cause.

(III) The victim or the victim's designee shall notify the district attorney within a reasonable time that he or she is unavailable to attend the court hearing. The district attorney's office shall then inform the court that the victim or the victim's designee, due to his or her unavailability, is requesting the court to arrange for and provide the means to

address the court, which may include but need not be limited to appearing by phone or similar technology. The district attorney shall inform the victim or the victim's designee of the court's decision regarding an alternate arrangement.

(IV) This paragraph (d.5) applies to a victim who is incarcerated or otherwise being held in a local county jail or the department of corrections, but is limited to participation by telephone.

(e) The right to consult with the prosecution after any crime against the victim has been charged, prior to any disposition of the case, or prior to any trial of the case, and the right to be informed of the final disposition of the case;

(f) The right to be informed by local law enforcement agencies, prior to the filing of charges with the court, or by the district attorney, after the filing of charges with the court, of the status of any case concerning a crime against the victim, and any scheduling changes or cancellations, if such changes or cancellations are known in advance;

(g) The right to be present at the sentencing hearing, including any hearing conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., for cases involving class 1 felonies, of any person convicted of a crime against such victim, and to inform the district attorney and the court, in writing, by a victim impact statement, and by an oral statement, of the harm that the victim has sustained as a result of the crime, with the determination of whether the victim makes written input or oral input, or both, to be made at the sole discretion of the victim;

(h) The right to have the court determine the amount, if any, of restitution to be paid to a victim pursuant to part 6 of article 1.3 of title 18, C.R.S., by any person convicted of a crime against such victim for the actual pecuniary damages that resulted from the commission of the crime;

(i) The right to be informed of the victim's right to pursue a civil judgment against any person convicted of a crime against the victim for any damages incurred by the victim as a result of the commission of the crime regardless of whether the court has ordered such person to make restitution to the victim;

(i.5) (Deleted by amendment, L. 2006, p. 645, § 4, effective July 1, 2006.)

(j) The right to be informed, upon written request from the victim, of any proceeding at which any postconviction release from confinement in a secure state correctional facility is being considered for any person convicted of a crime against the victim and the right to be heard at any such proceeding or to provide written information thereto. For purposes of this subsection (1), "proceeding" means reconsideration of sentence, a parole hearing, or commutation of sentence.

(j.3) The right to be notified of a referral of an offender to community corrections;

(j.5) (I) The right to provide a written victim impact statement that will be included with any referral made by the department of corrections or a district court to place an offender in a community corrections facility or program. A community corrections board may allow a victim to provide an oral statement to the community

corrections board when an offender is being considered for a direct sentence to community corrections and may place reasonable limits on the victim's oral statement.

(II) For purposes of this paragraph (j.5), the victim shall have the right to provide a separate oral statement to the community corrections board considering a transitional referral, but the board shall have discretion to place reasonable parameters on the victim's oral statement. If a community corrections board denies the offender's referral to community corrections, the victim's right under this subparagraph (II) to provide an oral statement shall not take effect.

(j.7) The right, at the discretion of the district attorney, to view all or a portion of the presentence report of the probation department;

(k) The right to promptly receive any property that belongs to a victim and that is being held by a prosecutorial or law enforcement agency unless there are evidentiary reasons for the retention of such property;

(l) The right to be informed of the availability of financial assistance and community services for victims, the immediate families of victims, and witnesses, which assistance and community services shall include, but shall not be limited to, crisis intervention services, victim compensation funds, victim assistance resources, legal resources, mental health services, social services, medical resources, rehabilitative services, and financial assistance services, and the right to be informed about the application process for such services;

(l.5) The right to be informed about the possibility of restorative justice practices, as defined in section 18-1-901 (3) (o.5), C.R.S., which includes victim-offender conferences;

(m) The right to be informed about what steps can be taken by a victim or a witness, including information regarding protection services, in case there is any intimidation or harassment by a person accused or convicted of a crime against the victim, or any other person acting on behalf of the accused or convicted person;

(n) The right to be provided with appropriate employer intercession services to encourage the victim's employer to cooperate with the criminal justice system in order to minimize the loss of employment, pay, or other benefits resulting from a victim's court appearances or other required meetings with criminal justice officials;

(o) The right to be assured that in any criminal proceeding the court, the prosecutor, and other law enforcement officials will take appropriate action to achieve a swift and fair resolution of the proceedings;

(p) The right to be provided, whenever practicable, with a secure waiting area during court proceedings that does not require a victim or a witness to be seen or to be in close proximity to the person accused or convicted of a crime against the victim or such person's family or friends;

(q) The right to be informed, upon written request by the victim, when a person convicted of a crime against the victim is placed in or transferred to a less secure public

or private correctional facility or program;

(r) The right to be informed, upon written request by the victim, when a person who is or was charged with or convicted of a crime against the victim escapes or is permanently or conditionally transferred or released from any public hospital, private hospital, or state hospital;

(s) The right to be informed of any rights which the victim has pursuant to the constitution of the United States or the state of Colorado;

(t) The right to be informed of the process for enforcing compliance with this article pursuant to section 24-4.1-303 (17);

(u) The right to be informed of the results of any HIV testing that is ordered and performed pursuant to section 18-3-415, C.R.S.;

(v) The right to prevent any party at any court proceeding from compelling testimony regarding the current address, telephone number, place of employment, or other locating information of the victim unless the victim consents or the court orders disclosure upon a finding that a reasonable and articulable need for the information exists. Any proceeding conducted by the court concerning whether to order disclosure shall be in camera.

(w) The right to have the district attorney, a law enforcement agency, a probation department, a state or private correctional facility, the department of human services, or the Colorado mental health institute at Pueblo make all reasonable efforts to exclude or redact a victim's social security number or a witness' social security number from a criminal justice document or record created or compiled as a result of a criminal investigation when the document or record is released to anyone other than the victim, the defense attorney of record, the defense attorney's agent, or a criminal justice agency that has duties under this article;

(x) The right to be notified of how to request protection of their address pursuant to the Colorado rules of criminal procedure;

(y) The right to receive a copy of the victim impact statement form from the district attorney's office.

(1.6) The right to be informed of the existence of a criminal protection order under section 18-1-1001, C.R.S., or section 19-2-707, C.R.S., and, upon request of the victim, information about provisions that may be added or modified, and the process for requesting such an addition or modification.

(2) Subsection (1) of this section shall not be construed to imply that any victim who is incarcerated by the department of corrections or any local law enforcement agency has a right to be released to attend any hearing or that the department of corrections or the local law enforcement agency has any duty to transport such incarcerated victim to any hearing.

(3) Municipalities and municipal courts shall be encouraged to adopt policies which afford the rights granted to crime victims pursuant to this section to crime victims

at the municipal court level, to the extent the adoption of such policies is practicable in the particular municipality.

(4) If a victim contacts a criminal justice agency regarding a crime that occurred before 1993, and the offender who committed the crime is currently serving a sentence for the crime, the victim may request notification of any future critical stages of the criminal proceedings. In addition, if an arrest is made for a crime committed before 1993 that was previously unsolved, the victim of the crime may request notification of all future critical stages from the appropriate criminal justice agency. This provision does not require a criminal justice agency to proactively locate victims of crimes that occurred before 1993.

24-4.1-303. Procedures for ensuring rights of victims of crimes. (1) Law enforcement agencies, prosecutorial agencies, judicial agencies, and correctional agencies shall ensure that victims of crimes are afforded the rights described in section 24-4.1-302.5.

(2) Upon request of a victim, all correctional officials shall keep confidential the address, telephone number, place of employment, or other personal information of such victim or members of such victim's immediate family.

(3) The district attorney's office, if practicable, shall inform the victim of any pending motion that may substantially delay the prosecution. The district attorney shall inform the court of the victim's position on the motion, if any. If the victim has objected, the court shall state in writing or on the record prior to granting any delay that the objection was considered.

(4) After a crime has been charged, unless inconsistent with the requirements of investigative activities, the district attorney shall consult, where practicable, with the victim concerning the reduction of charges, negotiated pleas, diversion, dismissal, seeking of death penalty, or other disposition. Failure to comply with this subsection (4) shall not invalidate any decision, agreement, or disposition. This subsection (4) shall not be construed as a restriction on or delegation of the district attorney's authority under the constitution and laws of this state.

(5) All reasonable attempts shall be made to protect any victim or the victim's immediate family from harm, harassment, intimidation, or retaliation arising from cooperating in the reporting, investigation, and prosecution of a crime. Law enforcement officials and the district attorney shall provide reasonable efforts to minimize contact between the victim and the victim's immediate family and the defendant and the relatives of the defendant before, during, and immediately after a judicial proceeding. Whenever possible, a waiting area shall be provided that is separate in both proximity and sight from that of the defendant, the defendant's relatives, and any defense witnesses.

(6) (a) A victim or an individual designated by the victim may be present at all

critical stages of a criminal proceeding regarding any crime against such victim unless the court or the district attorney determines that exclusion of the victim is necessary to protect the defendant's right to a fair trial or the confidentiality of juvenile proceedings. If the victim is present, the court, at the victim's request, may permit the presence of an individual to provide support to the victim.

(b) A victim may be present at the phase of the trial at which the defendant is determined to be guilty or not guilty and may be heard at such phase of the trial if called to testify by the district attorney, defense, or court if any such statement would be relevant.

(c) The court shall make all reasonable efforts to accommodate the victim upon the return of a verdict by the jury. If the court is informed by the district attorney that the victim is en route to the courtroom for the reading of the verdict, the court shall state on the record that it has considered the information provided by the district attorney prior to the return of the verdict by the jury.

(7) When a victim's property is no longer needed for evidentiary reasons, the district attorney or any law enforcement agency shall, upon request of the victim, return such property to the victim within five working days unless the property is contraband or subject to forfeiture proceedings.

(8) An employer may not discharge or discipline any victim or a member of a victim's immediate family for honoring a subpoena to testify in a criminal proceeding or for participating in the preparation of a criminal proceeding.

(9) The district attorney and any law enforcement agency shall inform each victim as to the availability of the following services:

(a) Follow-up support for the victim and the victim's immediate family in order to ensure that the necessary assistance is received by such persons;

(b) Services for child victims and elderly victims, and services for victims who are persons with disabilities, which are directed to the special needs of such victims;

(c) Referral to special counseling facilities and community service agencies by providing the names and telephone numbers of such facilities or agencies, whether public or private, which provide such services as crisis intervention services, victim compensation funds, victim assistance resources, legal resources, mental health services, social services, medical resources, rehabilitative services, financial assistance, and other support services;

(d) Transportation and household assistance to promote the participation of any victim or the victim's immediate family in the criminal proceedings;

(e) Assistance in dealing with creditors and credit reporting agencies to deal with any financial setbacks caused by the commission of a crime;

(f) Interpretation services and information printed in languages other than the English language;

(g) Child care services to enable a victim or the victim's immediate family to give

testimony or otherwise cooperate in the prosecution of a criminal proceeding; and

(h) The existence of a criminal protection order under section 18-1-1001, C.R.S., or section 19-2-707, C.R.S., and, upon request of the victim, information about provisions that may be added or modified and the process for requesting such an addition or modification.

(10) (a) After the initial contact between a victim and a law enforcement agency responsible for investigating a crime, the agency shall promptly give the victim the following information in writing:

(I) A statement of the victim's rights as enumerated in this article;

(II) Information concerning the availability of victim assistance, medical, and emergency services;

(III) Information concerning the availability of compensatory benefits pursuant to this article and the name, address, and telephone number of any person to contact to obtain such benefits;

(IV) The availability of protection for the victim from the person accused of committing a crime against the victim, including protective court orders; and

(V) The right of a victim to request a copy of the law enforcement report and other documents related to the case, including the right to receive a free copy of the initial incident report. The release of any documents associated with the investigation is at the discretion of the law enforcement agency based on the status of the case.

(b) As soon as available, the law enforcement agency shall give to each victim, as appropriate, the following information:

(I) The business address and business telephone number of the office of the district attorney;

(II) The file number of the case and the name, business address, and business telephone number of any law enforcement officer assigned to investigate the case;

(III) Unless such information would be inconsistent with the requirements of the investigation, information as to whether a suspect has been taken into custody and, if known, whether the suspect has been released and any conditions imposed upon such release;

(IV) The law enforcement agency shall provide the victim in a cold case information concerning any change in the status of the case. In addition, upon the written request of the victim, the law enforcement agency shall provide an update at least annually to the victim concerning the status of a cold case involving one or more crimes for which the criminal statute of limitations is longer than three years.

(V) Any final decision not to file misdemeanor charges against a person accused of committing any crime specified in section 24-4.1-302 (1) against the victim unless law enforcement and the district attorney's office in a judicial district have developed a policy specifying the manner in which to inform victims of decisions not to file charges in a case.

(11) The district attorney shall inform a victim of the following:

(a) The filing of charges against a person accused of committing any of the crimes specified in section 24-4.1-302 (1) against the victim, including an explanation of the charges when necessary; or a final decision not to file felony charges against a person for whom law enforcement has requested, pursuant to section 16-21-103 (2) (a), C.R.S., the filing of charges for any of the crimes specified in section 24-4.1-302 (1) committed against the victim unless law enforcement and the district attorney's office in a judicial district have developed a policy specifying the manner in which to inform victims of decisions not to file charges in a case;

(a.5) The charges to be filed, prior to filing of the charges, if the most serious charge to be filed is lower than the most serious charge for which the individual was arrested and the filing of the lower charge may result in the court issuing a new, lower bond;

(b) Any of the critical stages specified in section 24-4.1-302 (2) (a) to (2) (j) and (2) (l) of a criminal proceeding relating to a person accused of a crime against the victim; except that the district attorney shall not be obligated to inform the victim of any appellate review undertaken by the attorney general's office;

(b.5) Any critical stage described in section 24-4.1-302 (2) (r.3) relating to a hearing concerning a petition for the expungement of juvenile records, which records concern an offense committed by the juvenile against the victim;

(c) The assignment of any case regarding a crime against the victim, including the file number of such case and, if available, the name, business address, and business telephone number of any deputy district attorney assigned to the case, and the court room to which the case is assigned;

(d) The date, time, and place of any of the critical stages specified in section 24-4.1-302 (2) (a) to (2) (j) and (2) (l) of the proceeding;

(e) The availability of benefits pursuant to this article and the name, address, and telephone number of any person to contact to obtain such benefits;

(f) The availability of transportation to and from any court proceeding for any victim, except as provided in section 24-4.1-302.5 (2);

(g) The availability of restorative justice practices, as defined in section 18-1-901 (3) (o.5), C.R.S., which includes victim-offender conferences;

(h) The right to complete a written victim impact statement. The victim has the option to complete the statement on a form provided by the district attorney's office. The district attorney shall inform the victim that the defendant has a right to view the victim impact statement.

(i) The availability of the district attorney to seek a court order to protect a victim's residential address.

(12) Unless a victim requests otherwise, the district attorney shall inform each victim of the following:

(a) The function of a presentence report, including the name and telephone number of the probation office preparing any such report regarding a person convicted of a crime against the victim, and the right of a victim, or a member of the victim's immediate family, to make a victim impact statement pursuant to this article;

(b) The defendant's right to view the presentence report and the victim impact statement;

(c) The date, time, and location of any sentencing hearing;

(d) The right of the victim, or a member of the victim's immediate family, to attend and to express an opinion at the sentencing hearing as to the appropriateness of any sentence proposed to the court for consideration;

(e) Any sentence imposed;

(f) (I) The date, time, and location of any hearing for modification of a sentence pursuant to rule 35 (a) or rule 35 (b) of the Colorado rules of criminal procedure or any provision of state or federal law.

(II) If a hearing is not scheduled and the court has reviewed a written motion for modification of sentence and is considering granting any part of the motion without a hearing, the court shall inform the district attorney, and the district attorney shall notify and receive input from the victim to give to the court before the court rules on the motion.

(III) If the court has reviewed and denied the written motion without a hearing, the district attorney is not required to notify the victim regarding the filing of or ruling on the motion.

(IV) This paragraph (f) does not modify the probation department's responsibility to notify a victim that has opted to receive notifications described in subsection (13.5) of this section.

(f.5) Any motion to modify the terms and conditions of an unsupervised deferred sentence for which the district attorney's office is the monitoring agency. The procedures for notifying victims outlined in subparagraphs (I) and (II) of paragraph (f) of this subsection (12) apply to the district attorney and the court with regard to this motion.

(g) The right to receive information from correctional officials concerning the imprisonment and release of a person convicted of a crime against the victim pursuant to subsection (14) of this section.

(h) The right to receive information from the probation department concerning information outlined in subsection (13.5) of this section regarding a person convicted of a crime against the victim; and

(i) The decision, whether by court order, stipulation of the parties, or otherwise, to conduct postconviction DNA testing to establish the actual innocence of the person convicted of a crime against the victim. If court proceedings are initiated based on the results of the postconviction DNA testing, the victim shall be notified of the court proceedings by the district attorney's office that filed and prosecuted the charges resulting in the entry of the judgment of conviction challenged by the defendant. If the attorney

general's office is the agency that decides to conduct postconviction DNA testing, the attorney general's office is responsible for notifying the victim.

(13) If a person convicted of a crime against the victim seeks appellate review or attacks the conviction or sentence, the district attorney or the office of the attorney general, whichever is appropriate, shall inform the victim of the status of the case and of the decision of the court.

(13.5) (a) Following a sentence to probation and upon the written request of a victim, the probation department shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(I) The location and telephone number of the probation department responsible for the supervision of the person;

(II) The date of the person's termination from probation supervision;

(III) Any request for release of the person in advance of the person's imposed sentence or period of probation;

(IV) Any probation revocation or modification hearing regarding the person and any changes in the scheduling of the hearings;

(V) Any motion filed by the probation department requesting permission from the court to modify the terms and conditions of probation as described in section 18-1.3-204, C.R.S., if the motion has not been denied by the court without a hearing;

(V.5) Any change of venue, transfer of probation supervision from one jurisdiction to another, or interstate compact transfer of probation supervision;

(VI) Any complaint, summons, or warrant filed by the probation department for failure to report to probation or because the location of a person convicted of a crime is unknown;

(VII) The death of the person while under the jurisdiction of the probation department; and

(VIII) Concerning domestic violence cases, any conduct by the defendant that results in an increase in the supervision level by the probation department.

(b) Repealed.

(14) Upon receipt of a written victim impact statement as provided in section 24-4.1-302.5 (1) (j.5), the department of corrections shall include the statement with any referral made by the department of corrections or a district court to place an offender in a public or private community corrections facility or program. Upon written request of a victim, the department of corrections or the public or private local corrections authorities shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(a) The institution in which such person is incarcerated or otherwise being held;

(b) The projected date of such person's release from confinement;

(c) Any release of such person on furlough or work release or to a community correctional facility or other program, in advance of such release;

(d) Any scheduled parole hearings regarding such person and any changes in the scheduling of such hearings;

(e) Any escape by such person or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, or other program, and any subsequent recapture of such person;

(f) Any decision by the parole board to release such person or any decision by the governor to commute the sentence of such person or pardon such person;

(g) The transfer to or placement in a nonsecured facility of a person convicted of a crime, any release or discharge from confinement of the person, and any conditions attached to the release;

(h) The death of the person while in custody or while under the jurisdiction of the state of Colorado concerning the crime; and

(i) The transition of the person from a residential facility to a nonresidential setting.

(14.2) Upon receipt of a written statement as provided in section 24-4.1-302.5 (1) (j.5), the department of human services shall include the statement with any referral made by the department of human services or a district court to place an offender in a public or private community corrections facility or program. Upon written request of the victim, the department of human services and any state hospital shall notify the victim of the following information regarding any person who was charged with or convicted of a crime against the victim:

(a) The institution in which such person is incarcerated or otherwise being held;

(b) The projected date of such person's release from confinement;

(c) Any release of such person on furlough or work release or to a community correctional facility or other program, in advance of such release;

(d) Any scheduled parole hearings regarding such person and any changes in the scheduling of such hearings;

(e) Any escape by such person or transfer or release from any state hospital, a detention facility, a correctional facility, a community correctional facility, or other program, and any subsequent recapture of such person;

(f) Any decision by the parole board to release such person or any decision by the governor to commute the sentence of such person or pardon such person;

(g) The transfer to or placement in a nonsecured facility of a person convicted of a crime, any release or discharge from confinement of the person, and any conditions attached to the release;

(h) The death of such person while in custody or while under the jurisdiction of the state of Colorado concerning the crime; and

(i) Any request by the department of human services to the juvenile court to modify the sentence to commitment and any decision by the juvenile court to modify the sentence to commitment.

(14.3) Upon receipt of a written statement from the victim, the juvenile parole board shall notify the victim of the following information regarding any person who was charged with or convicted of an offense against the victim:

(a) Any scheduled juvenile parole hearings pursuant to sections 19-2-1002 and 19-2-1004, C.R.S., regarding the person, and any changes in the scheduling of the hearings in advance of the hearing;

(b) Any escape by the person while serving juvenile parole and any subsequent recapture of the person;

(c) Any placement change that occurs during the period of parole that may impact the victim's safety or public safety as determined by the division of youth corrections; and

(d) Any discharge from juvenile parole.

(14.4) The court or its designee, pursuant to section 18-3-415, C.R.S., shall disclose the results of any HIV testing that is ordered and performed pursuant to section 18-3-415, C.R.S., to any victim of a sexual offense in the case in which the testing was ordered.

(14.5) (a) At any proceeding specified in section 24-4.1-302.5 (1) (d), the court shall inquire whether the victim is present and wishes to address the court. The court shall advise the victim of his or her right to address the court regarding issues relevant to the case.

(b) At a proceeding specified in section 24-4.1-302.5 (1) (d) (VII), involving a subpoena for records of a victim, the court shall ascertain whether the victim received notice from the district attorney's office of the subpoena. After considering all evidence relevant to the subpoena, the court shall deny a request for a victim's records that are privileged pursuant to section 13-90-107, C.R.S., unless the court makes a finding supported by specific facts that a victim has expressly or impliedly waived the victim's statutory privilege specified in section 13-90-107, C.R.S.

(14.7) (a) The court or its designee shall ensure that victim information be provided to any entity responsible for victim notification after the defendant is sentenced.

(b) The court shall notify the victim of petitions filed by sex offenders to cease sex offender registration pursuant to section 16-22-113 (2) (c), C.R.S.

(15) (a) Unless specifically stated otherwise, the requirements of this section to provide information to the victim may be satisfied by either written, electronic, or oral communication with the victim or the victim's designee. The person responsible for providing the information shall do so in a timely manner and advise the victim or the victim's designee of any significant changes in the information. The victim or the victim's designee shall keep appropriate criminal justice authorities informed of the name, address, electronic mail address, if available, and telephone number of the person to whom the information should be provided, and any changes of the name, address, electronic mail address, and telephone number.

(a.5) A victim who turns eighteen years of age has the right to request notification

from a criminal justice agency and to become the primary point of contact. The designee for the victim shall also continue to receive notifications if the designee has requested notification; except that the notifying agency has the discretion to notify only the victim if the victim so requests or if the agency deems that extenuating and documentable circumstances justify discontinuing notification to the victim's designee. The right of a victim's designee to address the court remains in effect even if the victim requests notification from a criminal justice agency.

(b) An agency that is required to notify a victim under this part 3 shall make reasonable attempts to contact the victim or the victim's designee by mail, electronic communication, if the victim or the victim's designee has provided an electronic mail address, and by telephone. If the victim or the victim's designee does not provide the agency with a forwarding address, electronic mail address, and telephone number and the agency is unable to locate the victim or the victim's designee after reasonable attempts have been made to contact the victim or the victim's designee, the agency shall be deemed to have met its obligation under this part 3 and shall not be required to notify the victim or victim's designee until the victim or victim's designee provides the agency with the current address, electronic mail address, if available, and telephone of the victim and the name of the victim's current designee, if applicable.

(c) An agency that is required to notify a victim under this part 3 may use an automated victim notification system.

(16) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this article.

(17) Any affected person, except as provided in subsection (16) of this section, may enforce compliance with this article by notifying the crime victim services advisory board created in section 24-4.1-117.3 (1) of any noncompliance with this article. The crime victim services advisory board shall review any report of noncompliance, and, if the board determines that the report of noncompliance has a basis in fact and cannot be resolved, the board shall refer the report of noncompliance to the governor, who shall request that the attorney general file suit to enforce compliance with this article. A person, corporation, or other legal entity shall not be entitled to claim or to receive any damages or other financial redress for any failure to comply with this article.

(18) The district attorney, a law enforcement agency, a probation department, a state or private correctional facility, the department of human services, or the Colorado mental health institute at Pueblo shall make all reasonable efforts to exclude or redact a victim's social security number or a witness' social security number from any criminal justice document or record created or compiled as a result of a criminal investigation when the document or record is released to anyone other than the victim, a criminal justice agency that has duties under this article, or the attorney for the defendant.

24-4.1-304. Child victim or witness - rights and services. (1) In addition to all rights afforded to a victim or witness under section 24-4.1-302.5, law enforcement agencies, prosecutors, and judges are encouraged to designate one or more persons to provide the following services on behalf of a child who is involved in criminal proceedings as a victim or a witness:

(a) To explain, in language understood by the child, all legal proceedings in which the child will be involved;

(b) To act, as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate in any court proceeding;

(c) To assist the child and the child's family in coping with the emotional impact of the crime and any subsequent criminal proceeding in which the child is involved;

(d) To advise the district attorney concerning the ability of a child witness to cooperate with the prosecution and concerning the potential effects of the proceeding on the child.

ARTICLE 4.2

Assistance to Victims of and Witnesses
to Crimes and Aid to Law Enforcement Act

24-4.2-101. Victims and witnesses assistance and law enforcement board - creation. (1) There is hereby created in each judicial district a victims and witnesses assistance and law enforcement board, referred to in this article as the "board". Each board shall be composed of five members to be appointed by the chief judge of the judicial district. In making such appointments, the chief judge shall consider whether an appointee represents or belongs to an organization, public or private, which might reasonably be anticipated to be a recipient of moneys pursuant to this article. In multicounty judicial districts, to the extent possible, members shall fairly reflect the population of the judicial district. The board shall designate one of its members as chairman.

(2) The term of office of each member of the board shall be three years; except that, of those members first appointed, one shall be appointed for a one-year term, two for two-year terms, and two for three-year terms. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. Each member may be reappointed once and serve two consecutive terms. A person may be reappointed to the board thereafter if it has been at least one year since such person served on the board.

(3) Members of the board shall receive no compensation.

24-4.2-102. District attorney to assist board. The district attorney and his legal and administrative staff shall assist the board in the performance of its duties pursuant to this article.

24-4.2-103. Victims and witnesses assistance and law enforcement fund - control of fund. (1) The victims and witnesses assistance and law enforcement fund is hereby established in the office of the court administrator of each judicial district and is referred to in this article as the "fund". The fund shall consist of all moneys paid as a surcharge as provided in section 24-4.2-104.

(1.5) In addition to the moneys paid into the fund pursuant to subsection (1) of this section, the fund shall consist of moneys paid pursuant to section 17-27-104 (4) (b) (IV), C.R.S.

(2) All moneys deposited in the fund shall be deposited in an interest-bearing account which would be a legal investment for the state treasurer. All interest earned by moneys in the fund shall be credited to the fund.

(3) At the conclusion of each fiscal year, all moneys remaining in the fund shall remain in the fund for allocation as originally designated under section 24-4.2-105.

(4) All moneys deposited in the fund shall be used solely for the purposes designated in section 24-4.2-105; except that the district attorney may use up to an aggregate of ten percent of the total amount of moneys in the fund for administrative costs incurred pursuant to this article and for preparation of victim impact statements required pursuant to section 16-11-102 (1), C.R.S. The board shall determine the manner of reimbursement for preparation of victim impact statements and the method of establishing actual costs for such preparation.

(5) The priority use for moneys in the fund created in this section shall be for the implementation of the rights afforded to crime victims pursuant to section 24-4.1-302.5 and the provision of the services and programs delineated in sections 24-4.1-303, 24-4.1-304, and 24-4.2-105 (4) related to all crimes as defined by section 24-4.1-302 (1).

(6) Notwithstanding any provision of this section to the contrary, on June 30, 2004, the state treasurer shall transfer up to one million dollars of locally unencumbered moneys in the fund to the general fund.

24-4.2-104. Surcharges levied on criminal actions and traffic offenses. (1) (a) (I) A surcharge equal to thirty-seven percent of the fine imposed for each felony, misdemeanor, or class 1 or class 2 misdemeanor traffic offense, or a surcharge of one hundred sixty-three dollars for felonies, seventy-eight dollars for misdemeanors, forty-six dollars for class 1 misdemeanor traffic offenses, and thirty-three dollars for class 2 misdemeanor traffic offenses, whichever amount is greater, except as

otherwise provided in paragraph (b) of this subsection (1), is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided in section 18-1.3-102, C.R.S., which criminal action is charged pursuant to state statute, or upon each petition alleging that a child is delinquent that results in a finding of guilty pursuant to part 8 of article 2 of title 19, C.R.S., or a deferral of adjudication pursuant to section 19-2-709, C.R.S. These surcharges shall be paid to the clerk of the court by the defendant. Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(II) (A) In addition to any other surcharge provided for in this section, a surcharge of one thousand three hundred dollars shall be levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided in section 18-1.3-102, C.R.S., which criminal action is charged pursuant to the statutes listed in sub-subparagraph (B) of this subparagraph (II). These surcharges shall be paid to the clerk of the court by the defendant. Any moneys collected by the clerk pursuant to this subparagraph (II) shall be transmitted to the court administrator of the judicial district in which the offense occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(B) The surcharge in sub-subparagraph (A) of this subparagraph (II) shall apply to charges brought pursuant to the following sections: 18-3-305, 18-3-402, 18-3-403, as it existed prior to July 1, 2000, 18-3-404, 18-3-405, 18-3-405.3, 18-3-405.5, 18-3-502, 18-6-301, 18-6-302, 18-6-403, 18-6-404, 18-7-302, 18-7-402, 18-7-405, 18-7-405.5, and 18-7-406, C.R.S., or any attempt to commit any of these crimes.

(C) (Deleted by amendment, L. 93, p. 2054, § 5, effective June 9, 1993.)

(b) (I) A surcharge shall be levied against a penalty assessment imposed for a violation of a class A or class B traffic infraction or class 1 or class 2 misdemeanor traffic offense pursuant to section 42-4-1701, C.R.S. The amount of such surcharge shall be one half of the amount specified in the penalty and surcharge schedule in section 42-4-1701 (4), C.R.S., or, if no amount is specified, thirty-seven percent of the penalty imposed. All moneys collected by the department of revenue pursuant to this subparagraph (I) shall be transmitted to the court administrator of the judicial district in which the infraction occurred for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district as provided in section 42-1-217, C.R.S. Surcharges paid to the clerk of the court pursuant to this subparagraph (I) shall be transmitted to the court administrator of the judicial district in which the offense was committed for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(II) A surcharge shall be levied against all penalty assessments issued pursuant to section 33-6-104, C.R.S., in an amount equal to thirty-seven percent of the penalty imposed. Any moneys collected by the division of parks and wildlife pursuant to this

subparagraph (II) shall be transmitted to the court administrator of the judicial district in which the offense was committed for credit to the victims and witnesses assistance and law enforcement fund established in that judicial district.

(c) All calculated surcharge amounts resulting in dollars and cents shall be rounded down to the nearest whole dollar. The surcharge levied by this section may not be suspended or waived by the court unless the court determines that the defendant is indigent.

(d) The surcharges levied pursuant to this subsection (1) are separate and distinct from costs levied pursuant to section 24-4.1-119 for the crime victim compensation fund.

(1.5) Repealed.

(2) The provisions of sections 18-1.3-701 and 18-1.3-702, C.R.S., shall be applicable to the collection of costs levied pursuant to this section.

24-4.2-105. Allocation of moneys from fund - application for grants - disbursements. (1) Thirteen percent of the aggregate amount of the moneys in the fund, after payment of the expenses specified in section 24-4.2-103 (4), shall be deposited with the state treasurer to the credit of the fund created pursuant to section 24-33.5-506.

(2) Not less than eighty-five percent of the net aggregate of the fund remaining after the deduction of the amounts specified in subsection (1) of this section shall be allocated for the purchase of victims and witnesses services pursuant to subsection (4) of this section, and the remaining moneys may be allocated to the police departments, sheriffs' departments, and district attorneys for the purposes specified in subsection (3) of this section.

(2.5) (a) The board shall not accept, evaluate, or approve any application requesting grants of money from the fund submitted by, or on behalf of, any state agency, including local offices of such agencies; except that:

(I) The court administrator of each judicial district may apply for grants of moneys for the purpose of collecting all moneys assessed by the courts, including moneys owed pursuant to this article, and collecting and disbursing restitution owed to victims of crime; and

(II) The local probation department may apply for grants of moneys for the purpose of implementing the rights of victims established pursuant to article 4.1 of this title.

(b) The state judicial department shall study alternative methods for funding the collection of restitution owed to victims of crime.

(3) The board shall accept and evaluate applications from the law enforcement agencies listed in subsection (2) of this section requesting grants of moneys for the following purposes, including, but not limited to, purchase of equipment, training programs, and additional personnel. Such moneys shall not be used for defraying the costs

of routine and ongoing operating expenses.

(4) The board is authorized to enter into contracts for the purchase and coordination of victims and witnesses assistance services with persons or agencies which the board deems appropriate. Victims and witnesses assistance services may be used for the following:

(a) Provision of services for early crisis intervention;

(b) Provision of telephone lines for victims and witnesses assistance;

(c) Referral of victims to appropriate social service and victim compensation programs and assistance in filling out forms for compensation;

(c.5) Assistance programs for victims and their families;

(d) Education of victims and witnesses about the operation of the criminal justice system;

(e) Assistance in prompt return of the victims' property;

(f) Notification to the victim of the progress of the investigation, the defendant's arrest, subsequent bail determinations, and the status of the case;

(g) Intercession with the employers or creditors of victims or witnesses;

(h) Assistance to the elderly and to persons with disabilities in arranging transportation to and from court;

(i) Provision of translator services;

(j) Coordination of efforts to assure that victims have a secure place to wait before testifying;

(k) Provision of counseling or assistance during court appearances when appropriate;

(l) Protection from threats of harm and other forms of intimidation; and

(m) Special advocate services.

(4.3) (a) Moneys allocated for the purposes specified in subsections (3) and (4) of this section shall only be used for the purchases of equipment, training programs, additional personnel, and victims and witnesses services that are directly related to the implementation of the rights afforded to crime victims pursuant to section 24-4.1-302.5 and the provision of services delineated pursuant to sections 24-4.1-303 and 24-4.1-304.

(b) Equipment that may be purchased with such moneys includes technical equipment directly related to the immediate individual physical safety of crime victims.

(c) Grants of moneys may be approved for registration fees and expenses for lodging, travel, and meals for those in-state training programs specifically directed toward delivery of services to crime victims and for the actual cost of providing the necessary staff training directly related to the implementation of the rights afforded to crime victims pursuant to section 24-4.1-302.5 and the provision of services delineated pursuant to sections 24-4.1-303 and 24-4.1-304. Nothing in this subsection (4.3) shall preclude volunteer board members from receiving reimbursement for actual and necessary expenses incurred at in-state training programs held pursuant to this paragraph (c).

Expenses for lodging, travel, and meals which may be reimbursed pursuant to this paragraph (c) shall not exceed the state government expense reimbursement guidelines.

(4.7) A requesting agency or person shall acknowledge in writing that such agency or person has read and understands the rights afforded to crime victims pursuant to section 24-4.1-302.5 and the services delineated pursuant to sections 24-4.1-303 and 24-4.1-304. Such written acknowledgment shall be attached to such requesting agency's or person's application for moneys pursuant to this section. The board shall not accept for evaluation any application for a grant of moneys pursuant to this section until the requesting agency or person provides the board with such written acknowledgment.

(5) The board shall specify levels and types of services to be provided pursuant to this section and shall review expenditures in accord with these standards.

(6) Upon a finding by the board that a disbursement shall be made from the fund, the board shall submit a written request for payment to the court administrator who shall remit payment in accordance with the request.

(7) For purposes of this section:

(a) "Victim" and "witness" mean "victim" and "witness" as defined in section 24-4.1-302.

(b) "Special advocate services" means the services offered to aid victims who are children, including, but not limited to, court-appointed special advocate (CASA) programs, sexual assault treatment and prevention programs, community-based youth and family servicing programs, gang alternative programs, school-based intervention and prevention programs, big brother and big sister programs offering aid to children who are victims, restitution programs, partners programs offering aid to children who are victims, and child abuse treatment programs.

(c) "Court-Appointed Special Advocate" or "CASA" means a trained volunteer appointed by the court pursuant to the provisions of part 2 of article 1 of title 19, C.R.S., in a district to aid the court by providing independent and objective information as directed by the court, regarding children involved in actions brought pursuant to this title.

24-4.2-106. Court administrator custodian of fund - disbursements. The court administrator of each judicial district shall be the custodian of the fund, and all disbursements from the fund shall be paid by him upon written authorization of the board.

24-4.2-107. Regulations. In the performance of its functions, the board, pursuant to article 4 of this title, may promulgate rules and regulations prescribing the procedures to be followed in the making, filing, and evaluation of grant applications, criteria for evaluation, fiscal procedures including proper investment of moneys in the fund, and any other regulations necessary for the administration of this article.

24-4.2-108. Report of grants and expenditures. (1) Each victims and witnesses assistance and law enforcement board and each crime victim compensation board shall submit a report to the executive director of the department of public safety by such date each year as shall be specified by the executive director of the department of public safety, detailing the amount of funds granted to agencies or individuals pursuant to this article and article 4.1 of this title, the number and types of agencies applying for grants, and the projects and services for which such grants were made.

(2) The division of criminal justice in the department of public safety shall report annually to the crime victim services advisory board created in section 24-4.1-117.3 (1) on all grants made and contracts entered into pursuant to this article. The crime victim services advisory board may review the grants and contracts to determine the existence of any conflicts of interest involving members of boards, recipients, or contracting parties.

(3) (Deleted by amendment, L. 99, p. 686, § 3, effective August 4, 1999.)

24-4.2-109. County, city, city and county, or municipality not preempted. Nothing in this article shall preclude a home rule county, city, city and county, or municipality from enacting provisions to provide funds for law enforcement agencies and victims and witnesses assistance programs through charges assessed on fines imposed for violation of local ordinances.

24-4.2-110. Applicability. The surcharge specified in section 24-4.2-104 shall apply to offenses committed on or after January 1, 1985.

24-4.2-111. Repeal of article. (Repealed)

ARTICLE 5

Public Employment - Eligibility

24-5-101. Effect of criminal conviction on employment rights. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1), the fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent the person from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the

laws of this state to follow any business, occupation, or profession.

(b) This subsection (1) shall not apply to:

(I) The offices and convictions described in section 4 of article XII of the state constitution;

(II) The certification and revocation of certification of peace officers as provided in section 24-31-305;

(III) The employment of personnel in positions involving direct contact with vulnerable persons as specified in section 27-90-111, C.R.S.;

(IV) The licensure or authorization of educators prohibited pursuant to section 22-60.5-107 (2), (2.5), or (2.6), C.R.S.;

(V) The employment of persons in public or private correctional facilities pursuant to the provisions of sections 17-1-109.5 and 17-1-202 (1) (a) (I) and (1.5), C.R.S., and the employment of persons in public or private juvenile facilities pursuant to the provisions of sections 19-2-403.3 and 19-2-410 (4), C.R.S.;

(VI) The employment of persons by the public employees' retirement association created pursuant to section 24-51-201 who, upon the commencement of that employment, will have access to association investment information, association assets, or financial, demographic, or other information relating to association members or beneficiaries; and

(VII) The employment of persons by the department of public safety.

(2) Whenever any state or local agency is required to make a finding that an applicant for a license, certification, permit, or registration is a person of good moral character as a condition to the issuance thereof, the fact that such applicant has, at some time prior thereto, been convicted of a felony or other offense involving moral turpitude, and pertinent circumstances connected with such conviction, shall be given consideration in determining whether, in fact, the applicant is a person of good moral character at the time of the application. The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

(3) (a) Unless statute prohibits the employment of a person with a specific criminal conviction for a particular position, an agency shall not advertise the position with a statement that a person with a criminal record may not apply for the position or place on the application a statement that a person with a criminal record may not apply for the position.

(b) The agency shall not perform a background check until the agency determines that an applicant is a finalist or makes a conditional offer of employment to the applicant.

(c) If, after determining that an applicant is a finalist or after making a conditional offer of employment to an applicant, the agency determines that the applicant has been arrested or charged but not convicted of a criminal offense and the criminal case is not actively pending, the agency shall not use that information as a basis for not making an

offer of employment or for withdrawing the conditional offer of employment.

(d) If, after determining that an applicant is a finalist or after making a conditional offer of employment to an applicant, the agency determines that the applicant has had a criminal conviction expunged or sealed from his or her record, received a pardon, or that charges were dismissed pursuant to successfully completing a deferred judgment or sentence, the agency shall not use that information as a basis for not making an offer of employment or for withdrawing the conditional offer of employment unless, after reviewing the factors in subsection (4) of this section, the agency determines that the applicant should be disqualified for the position.

(e) Nothing in this section prevents an agency from considering criminal history information that the applicant voluntarily provides.

(4) If, after determining that an applicant is a finalist or making a conditional offer of employment to an applicant, the agency determines that the applicant has been convicted of a crime, the agency shall consider the following factors when determining whether the conviction disqualifies the applicant for the position:

(a) The nature of the conviction;

(b) Whether there is a direct relationship between the conviction and the position's duties and responsibilities and the bearing, if any, the conviction may have on the applicant's fitness or ability to perform one or more such duties and responsibilities, including whether the conviction was for unlawful sexual behavior as listed in section 16-22-102 (9), C.R.S., and whether the duties of employment would place a co-worker or the public in a vulnerable position;

(c) Any information produced by the applicant or produced on his or her behalf regarding his or her rehabilitation and good conduct; and

(d) The time that has elapsed since the conviction.

(5) Notwithstanding any other provision of law to the contrary, the provisions of this section apply to the office of the governor.

ARTICLE 6

Colorado Sunshine Law

PART 1

GENERAL PROVISIONS

24-6-101. Short title. This article shall be known and may be cited as the "Colorado Sunshine Act of 1972".

24-6-102. Effective date. This article became effective January 1, 1973.

PART 2

PUBLIC OFFICIAL DISCLOSURE LAW

24-6-201. Declaration of policy. In order to continue the public confidence in the integrity of government officials and to promote trust of the people in the objectivity of their public servants, this open disclosure law is adopted.

24-6-202. Disclosure - contents - filing - false or incomplete filing - penalty. (1) Except as otherwise provided in subsection (1.7) of this section, not later than the January 10 following his or her election, reelection, appointment, or retention in office, written disclosure, in such form as the secretary of state shall prescribe, stating the interests named in subsection (2) of this section shall be made to and filed with the secretary of state of Colorado by:

(a) Each member of the general assembly;

(b) The governor, lieutenant governor, secretary of state, attorney general, and state treasurer;

(c) Each justice or judge of a court of record;

(d) Each district attorney;

(e) Each member of the state board of education;

(f) Each member of the board of regents of the university of Colorado;

(g) Each member of the public utilities commission.

(h) Repealed.

(1.5) The provisions of subsection (1) of this section apply to any person who is serving in any position noted in said subsection (1) on July 1, 1979.

(1.7) Notwithstanding any other provision of this section, any person who has timely filed an amended statement with the secretary of state pursuant to subsection (4) of this section is not required to additionally file a disclosure statement satisfying the requirements of subsection (1) of this section by the January 10 following his or her election, reelection, appointment, or retention in office.

(2) Disclosure shall include:

(a) The names of any source or sources of any income, including capital gains, whether or not taxable, of the person making disclosure, his spouse, and minor children residing with him;

(b) The name of each business, insurance policy, or trust in which he, his spouse, or minor children residing with him has a financial interest in excess of five thousand dollars;

(c) The legal description of any interest in real property, including an option to buy, in the state in which the person making disclosure, his spouse, or minor children residing with him have any interest, direct or indirect, the market value of which is in excess of five thousand dollars;

(d) The identity, by name, of all offices, directorships, and fiduciary relationships held by the person making disclosure, his spouse, and minor children residing with him;

(e) The identity, by name, of any person, firm, or organization for whom compensated lobbying is done by any person associated with the person making disclosure if the benefits of such compensation are or may be shared by the person making disclosure, directly or indirectly;

(f) The name of each creditor to whom the person making disclosure, his spouse, or minor children owe money in excess of one thousand dollars and the interest rate;

(g) A list of businesses with which the person making disclosure or his spouse are associated that do business with or are regulated by the state and the nature of such business or regulation;

(h) Such additional information as the person making disclosure might desire.

(3) Any disclosure statement shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(4) Any person required by this section to file a disclosure statement shall, on or before January 10 of each calendar year, file an amended statement with the secretary of state or notify the secretary of state in writing that he has had no change of condition since the previous filing of a disclosure statement.

(5) Each disclosure statement, amended statement, or notification that no amendment is required shall be public information, available to any person upon request during normal working hours.

(6) Any person subject to the provisions of this section may elect to file with the secretary of state annually a copy of his federal income tax return and any separate federal income tax return filed by his spouse or minor children residing with him together with a certified statement of any investments held by him, his spouse, or minor children residing with him which are not reflected by the income tax returns in lieu of complying with the provisions of subsections (1) to (4) of this section, which tax return and any statement filed under the provisions of this subsection (6) shall be public information.

(7) Any person who willfully files a false or incomplete disclosure statement, amendment, or notice that no amendment is required, or who willfully files a false or incomplete copy of any federal income tax return or a false or incomplete certified statement of investments, or who willfully fails to make any filing required by this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars.

24-6-203. Reporting by incumbents and elected candidates - gifts, honoraria, and other benefits - prohibition on monetary gifts - penalty - definitions. (1) (a) As used in this section, the terms "appropriate officer" and "candidate" shall have the meanings ascribed to them in section 1-45-103, C.R.S., of the "Fair Campaign Practices Act".

(b) (I) As used in this section, the term "public office" means any office voted for in this state at any election. "Public office" includes, without limitation, the governor, lieutenant governor, secretary of state, attorney general, and state treasurer; a member of the general assembly or the state board of education; a regent of the university of Colorado; a judge on the Colorado court of appeals or the Colorado supreme court; a district attorney; or an officer of a county, municipality, city and county, school district, or any elective office within a special district for which the annual compensation exceeds sixteen hundred dollars.

(II) "Public office" does not include:

(A) The office of president or vice president of the United States;

(B) The office of senator or representative in the congress of the United States;

(C) Any office in a political party chosen pursuant to sections 1-3-103, 1-4-403, and 1-4-701, C.R.S.; or

(D) Any political party office in an assembly or convention, including delegates thereto.

(E) Repealed.

(III) Repealed.

(c) As used in this section, "covered state office" means the governor, lieutenant governor, secretary of state, attorney general, state treasurer, a member of the state board of education, a regent of the university of Colorado, a member of the general assembly, or a district attorney.

(2) Every incumbent in or candidate elected to public office who receives from any other person any item described in subsection (3) of this section in connection with the incumbent's or elected candidate's public service shall file with the appropriate officer, on or before January 15, April 15, July 15, and October 15 of each year, a report covering the period since the last report. The requirement of this subsection (2) pertaining to the report due January 15 shall extend to an incumbent leaving public office between October 15 and January 15, who shall file with the appropriate officer by January 15 a report that covers any items received during the period since the last report. Such report shall be on forms prescribed by the secretary of state and shall contain, at a minimum, the name of the person from whom the item was received and the amount or value and the date of receipt. The secretary of state shall furnish such forms to municipal clerks, to county clerk and recorders, and to incumbents and elected candidates for state offices and district offices of districts greater than a county free of charge for use by incumbents and elected candidates required to file such forms. If any incumbent in or candidate elected to

public office does not receive any such item, he or she shall not be required to file such report.

(3) The reports required by subsection (2) of this section shall include the following:

(a) In the case of a candidate elected to public office who is not an incumbent and has not yet been sworn into such office and subject to the requirements of subsection (3.5) of this section, any money, including but not limited to a loan, pledge, or advance of money or a guarantee of a loan of money, or any forbearance or forgiveness of indebtedness from any person, with a value greater than fifty-three dollars;

(b) In the case of a candidate elected to public office who is not an incumbent and has not yet been sworn into such office and subject to the requirements of subsection (3.5) of this section, any gift of any item of real or personal property, other than money, with a value greater than fifty-three dollars;

(c) In the case of a candidate elected to public office who is not an incumbent and has not yet been sworn into such office, any loan of any item of real or personal property, other than money, if the value of the loan is greater than fifty-three dollars. For such purpose, the "value of the loan" means the cost saved or avoided by the elected candidate by not borrowing, leasing, or purchasing comparable property from a source available to the general public.

(d) Any payment for a speech, appearance, or publication;

(e) In the case of a candidate elected to public office who is not an incumbent and has not yet been sworn into such office, tickets to sporting, recreational, educational, or cultural events with a value greater than fifty-three dollars for any single event;

(f) Payment of or reimbursement for actual and necessary expenditures for travel and lodging for attendance at a convention, fact-finding mission or trip, or other meeting that the incumbent or elected candidate who has been sworn into public office is permitted to accept or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, unless the payment of or reimbursement for such expenditures is made from public funds of a state or local government in the case of an incumbent or elected candidate subject to the provisions of said article or from the funds of any association of public officials or public entities whose membership includes the incumbent's or elected candidate's office or the governmental entity in which such office is held;

(g) Subject to the provisions of section 3 of article XXIX of the state constitution, any gift of a meal to a fund-raising event of a political party;

(h) Payment of or reimbursement for actual and necessary expenses for travel and lodging for attendance at a convention, fact-finding mission or trip, or other meeting that is from an organization declared to be a joint governmental agency by section 2-3-311, C.R.S.

(3.5) (a) Each incumbent in or candidate elected to covered state office is

prohibited from knowingly receiving or accepting from any other person, in connection with the public service of the incumbent or elected candidate:

(I) A gift of any money, including but not limited to a loan, pledge, or advance of money, a guarantee of a loan of money, or any monetary payment given, directly or indirectly, for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected candidate; or

(II) An in-kind gift.

(b) Nothing in paragraph (a) of this subsection (3.5) shall be construed to prohibit an incumbent or elected candidate from receiving a salary or other compensation paid to the incumbent or elected candidate in connection with the performance of his or her official duties, including, without limitation, payment for a speech, appearance, or publication or payment of or reimbursement for actual and necessary expenditures for travel and lodging to the extent the incumbent or elected candidate who has been sworn into covered state office is permitted to accept or receive such items in accordance with the provisions of section 3 of article XXIX of the state constitution.

(c) For purposes of this subsection (3.5), an "in-kind gift" means any gift of equipment, goods, supplies, property, services, or anything else, the value of which exceeds fifty dollars in the aggregate in any one calendar year, given, directly or indirectly, to an incumbent in or candidate elected to covered state office for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected candidate.

(3.7) Notwithstanding any other provision of this section, no incumbent in or candidate elected to covered state office shall accept a gift of any money from any person who is a professional or volunteer lobbyist or from a corporation or labor organization.

(4) The reports required by subsection (2) of this section need not include the following:

(a) A contribution or contribution in kind that has already been reported pursuant to section 1-45-108, C.R.S.;

(b) Any unsolicited item of trivial value as described in section 3 (3) (b) of article XXIX of the state constitution;

(c) An unsolicited token or award of appreciation as described in section 3 (3) (c) of article XXIX of the state constitution;

(d) Payment of or reimbursement for actual and necessary expenditures for travel and lodging for attendance at a convention, fact-finding mission or trip, or other meeting that the incumbent or elected candidate is permitted to accept or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, if the payment of or reimbursement for such expenditures is made from public funds of a state or local government in the case of an incumbent or elected candidate subject to the provisions of said article or from the funds of any association of public officials or public entities whose membership includes the incumbent's or elected candidate's office or the

governmental entity in which such office is held;

(e) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(f) Except as otherwise described in this subsection (4), any other gift or thing of value an incumbent or elected candidate who has been sworn into public office is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution.

(5) Any person who provides an incumbent or elected candidate with any item required to be reported by the incumbent or elected candidate pursuant to this section shall, at the time the item is provided, furnish the recipient with a written statement of the dollar value of the item.

(6) Nothing contained in this section shall relieve any person from the disclosure requirements of part 3 of article 6 of this title, relating to the regulation of lobbyists.

(7) Any person who willfully files a false or incomplete report pursuant to this section, who willfully fails to file a report required by this section, who willfully fails to provide the statement of value required by subsection (5) of this section, or who violates any provision of subsection (3.5) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars.

(8) The amount of the gift limit specified in subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

PART 3

REGULATION OF LOBBYISTS

24-6-301. Definitions - legislative declaration. As used in this part 3, unless the context otherwise requires:

(1) "Communication" includes but is not limited to a transmittal of information, data, ideas, opinions, or anything of a similar nature, either oral, written, or by any other means, to a covered official.

(1.5) "Contribution" means a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution. "Contribution" also includes the compensation and reimbursement for expenses of a person required to file a disclosure statement under section 24-6-302.

(1.7) "Covered official" means:

(a) For the type of lobbying defined in subparagraphs (I) and (III) of paragraph (a) of subsection (3.5) of this section, the governor, the lieutenant governor, or a member of the general assembly;

(b) For the type of lobbying defined in subparagraph (IV) of paragraph (a) of subsection (3.5) of this section, a member of a rule-making board or commission or a rule-making official of a state agency which has jurisdiction over the subject matter of a rule, standard, or rate.

(1.9) (a) "Disclosure statement" means a written statement that contains:

(I) The name and address of each person who has made a contribution totaling one hundred dollars or more to or for the disclosing person for lobbying during the fiscal year, together with the amount thereof;

(II) The total sum of the contributions made to or for the disclosing person for lobbying since the last disclosure statement which are not stated under subparagraph (I) of this paragraph (a);

(III) The total sum of all contributions made to or for the disclosing person for lobbying since the last disclosure statement and during the fiscal year;

(IV) The name of the covered official to or for whom such expenditures of more than fifty-three dollars have been made by or on behalf of the disclosing person for gift or entertainment purposes in connection with lobbying or for whom an expenditure was made by or on behalf of the disclosing person for a gift of a meal at a fund-raising event of a political party described in section 1-45-105.5 (1) (c) (IV), C.R.S., during either the first six months or the second six months of a state fiscal year and the amount, date, and principal purpose of the gift or entertainment, if the covered official or a member of his or her family actually received such gift or entertainment, but expenditures of one dollar or less shall be reported under subparagraph (V) of this paragraph (a). All amounts that a professional lobbyist spends on a covered official for which the lobbyist is reimbursed, or the source of which is a contribution, shall be deemed to be for gift or entertainment purposes.

(V) The total sum of all such expenditures made by or on behalf of the disclosing person to covered officials for gift or entertainment purposes in connection with lobbying since the last disclosure statement that are not stated under subparagraph (IV) of this paragraph (a);

(VI) (Deleted by amendment, L. 96, p. 1081, § 1, effective August 7, 1996.)

(VII) The total sum of all expenditures made by or on behalf of the disclosing person in connection with lobbying, other than gift and entertainment expenditures, since the last disclosure statement which are not stated under subparagraph (VI) of this paragraph (a);

(VIII) The total sum of all expenditures made by or on behalf of the disclosing person in connection with lobbying since the last disclosure statement and during the

fiscal year;

(IX) A statement, which shall only be given by a professional lobbyist, which contains the names of, and the amounts of any expenditures or contributions made to, any papers, periodicals, magazines, radio or television stations, or other media of mass communication to whom expenditures or contributions were made in which the professional lobbyist or his employer or agent has caused to be published any advertisements, articles, or editorials relating to lobbying; except that this information is not required for regular or routine publications sent primarily to the members of the professional lobbyist's organization, which publications contain information relating to his lobbying;

(X) The nature of the legislation, standards, rules, or rates for which the disclosing person is receiving contributions or making expenditures for lobbying and, where known, the specific legislation, standards, rules, or rates. In the case of specific legislation, disclosure shall include, during a regular or special session of the general assembly, the bill number of the legislation, and whether the disclosing person's principal is supporting, opposing, amending, or monitoring the legislation identified as of the time a disclosure statement is required to be filed pursuant to section 24-6-302 (3), after the disclosing person is retained to advocate or monitor in connection with the legislation. The disclosure statement shall specify that the disclosing person's representation is accurate as of the date of disclosure only and that such representation is not binding on the disclosing person after such date and is subject to change subsequent to such date and prior to the time the next disclosure statement is due. If a disclosure statement from a disclosing person during a regular or special session of the general assembly fails to show any bill numbers or nature of the legislation, as applicable, the disclosing person shall be required to make an affirmative statement that he or she was not retained in connection with any legislation. Nothing in this subparagraph (X) shall require any additional disclosure on the part of a disclosing person before the next applicable reporting deadline pursuant to section 24-6-302 (3). For purposes of this subparagraph (X), "legislation" means the process of making or enacting law in written form in the form of codes, statutes, or rules.

(XI) If the disclosing person's principal is an individual, the name and address of the individual and a description of the business activity in which the individual is engaged. If the disclosing person's principal is a business entity, a description of the business entity in which the principal is engaged and the name or names of the entity's chief executive officer or partners, as applicable. If the disclosing person's principal is an industry, trade, organization or group of persons, or professional association, a description of the industry, trade, organization or group of persons, or profession that the disclosing person represents.

(XII) A statement detailing any direct business association of the disclosing person in any pending legislation, measure, or question. For purposes of this subparagraph (XII), a "direct business association" means that, in connection with a

pending bill, measure, or question, the passage or failure of the bill, measure, or question will result in the disclosing person deriving a direct financial or pecuniary benefit that is greater than any such benefit derived by or shared by other persons in the disclosing person's profession, occupation, or industry. A disclosing person shall not be deemed to have a direct personal relationship in a pending bill, measure, or question where such interest arises from a bill, measure, or question that affects the entire membership of a class to which the disclosing person belongs.

(b) The secretary of state shall prescribe a form for disclosure statements, which shall contain:

(I) A statement, which the disclosing person may adopt, if true, that no change has occurred since the prior month's disclosure statement, in which case the information required by paragraph (a) of this subsection (1.9) may be omitted;

(II) A statement, which the disclosing person may adopt, if true, that no unreported contributions for lobbying are receivable and that no unreported expenditures for lobbying will be made during the remainder of the fiscal year;

(III) A statement which the disclosing person shall sign indicating that the information provided is correct and complete; but notarization of such statement shall not be required. The disclosing person, in signing such statement, shall be subject to section 18-8-503, C.R.S., concerning false statements made to a public servant.

(c) Whenever a person required to file a disclosure statement under this part 3 solicits, collects, or receives contributions which are used for lobbying as well as for other purposes, or makes an expenditure which is attributable to lobbying as well as to other purposes, such contributions and expenditures shall be allocated between lobbying and other purposes, and the disclosure statement shall contain that portion allocated to lobbying.

(2) "Expenditure" means a payment, distribution, loan, advance, deposit, or gift of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(2.3) "Fiscal year" means the period commencing July 1 of a calendar year and concluding June 30 of the following calendar year.

(2.5) "Gross income for lobbying" means the total income, including compensation for services, fees, and similar payments, before any deductions are made, received by a professional lobbyist for lobbying or by a firm organized for professional lobbying purposes that employs a professional lobbyist.

(3) Repealed.

(3.5) (a) "Lobbying" means communicating directly, or soliciting others to communicate, with a covered official for the purpose of aiding in or influencing:

(I) The drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on:

(A) Any bill, resolution, amendment, nomination, appointment, or report, whether

or not in writing, pending or proposed for consideration by either house of the general assembly or committee thereof, whether or not the general assembly is in session;

(B) Any other matter pending or proposed in writing by any covered official for consideration by either house of the general assembly or a committee thereof, whether or not the general assembly is in session;

(II) Repealed.

(III) The convening of a special session of the general assembly or the specification of business to be transacted at such special session;

(IV) The drafting, consideration, amendment, adoption, or defeat of any rule, standard, or rate of any state agency having rule-making authority.

(b) Subject to the exclusions and provisions of this paragraph (b), for the purpose of determining when contributions and expenditures become reportable in disclosure statements, "lobbying" includes activities undertaken by the person engaging in lobbying and persons acting at his request to prepare for lobbying which in fact ultimately occurs, provided:

(I) No such reports shall be required for activities occurring prior to the preceding fiscal year;

(II) Expenditures shall not be reported when such expenditures are incurred by a person in the ordinary course of the business or affairs of such person and are not made for lobbying. Such nonreportable expenditures will include, but not be limited to, the keeping of books of account and the routine collection of statistics and other data.

(c) "Lobbying" does not include communications made by a person in response to a statute, rule, regulation, or order requiring such a communication.

(d) (I) "Lobbying" does not include communications by a person who appears before a committee of the general assembly or a rule-making board or commission solely as a result of an affirmative vote by the committee, board, or commission issuing a mandatory order or subpoena commanding that the person appear and testify, or making such a person a respondent in such a proceeding whether or not the person is reimbursed by the committee, board, or commission for expenses incurred in making such appearance.

(II) (Deleted by amendment, L. 2004, p. 431, § 1, effective August 4, 2004.)

(III) (A) **Legislative declaration.** The general assembly hereby declares its support of the "Colorado Sunshine Act of 1972" and the open process that it has brought to the legislative process in Colorado. The general assembly's intent in enacting this subparagraph (III) is to achieve a more uniform application of the lobbying laws to witness testimony and to clarify the ability of the public to provide testimony to the general assembly and to state agencies.

(B) "Lobbying" excludes persons who are not otherwise registered as lobbyists and who limit their activities to appearances to give testimony or provide information to committees of the general assembly or at public hearings of state agencies or who give

testimony or provide information at the request of public officials or employees and who clearly identify themselves and the interest for whom they are testifying or providing information.

(e) "Lobbying" does not include communications made by an attorney-at-law when such communications are made on behalf of a client whose name has been identified and when such communications constitute the practice of law subject to control by the judicial branch of the state of Colorado.

(f) "Lobbying" does not include duties performed by employees of the legislative department.

(3.7) "Lobbyist" means either a professional or a volunteer lobbyist.

(4) "Person" means an individual, limited liability company, partnership, committee, association, corporation, or any other organization or group of persons.

(5) "Political committee" means any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice-presidential electors or any duly authorized committee or subcommittee of a national, state, or local political party.

(5.5) "Principal" means any person who employs a lobbyist. If an association, corporation, limited liability company, partnership, or any other organization or group of persons or form of business entity engages a lobbyist, a person serving as an officer, employee, member, shareholder, or partner of the association, corporation, limited liability company, partnership, or other organization or group of persons or form of business entity shall not be considered a principal.

(6) "Professional lobbyist" means any individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying. "Professional lobbyist" does not include any volunteer lobbyist, any state official or employee acting in his official capacity, except as provided in section 24-6-303.5, any elected public official acting in his official capacity, or any individual who appears as counsel or advisor in an adjudicatory proceeding.

(7) "Volunteer lobbyist" means any individual who engages in lobbying and whose only receipt of money or other thing of value consists of nothing more than reimbursement for actual and reasonable expenses incurred for personal needs, such as meals, travel, lodging, and parking, while engaged in lobbying or for actual expenses incurred in informing the organization making the reimbursement or the members thereof of his lobbying.

24-6-302. Disclosure statements - required.

(1) (Deleted by amendment, L. 96, p. 1081, 2, effective August 7, 1996.)

(2) Any person who makes expenditures for gifts or entertainment purposes for

the benefit of covered officials in the aggregate amount of two hundred dollars in a state fiscal year shall file disclosure statements with the secretary of state in accordance with this section. Such disclosure statements shall not include actual and reasonable expenses incurred for personal needs, such as meals, travel, lodging, and parking.

(2.5) (a) A professional lobbyist and any firm organized for professional lobbying purposes that employs such lobbyist shall file disclosure statements in accordance with this section. Such a disclosure statement, in lieu of the contributions described in section 24-6-301 (1.9) (a) (I), (1.9) (a) (II), and (1.9) (a) (III), shall contain the gross income for lobbying since the prior month's disclosure statement and the name and address of any person from whom gross income for lobbying is received totaling one hundred dollars or more.

(b) No disclosure statement shall be required of a person who is described in a disclosure statement of a professional lobbyist pursuant to paragraph (a) of this subsection (2.5).

(c) Nothing in this subsection (2.5) shall be construed to require a professional lobbyist or a firm organized for professional lobbying purposes that is engaged in lobbying for a trade association, public interest group, or governmental organization to include in the disclosure statement of such lobbyist or firm any dues, assessments, or fees collected by such association, group, or organization for lobbying purposes.

(3) (a) A disclosure statement shall be filed within fifteen days after the end of the first calendar month in which any contribution or gross income for lobbying is received or any expenditure is made or incurred for lobbying and shall be filed within fifteen days after the end of each subsequent month during the fiscal year.

(b) A cumulative disclosure statement for the entire fiscal year shall be filed by a professional lobbyist or a firm organized for professional lobbying purposes on or before July 15 covering the fiscal year immediately preceding the date on which the cumulative disclosure statement is due. Such disclosure statement shall contain the name of and total gross income for lobbying received from each person for the previous fiscal year. If a firm organized for professional lobbying purposes subcontracts lobbying business to another such firm or professional lobbyist, or if a professional lobbyist subcontracts lobbying business to another such firm or lobbyist, only the firm or professional lobbyist that receives the business on a subcontract shall report the information required to be disclosed pursuant to this subsection (3). The firm or professional lobbyist that subcontracted the business to another firm or professional lobbyist shall describe in an addendum or supplement to the report required to be filed pursuant to the provisions of this subsection (3) the total gross income received from lobbying that is being contemporaneously reported by another firm or professional lobbyist.

(4) If a person adopts the statement set out in section 24-6-301 (1.9) (b) (II), he or she shall at the same time file a cumulative disclosure statement for the fiscal year to date and thereafter shall not have to file monthly disclosure statements unless he or she

subsequently becomes required to do so by virtue of subsection (3) of this section.

(5) This section shall not apply to any political committee, volunteer lobbyist, citizen who lobbies on his or her own behalf, state official or employee acting in his or her official capacity, except as provided in section 24-6-303.5, or elected public official acting in his or her official capacity.

(6) (a) During the period that the general assembly is not in session, a professional lobbyist shall notify the secretary of state in writing within five working days after an oral or written agreement to engage in lobbying for any person not disclosed in the registration statement filed pursuant to section 24-6-303 (1). During the period that the general assembly is in session, a professional lobbyist shall notify the secretary of state after an agreement to engage in lobbying for any person not disclosed in the registration statement filed pursuant to section 24-6-303 (1), either by means of the electronic filing system created in section 24-6-303 (6.3) or by facsimile transmission in accordance with the following:

(I) In the case of a written agreement to engage the lobbyist, disclosure shall be made within twenty-four hours after the date of the agreement; and

(II) In the case of an oral agreement to engage the lobbyist, the disclosure shall be made within twenty-four hours after the date of a subsequent written agreement between the parties, the commencing of lobbying activities, or the date the lobbyist receives any payment on the agreement, whichever occurs first.

(b) A professional lobbyist who provides the notification under paragraph (a) of this subsection (6) shall file, concurrently with the next disclosure statement due after such notification, a signed written statement that contains:

(I) The name and address of the person described in such notification;

(II) A summary of the terms related to lobbying under the agreement between such person and the professional lobbyist.

(III) (Deleted by amendment, L. 2001, p. 147, § 1, effective July 1, 2001.)

(7) In addition to the criminal penalty provided for in section 24-6-309 (1), the secretary of state, after proper notification by certified mail, shall impose an additional penalty of twenty dollars per day for each business day that a disclosure statement required to be filed by this section is not filed by the close of the business day on the day due up to and including the first ten business days on which the disclosure statement has not been filed after the day due. For failure to file a disclosure statement required to be filed by this section by the close of the eleventh business day on which the disclosure statement has not been filed after the day due, in addition to the criminal penalty provided for in section 24-6-309 (1), the secretary of state shall impose an additional penalty of fifty dollars for each day thereafter that a disclosure statement required to be filed by this section is not filed by the close of the business day. The secretary of state may excuse the payment of any penalty imposed by this subsection (7), or reduce the amount of any penalty imposed, for bona fide personal emergencies. Revenues collected from penalties

assessed by the secretary of state shall be deposited in the department of state cash fund created in section 24-21-104 (3).

24-6-303. Registration as professional lobbyist - filing of disclosure statements - certificate of registration - legislative declaration. (1) Any professional lobbyist, before engaging in lobbying, shall register with the secretary of state and file a written or electronic registration statement that shall contain:

(a) His or her full legal name, business address, and business telephone number;

(b) The name, address, and telephone number of any person by whom he or she is employed;

(c) The name, address, and telephone number of any person for whom he or she will be lobbying; and

(d) The name, address, and telephone number of any person by whom the professional lobbyist or firm organized for professional lobbying is paid or is to be paid for such lobbying.

(1.3) (a) At the time a professional lobbyist files a registration statement in accordance with subsection (1) of this section prior to engaging in lobbying, and each time such lobbyist files an updated registration statement in accordance with subsection (1.5) of this section, such individual shall pay a registration fee in an amount that shall be set by the secretary of state by rule promulgated in accordance with article 4 of this title and shall be set at a level that offsets the costs to the secretary of state of providing electronic access to information pursuant to section 24-6-304 (2), and in processing and maintaining the disclosure information required by this part 3. The secretary of state shall charge a reduced fee to a professional lobbyist that files his or her registration statement pursuant to paragraph (b) of subsection (6.3) of this section. The secretary of state may waive the fee of a professional lobbyist for a not-for-profit organization who derives his or her compensation solely from the organization. A volunteer lobbyist shall be exempt from the requirement to pay the registration fee mandated by this paragraph (a).

(b) All fees collected pursuant to the provisions of this subsection (1.3) shall be credited to the department of state cash fund created in section 24-21-104 (3) (b).

(1.5) A professional lobbyist shall file an updated registration statement on or before July 15 of each year unless at that time he or she is no longer a professional lobbyist. Registration under this subsection (1.5) shall be effective until July 1 of the next year.

(2) A professional lobbyist shall file disclosure statements as required by section 24-6-302.

(3) Consistent with the requirements of subsection (6.3) of this section, a hard copy of all registration statements and disclosure statements of professional lobbyists and firms organized for lobbying purposes shall be compiled by the secretary of state within

thirty days after the end of the calendar month for which such information is filed and shall be organized alphabetically according to the names of the lobbyists and firms.

(4) No individual shall act as a professional lobbyist unless he has received a certificate of registration as provided in section 24-6-305 (1).

(5) An individual shall not be considered a lobbyist solely because of his or her appearance as a witness in rule, standard, or rate-making proceedings.

(6) This section shall not apply to any political committee, volunteer lobbyist, citizen who lobbies on his or her own behalf, state official or employee acting in his or her official capacity, except as provided in section 24-6-303.5, or elected public official acting in his or her official capacity.

(6.3) (a) No later than January 1, 2002, the secretary of state shall establish, operate, and maintain a system that enables electronic filing of the reports required by this part 3 by utilizing the internet. Rules concerning the manner in which reports required by this part 3 may be filed electronically, including but not limited to the information to be contained in such reports, the procedure for amending such reports, and public access to the electronic filing system, shall be promulgated by the secretary of state in accordance with article 4 of this title.

(b) In addition to any other method of filing, any person subject to the filing requirements of this part 3 or his or her duly authorized agent may use the electronic filing system described in paragraph (a) of this subsection (6.3) in order to meet such filing requirements.

24-6-303.5. Lobbying by state officials and employees. (1) (a) Each principal department of state government, as defined in section 24-1-110, shall designate one person who shall be responsible for any lobbying of the type defined in section 24-6-301 (3.5) (a) (I) or (3.5) (a) (III) by a state official or employee on behalf of said principal department. All designated persons from the principal departments, as well as any person lobbying, as defined in section 24-6-301 (3.5) (a) (I) or (3.5) (a) (III), on behalf of an institution or governing board of higher education, shall register with the secretary of state by filing a written statement on or before January 15 of each year. Such registration statement shall be on a form prescribed by the secretary of state and shall include the following:

(I) The designated person's full legal name, principal department address, and business telephone number;

(II) The name of any state official or employee who is lobbying on behalf of the principal department, the name of such person's division or unit within the principal department, his classification or job title, and the address and telephone number of his division or unit.

(b) Copies of the original documents filed with the secretary of state shall be filed

with the governor's office, the secretary of the senate, and the chief clerk of the house of representatives.

(c) Any amendments to the original registration statement shall be filed with the secretary of state within seven days of the pertinent change.

(2) (a) In addition to the registration statement filed pursuant to subsection (1) of this section, the designated person, and any person lobbying on behalf of an institution or governing board of higher education, shall file, monthly, a disclosure statement with the secretary of state in accordance with this subsection (2). The secretary of state shall prescribe the form for such disclosure statement, which shall include:

(I) The legislation on which lobbying is being performed;

(II) Any expenditure of public funds used for lobbying and the amount thereof;

(III) An estimate of the time spent on lobbying or preparation thereof by any state official or employee named in the registration statement or any other employee of the principal department.

(b) Disclosure statements shall be filed within fifteen days after the end of the first calendar month and shall be filed within fifteen days after the end of each subsequent month during the fiscal year.

(3) For purposes of this section, "state official or employee" means an individual who is compensated by a state of Colorado warrant and receives state of Colorado employee benefits except a lobbyist hired on a contract basis if he is currently registered under sections 24-6-302 and 24-6-303 or a lobbyist who registers as a professional lobbyist pursuant to sections 24-6-302 and 24-6-303.

(4) This section shall not apply to the following persons:

(a) Members of the public utilities commission, the industrial claim appeals office, the state board of land commissioners, the office of the property tax administrator, the state parole board, and the state personnel board;

(b) Members of any board or commission serving without compensation except for per diem allowances provided by law and reimbursement of expenses;

(c) Members of the governor's cabinet and personal staff employees in the offices of the governor and the lieutenant governor whose functions are confined to such offices and who report directly to the governor or lieutenant governor;

(d) Appointees to fill vacancies in elective offices;

(e) One deputy of each elective officer other than the governor and lieutenant governor specified in section 1 of article IV of the state constitution;

(f) Members, officers, and employees of the legislative branch;

(g) Members, officers, and employees of the judicial branch; specifically, municipal, state, and federal judges and the state court administrator and his designee; and

(h) Any state official or employee communicating with a covered official in response to an inquiry of that covered official or when testifying before any committee of

the general assembly upon request of a committee member.

(5) Any person who engages in lobbying for a principal department but who is not a state official or employee shall comply with the requirements of sections 24-6-302 and 24-6-303.

24-6-304. Records - preservation - public inspection - electronic access. (1) Each person required to file statements or reports under this part 3 shall maintain for a period of five years such records relating to such statements or reports as the secretary of state determines by regulation are necessary for the effective implementation of this part 3.

(2) (a) Any statement required by this part 3 to be filed with the secretary of state shall be preserved by the secretary of state for a period of five years after the date of filing, shall constitute part of the public records of that office, and shall be open and readily accessible for public inspection. The secretary of state shall implement a computer information system that will allow computer users to cross-reference and review, using the name of a professional lobbyist or any other person, any disclosure statement or other written statement filed pursuant to section 24-6-302 and registration statement filed pursuant to section 24-6-303 on which the name of such lobbyist or other person appears.

(b) No later than January 1, 2002, the secretary of state shall establish, operate, and maintain a web site on the internet, or modify an existing site, that will allow computer users electronic read-only access to the information required to be filed by this part 3 free of charge. All information required to be filed by this part 3 that is filed electronically shall be made available:

(I) On the web site within twenty-four hours after filing; and

(II) In a form that allows a computer user to cross-reference and review, using the name of a professional lobbyist or any other person, any disclosure statement or other written statement filed pursuant to section 24-6-302 and registration statement filed pursuant to section 24-6-303 on which the name of such lobbyist or other person appears.

24-6-304.5. Examination of books and records. (1) The secretary of state has the power to request to examine or cause to be examined the books and records of any individual who has received or is seeking to renew a certificate of registration as a lobbyist as such books and records may relate to lobbying.

(2) Failure of a registrant or an applicant for renewal of the certificate of registration to comply with a request from the secretary of state to furnish the information in subsection (1) of this section shall be grounds for the secretary of state to proceed to use his powers to revoke or suspend a certificate of registration or bar an individual from registration as provided in section 24-6-305.

24-6-305. Powers of the secretary of state - granting and revoking of certificates - barring from registration - imposition of penalties - notification of substantial violation. (1) It is the duty and responsibility of the secretary of state:

(a) To grant a certificate of registration as a lobbyist to any individual who registers under the provisions of this section and who supplies the information required in this part 3;

(b) To revoke the certificate of registration of any individual who has been convicted of violating any of the provisions of this part 3;

(c) and (d) Repealed.

(e) To revoke the certificate of registration of any individual whose lobbying privileges before the general assembly have been suspended following action on a written complaint against the person in accordance with the rules on lobbying practices promulgated by the general assembly.

(1.5) (a) In the case of misconduct by an individual culminating in the revocation of a certificate of registration in accordance with the provisions of paragraph (b) or (e) of subsection (1) of this section, the secretary of state shall additionally indicate the revocation of the individual's certificate of registration on the web site maintained by the secretary and shall send written notice of the revocation by United States mail to each principal for whom the individual lobbies as shown on the individual's registration statement filed pursuant to section 24-6-303 (1).

(b) In the case of misconduct by an individual culminating in a resolution of censure that has been adopted by the general assembly in accordance with its rules on lobbying practices, the secretary of state shall send a copy of the resolution by United States mail to each principal for whom the individual lobbies as shown on the individual's registration statement filed pursuant to section 24-6-303 (1).

(2) In addition to any other powers conferred by this section, the secretary of state may:

(a) Revoke, or suspend for a maximum period of one year, or bar from registration for a maximum period of one year or the remainder of the legislative biennium, whichever is longer, the certificate of registration required by section 24-6-303 for failure to file the reports required by section 24-6-303, provide the information required by section 24-6-304.5, or pay fully any penalty imposed pursuant to section 24-6-302 (7); but no certificate may be revoked or suspended within thirty days after the failure to file such a report if, prior to the last day for filing such reports, the secretary of state has been informed in writing of extenuating circumstances justifying such failure. Any revocation or suspension of a certificate of registration or bar from registration shall be in accordance with the provisions of article 4 of this title.

(b) Adopt rules and regulations in accordance with the provisions of article 4 of this title to define, interpret, implement, and enforce the provisions of this part 3 and to

prevent the evasion of the requirements of this part 3;

(c) On his or her own motion or on the verified complaint of any person, investigate the activities of any person who is or who has allegedly been engaged in lobbying and who may be in violation of the requirements of this part 3;

(d) Apply to the district court of the city and county of Denver for the issuance of an order requiring any individual who is believed by the secretary of state to be engaging in lobbying as a professional lobbyist as defined in section 24-6-301 without having received a certificate of registration as required by the provisions of section 24-6-303 to produce documentary evidence which is relevant or material or to give testimony which is relevant or material to the matter in question.

(3) If the secretary of state has reasonable grounds to believe that any person is in violation of section 24-6-302 or 24-6-303, the secretary of state may, after notice has been given and a hearing held in accordance with the provisions of article 4 of this title, issue a cease-and-desist order. Such order shall set forth the provisions of this part 3 found to be violated and the facts found to be the violation. Any person subject to a cease-and-desist order shall be entitled, upon request, to judicial review in accordance with the provisions of article 4 of this title.

(4) The secretary of state shall timely inform the president of the state senate and the speaker of the state house of representatives whenever the secretary of state has reasonable grounds to believe that a violation of section 24-6-302 or 24-6-303 has occurred that the secretary of state deems substantial.

24-6-306. Employment of legislators, legislative employees, or state employees - filing of statement. If any person who engages in lobbying employs or causes his employer to employ any member of the general assembly, any member of a rule-making board or commission, any rule-making official of a state agency, any employee of the general assembly, or any full-time state employee who remains in the partial employ of the state or any agency thereof, the new employer shall file a statement under oath with the secretary of state within fifteen days after such employment. The statement shall specify the nature of the employment, the name of the individual to be paid thereunder, and the amount of pay or consideration to be paid thereunder.

24-6-307. Employment of unregistered persons. It is unlawful for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, an individual to engage in lobbying who is not registered except upon condition that such individual register forthwith.

24-6-308. Prohibited practices. (1) No person engaged in lobbying shall:

(a) Make any agreement under which any consideration is to be given, transferred, or paid to any person contingent upon the passage or defeat of any legislation; the making or defeat of any rule, standard, or rate by any state agency; or the approval or veto of any legislation by the governor of this state;

(b) Knowingly attempt to deceive, or make a false statement to, a covered official regarding any material fact relating to a matter that is within the scope of duties of the covered official;

(c) Conceal from a covered official the identity of the person or entity for whom the lobbyist is lobbying;

(d) Knowingly use a fictitious name, or a real name without the consent of the person whose name is used, to communicate with a covered official;

(e) Knowingly represent an interest adverse to the lobbyist's principal without first obtaining the consent of the principal after full disclosure by the lobbyist of the adverse interest;

(f) Make any form of payment to a covered official as compensation for any interest in real or personal property or the provision of services in excess of the amount of compensation that would be paid by a person who is not a lobbyist for such interest or services in the ordinary course of business;

(g) Make a loan to a covered official or engage in any other transaction with a covered official with the intention of making the covered official personally obligated to the lobbyist;

(h) Attempt to influence the vote of a covered official in connection with any pending matter by threat of a political reprisal, including without limitation the promise of financial support of, or opposition to, the covered official's candidacy at any future election;

(i) Seek to influence a covered official by communicating with the covered official's employer;

(j) Cause to be introduced, or influence the introduction of, any bill, resolution, amendment, standard, rule, or rate for the purpose of afterwards being employed to secure its passage or defeat;

(k) Receive compensation for lobbying while serving as a state officer or employee of the state central committee of a political party;

(l) Make a campaign contribution in excess of the applicable limitations established by law or rule or make, solicit, or promise to solicit a campaign contribution during the period when lobbyists are prohibited from making such contributions under section 1-45-105.5, C.R.S.;

(m) Employ, subcontract, or pay compensation to a person for lobbying who has not registered as a lobbyist; or

(n) Engage in any other practice that discredits the practice of lobbying or the

general assembly.

(2) Any person who believes that a lobbyist has committed any act or omission in violation of this section may file a complaint with the secretary of state or any member of the executive committee of the general assembly in accordance with the procedures for filing a complaint against a lobbyist under the joint rules of the senate and the house of representatives. Upon receipt of a complaint, the secretary of state may act upon alleged violations of this section to enforce governing laws or rules or may refer the matter to the executive committee of the general assembly.

24-6-309. Offenses - penalties - injunctions. (1) Any person who violates any of the provisions of this part 3, willfully files any document provided for in this part 3 that contains any materially false statement or material omission, or willfully fails to comply with any material requirement of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than twelve months, or by both such fine and imprisonment.

(2) Whenever it appears that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this part 3 or any rule or order under this part 3, the secretary of state may bring an action in district court to enjoin the acts or practices and to enforce compliance with this part 3 or any rule or order under this part 3.

PART 4

OPEN MEETINGS LAW

24-6-401. Declaration of policy. It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

24-6-402. Meetings - open to public - definitions. (1) For the purposes of this section:

(a) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(b) "Meeting" means any kind of gathering, convened to discuss public business,

in person, by telephone, electronically, or by other means of communication.

(c) "Political subdivision of the state" includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.

(d) "State public body" means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other

public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV). Notwithstanding any other provision of this section, a vote to elect leadership of a state or local public body by that same public body may be taken by secret ballot, and a secret ballot may be used in connection with the election by a state or local public body of members of a search committee, which committee is otherwise subject to the requirements of this section, but the outcome of the vote shall be recorded contemporaneously in the minutes of the body in accordance with the requirements of this section. Nothing in this subparagraph (IV) shall be construed to affect the authority of a board of education to use a secret ballot in accordance with the requirements of section 22-32-108 (6), C.R.S. For purposes of this subparagraph (IV), "secret ballot" means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public.

(d.5) (I) (A) Discussions that occur in an executive session of a state public body shall be electronically recorded. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at an executive session that has been properly announced pursuant to paragraph (a) of subsection (3) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said

executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section 24-72-204 (5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be retained for at least ninety days after the date of the executive session.

(II) (A) Discussions that occur in an executive session of a local public body shall be electronically recorded. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of

subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section 24-72-204 (5.5).

(E) The record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the

executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;

(IV) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article 21 of title 23, C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article 21 of title 23, C.R.S., (including the

university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity;

(VII) With respect to nonprofit corporations incorporated pursuant to section 23-5-121 (2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b) (I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing one of the finalists to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of section 24-72-204 (3) (a) (XI). As used in this subsection (3.5), "finalist" shall have the same meaning as in section 24-72-204 (3) (a) (XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;

(b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4).

(c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators;

(f) (I) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. With respect to hearings held pursuant to the "Teacher Employment, Compensation, and Dismissal Act of 1990", article 63 of title 22, C.R.S., the provisions of section 22-63-302 (7) (a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act", part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section 24-72-202 (6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(5) (Deleted by amendment, L. 96, p. 691, §1, effective July 1, 1996.)

(6) The limitations imposed by subsections (3), (4), and (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local

public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

(10) Any provision of this section declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this section, and, to this end, the provisions of this section are declared to be severable.

ARTICLE 7

State Security Officers

24-7-100.2. Legislative declaration. (1) The general assembly hereby finds that the efforts of security officers employed by institutions of higher education to protect the persons and property of their environments are important elements of effective public safety management.

(2) The general assembly acknowledges the operational and environmental acumen of security officers of institutions of higher education regarding their facilities and the importance of including representatives of the institutions in emergency preparedness planning and training efforts conducted by local law enforcement agencies and emergency planning agencies intended to reduce the likelihood of, and develop effective responses to, emergency situations occurring at their facilities.

(3) The general assembly hereby encourages ongoing cooperation efforts among local law enforcement agencies, emergency planning agencies, and the security officers of institutions of higher education regarding emergency preparedness and response planning and training and development of communication capabilities supporting effective coordination among these groups during emergencies.

24-7-101. State institutions authorized to employ security officers. The institutions, agencies, and departments of state government, including any institution of higher education, are hereby authorized to employ security officers to protect the property of the institution, agency, or department employing the officer and to perform other police, security, and administrative functions as may be deemed necessary.

24-7-102. Supervision and control. The security officers employed pursuant to this article shall be under the control and supervision of the governing authority or head of the employing state institution. The governing authorities or heads of the state institutions, agencies, and departments shall provide appropriate credentials for the officers. The employing institution, department, or agency may permit its security officers that have been designated as peace officers pursuant to section 16-2.5-101, C.R.S., to hold and receive such other law enforcement commissions or appointments as are appropriate to carry out their duties.

24-7-103. Powers conferred. (1) Security officers employed and commissioned pursuant to this article that have been designated as peace officers pursuant to section 16-2.5-101, C.R.S., when operating on state owned or leased property, are hereby granted all the powers conferred by law upon peace officers to carry weapons and to make arrests.

(2) When not on state owned or leased property, security officers employed and commissioned pursuant to this article shall not have any authority not possessed by private citizens to arrest, investigate, or carry weapons. This subsection (2) shall not apply to peace officers as described in section 16-2.5-101, C.R.S.

24-7-104. State property not exempt from local law enforcement. Nothing in this article shall be construed to exempt state property from the authority of law enforcement agencies within whose jurisdiction the state property is located; except that representatives of the law enforcement agencies shall coordinate their official actions on state property with the appropriate security officers or police officers, except when emergency circumstances preclude such coordination.

24-7-105. Officers' qualifications. Security officers shall be at least twenty-one years of age and shall possess such other qualifications as may be specified by the state personnel director, including continuing training as may be prescribed by the said director.

24-7-106. Peace officers standards and training board evaluation and recommendation - legislative authorization of peace officer status required. Notwithstanding other provisions of this article, a person or group of persons employed as security officers or guards by any institution, agency, or department of state government, including any institution of higher education, shall not be designated as peace officers, after June 3, 2004, without completing the peace officer standards and training board processes described in sections 16-2.5-201 and 16-2.5-202, C.R.S., and

obtaining the legislative authorization described in section 16-2.5-101, C.R.S.

ARTICLE 7.5

Colorado Higher Education Police Officers

24-7.5-101. State institutions of higher education authorized to employ police officers. The state institutions of higher education are authorized to employ police officers to provide law enforcement and property protection for the institution employing the officers and to perform other police, emergency planning, community safety, and administrative functions as may be deemed necessary.

24-7.5-102. Supervision and control. State higher education police officers employed pursuant to this article shall be under the supervision and control of the governing board of the employing state institution of higher education or its designee. The governing board or head of the state institution of higher education shall provide institutional police commissions and other appropriate credentials for the police officers. The employing institution may permit its police officers to hold and receive other law enforcement commissions or appointments as are appropriate to carry out their duties.

24-7.5-103. Powers conferred. (1) State higher education police officers employed and commissioned pursuant to this article, when operating on property owned or leased by the state institution of higher education, are granted all the powers conferred by law upon peace officers to carry weapons and make arrests.

(2) When not on property owned or leased by the state institution of higher education, state higher education police officers shall not have any greater authority than that conferred upon peace officers by section 16-3-110, C.R.S.

24-7.5-104. State institution of higher education property not exempt from local law enforcement. Nothing in this article shall be construed to exempt the property of a state institution of higher education from the authority of law enforcement agencies within whose jurisdiction the property is located; except that representatives of the law enforcement agencies shall coordinate their official actions on the property with the appropriate higher education police officers, except when emergency circumstances preclude such coordination.

24-7.5-105. Officers' qualifications. State higher education police officers shall be at least twenty-one years of age and shall possess other qualifications as may be specified by the state personnel director, including continuing training as may be prescribed by the director. State higher education police officers shall be certified by the peace officers standards and training board.

24-7.5-106. Peace officers standards and training board evaluation and recommendation - legislative authorization of peace officer status required. Notwithstanding any other provision of this article, a person or group of persons employed by any institution of higher education shall not be designated as police officers after June 3, 2004, without completing the peace officers standards and training board processes described in sections 16-2.5-201 and 16-2.5-202, C.R.S., and obtaining the certification described in section 16-2.5-102, C.R.S.

ARTICLE 8

Governor-elect - Transition to New Administration

24-8-101. Legislative declaration. The general assembly declares it to be in the public interest that the transition from the administration of one governor to that of another be efficient and carefully planned. It is the purpose of this article to provide the governor-elect with sufficient resources to effect such a transition, including temporary office space, staff services, access to budgetary and other necessary and desirable information, and cooperation of officials and employees of the executive branch of state government.

24-8-102. Office space, supplies, and equipment. The department of personnel shall provide the governor-elect and the governor-elect's staff with suitable office space in the capitol building, together with sufficient furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

24-8-103. Access to information. (1) The governor and executive director of the department of personnel shall cooperate with the governor-elect and the governor-elect's staff to enable the governor-elect to adequately prepare his or her policy priorities, budget

recommendations, legislative program, and messages to the general assembly. To implement the provisions of this section, the governor-elect and authorized staff shall have full access to:

(a) All reports, estimates, minutes of hearings, and other information in the executive department of state government pertaining to estimated revenues and the proposed executive budget for the next fiscal year or years;

(b) All information relating to the problems, policies, and plans of any department of the executive branch of state government;

(c) The official records of the governor's office.

24-8-104. Staff personnel - state employees. The governor-elect shall be entitled to contract for the assistance and services of persons of his own choosing for the period between the general election and the inauguration, and they shall receive reasonable compensation for their services within the limits of appropriations made under section 24-8-105. Such persons shall not otherwise be classified as state employees, nor shall they be subject to the state personnel system laws during such period. In addition, upon request of the governor-elect, the executive director of any department shall assign an employee of his department to assist the governor-elect and his staff for such time as may be necessary between the general election and the inauguration.

24-8-105. General assembly to make appropriation. At the regular session in each year in which there is a general election to elect a new governor, the general assembly shall appropriate to the department of personnel a sum of not less than ten thousand dollars to pay the necessary expenses of the governor-elect incurred between the general election and the inauguration, including, but not limited to, office supplies, postage, actual and necessary travel expenses, and compensation of administrative, secretarial, and clerical personnel. Any unexpended balance of such appropriation remaining after the payment of such expenses shall revert to the general fund.

ARTICLE 9

Compensation of State Officers

24-9-101. Salaries of elected state officials. (1) The following state officials shall receive annual salaries and allowances, payable monthly, as follows:

(a) Governor, ninety thousand dollars;

(b) Lieutenant governor, sixty-eight thousand five hundred dollars or, if concurrently serving as the head of a principal department, a combined salary that, in total, is commensurate with the annual salary paid for the position of head of the principal department;

(c) President of the senate, speaker of the house of representatives, minority leader of the senate, or minority leader of the house of representatives, while for any reason acting as governor, the sum of twenty dollars per day as expenses;

(d) Attorney general, eighty thousand dollars;

(e) Secretary of state, sixty-eight thousand five hundred dollars;

(f) State treasurer, sixty-eight thousand five hundred dollars.

(2) The salaries fixed by subsection (1) of this section shall become payable on and after the second Tuesday in January, 1999.

(3) Repealed.

24-9-102. Salaries of appointed state officials. (1) The following state officials shall receive annual salaries and allowances, payable monthly, as follows:

(a) Deputy secretary of state, an amount set by the secretary of state;

(b) Deputy state treasurer, an amount set by the state treasurer;

(c) Repealed.

(d) Effective July 1, 2005, public utilities commission, each commissioner, an amount as set by the executive director of the department of regulatory agencies based on the most recent available figures contained in the annual total compensation survey conducted by the state personnel director pursuant to section 24-50-104 (4) (a) and subject to review by the state auditor and the general assembly pursuant to section 24-50-104 (4) (b) and (4) (c). The commissioners' salaries shall be set within the range identified in the survey for the category of senior executive service and shall be uniform; except that the chairman may receive a salary that is up to ten percent higher than those of the other two commissioners.

(e) Repealed.

(2) The positions listed in paragraphs (a) to (e) of subsection (1) of this section shall be full-time positions, and the salaries shall be for the full-time services of the persons involved.

(3) (Deleted by amendment, L. 2005, p. 500, § 1, effective May 12, 2005.)

24-9-103. Deputy state officers. The secretary of state and the state treasurer are hereby authorized to appoint their own deputies.

24-9-104. Mileage allowances.

(1) Repealed.

(2) (a) to (c) Repealed.

(d) On and after January 1, 2008, state officers and employees shall be allowed a mileage allowance for each mile actually and necessarily traveled while on official state business calculated at ninety percent of the prevailing internal revenue service mileage reimbursement rate to the nearest cent, and, when authorized to be utilized and necessary for official state business, ninety-five percent of the prevailing internal revenue service mileage reimbursement rate to the nearest cent for four-wheel-drive vehicles and forty cents per nautical mile for privately owned aircraft.

(e) For purposes of this section, "four-wheel-drive vehicles" means sport utility vehicles and pick-up trucks with a four-wheel-drive transmission system. "Four-wheel-drive vehicles" shall not include standard vehicles with all-wheel-drive capability.

(f) Repealed.

24-9-105. Elected state officials - discretionary funds. (1) Beginning with the fiscal year commencing July 1, 1985, and for each fiscal year thereafter, subject to annual appropriation by the general assembly, there is hereby available the following amounts for elected state officials for expenditure in pursuance of official business as each elected official sees fit:

(a) Governor, twenty thousand dollars;

(b) Lieutenant governor, five thousand dollars;

(c) Attorney general, five thousand dollars;

(d) Secretary of state, five thousand dollars;

(e) State treasurer, five thousand dollars.

(2) The appropriations made by paragraphs (a), (b), (c), and (e) of subsection (1) of this section shall be out of any moneys in the general fund not otherwise appropriated, and the appropriation made by paragraph (d) of subsection (1) of this section shall be out of any moneys in the department of state cash fund not otherwise appropriated.

ARTICLE 9.5

Recall of State Officers

24-9.5-101 to 24-9.5-109. (Repealed)

ARTICLE 10

24-10-101. Short title. This article shall be known and may be cited as the "Colorado Governmental Immunity Act".

24-10-102. Declaration of policy. It is recognized by the general assembly that the doctrine of sovereign immunity, whereunder the state and its political subdivisions are often immune from suit for injury suffered by private persons, is, in some instances, an inequitable doctrine. The general assembly also recognizes that the supreme court has abrogated the doctrine of sovereign immunity effective July 1, 1972, and that thereafter the doctrine shall be recognized only to such extent as may be provided by statute. The general assembly also recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens. It is also recognized that public employees, whether elected or appointed, should be provided with protection from unlimited liability so that such public employees are not discouraged from providing the services or functions required by the citizens or from exercising the powers authorized or required by law. It is further recognized that the state, its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article. The general assembly also recognizes the desirability of including within one article all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and that the distinction for liability purposes between governmental and proprietary functions should be abolished.

24-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Controlled agricultural burn" means a technique used in farming to clear the

land of any existing crop residue, kill weeds and weed seeds, or to reduce fuel buildup and decrease the likelihood of a future fire.

(1.3) "Dangerous condition" means either a physical condition of a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility. For the purposes of this subsection (1.3), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition.

(1.5) "Health care practitioner" means a physician, dentist, clinical psychologist, or any other person acting at the direction or under the supervision or control of any such persons.

(2) "Injury" means death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant.

(2.5) "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure. "Maintenance" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(2.7) "Motor vehicle" means a motor vehicle as defined in section 42-1-102, C.R.S., and a light rail car or engine owned or leased by a public entity.

(3) (a) "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public hospital, jail, or public water, gas, sanitation, power, or swimming facility. "Operation" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(b) The term "operation" shall not be construed to include:

(I) A failure to exercise or perform any powers, duties, or functions not vested by law in a public entity or employee with respect to the purposes of any public facility set forth in paragraph (a) of this subsection (3);

(II) A negligent or inadequate inspection or a failure to make an inspection of any property, except property owned or leased by the public entity, to determine whether such property constitutes a hazard to the health or safety of the public.

(3.5) "Prescribed fire" means the application of fire in accordance with a written

prescription for vegetative fuels and excludes a controlled agricultural burn.

(4) (a) "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity and includes a qualified volunteer as defined in section 24-33.5-802 (9).

(b) "Public employee" includes any of the following:

(I) Any health care practitioner employed by a public entity, except for any health care practitioner who is employed on less than a full-time basis by a public entity and who additionally has an independent or other health care practice. Any such person employed on less than a full-time basis by a county or a district public health agency and who additionally has an independent or other health care practice shall maintain the status of a public employee only when such person engages in activities at or for the county or the district public health agency that are within the course and scope of such person's responsibilities as an employee of the county or the district public health agency. For purposes of this subparagraph (I), work performed as an employee of another public entity or of an entity of the United States government shall not be considered to be an independent or other health care practice.

(II) Any health care practitioner employed part-time by and holding a clinical faculty appointment at a public entity as to any injury caused by a health care practitioner-in-training under such health care practitioner's supervision. Any such person shall maintain the status of a public employee when such person engages in supervisory and educational activities over a health care practitioner-in-training at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as an employee of a public entity.

(III) Any health care practitioner-in-training who is duly enrolled and matriculated in an educational program of a public entity and who is working at either a public entity or a nonpublic entity. Any such person shall maintain the status of a public employee when such person engages in professional or educational activities at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as a student or employee of a public entity.

(IV) Any health care practitioner who is a nurse licensed under article 38 of title 12, C.R.S., employed by a public entity. Any such person shall maintain the status of a public employee only when such person engages in activities at or for the public entity which are within the course and scope of such person's responsibilities as an employee of the public entity.

(V) Any health care practitioner who volunteers services at or on behalf of a public entity, or who volunteers services as a participant in the community maternity

services program;

(VI) Any release hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-217 (1), C.R.S. A release hearing officer shall maintain the status of a public employee only when the release hearing officer engages in activities that are within the course and scope of his or her responsibilities as a release hearing officer.

(VII) Any administrative hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-201 (3) (c) (I), C.R.S. An administrative hearing officer shall maintain the status of a public employee only when the administrative hearing officer engages in activities that are within the course and scope of his or her responsibilities as an administrative hearing officer.

(5) "Public entity" means the state, the judicial department of the state, any county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(5.5) "Public sanitation facility" means structures and related apparatus used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature that is operated and maintained by a public entity. "Public sanitation facility" does not include: A public water facility; a natural watercourse even if dammed, channelized, or containing storm water runoff, discharge from a storm sewer, or discharge from a sewage treatment plant outfall; a drainage, borrow, or irrigation ditch even if the ditch contains storm water runoff or discharge from storm sewers; a curb and gutter system; or other drainage, flood control, and storm water facilities.

(5.7) "Public water facility" means structures and related apparatus used in the collection, treatment, or distribution of water for domestic and other legal uses that is operated and maintained by a public entity. "Public water facility" does not include: A public sanitation facility; a natural watercourse even if dammed, channelized, or used for transporting domestic water supplies; a drainage, borrow, or irrigation ditch even if dammed, channelized, or containing storm water runoff or discharge; or a curb and gutter system.

(6) "Sidewalk" means that portion of a public roadway between the curb lines or the lateral lines of the traveled portion and the adjacent property lines which is constructed, designed, maintained, and intended for the use of pedestrians.

(7) "State" means the government of the state; every executive department, board, commission, committee, bureau, and office; and every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. "State" does not include the judicial department, a county, municipality,

city and county, school district, special district, or any other kind of district, instrumentality, political subdivision, or public corporation organized pursuant to law.

24-10-104. Waiver of sovereign immunity. Notwithstanding any provision of law to the contrary, the governing body of a public entity, by resolution, may waive the immunity granted in section 24-10-106 for the types of injuries described in the resolution. Any such waiver may be withdrawn by the governing body by resolution. A resolution adopted pursuant to this section shall apply only to injuries occurring subsequent to the adoption of such resolution.

24-10-105. Prior waiver of immunity - effect - indirect claims not separate. (1) It is the intent of this article to cover all actions which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant. No public entity shall be liable for such actions except as provided in this article, and no public employee shall be liable for injuries arising out of an act or omission occurring during the performance of his or her duties and within the scope of his or her employment, unless such act or omission was willful and wanton, except as provided in this article. Nothing in this section shall be construed to allow any action which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant to be brought against a public employee except in compliance with the requirements of this article.

(2) (a) A reference in this article to an injury, claim, or action that "lies in tort or could lie in tort" shall be construed in all cases to include, in addition to a direct claim or action, a claim or action asserted by way of assignment or subrogation to recover from a public entity or public employee the amount paid on a damages claim or the amount that may become payable on a damages claim because of the occurrence of an injury, as defined in section 24-10-103 (2).

(b) In any case in which an assignee or subrogee asserts an injury governed by this article:

(I) The injury shall not be deemed to be separate from the injury suffered by the assignor or subrogor; and

(II) Pursuant to section 24-10-114 (1.5), the assignment or subrogation concerning the injury shall not be deemed to be a separate occurrence with regard to limitations on judgments.

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of

whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108 (2) and (3), C.R.S.;

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, C.R.S., or jail by such public entity;

(c) A dangerous condition of any public building;

(d) (I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

(III) A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. Nothing in this paragraph (e) or in paragraph (d) of this subsection (1) shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area or on a highway, road, or street right-of-way.

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;

(g) The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement pursuant to the provisions of part 10 of article 82 of this title;

(h) Failure to perform an education employment required background check as described in section 13-80-103.9, C.R.S.

(1.5) (a) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does not apply to claimants who have been convicted of a crime and incarcerated in a correctional facility or jail pursuant to such conviction, and such correctional facility or jail shall be immune from liability as set forth in subsection (1) of this section.

(b) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does apply to claimants who are incarcerated but not yet convicted of the crime for which such claimants are being incarcerated if such claimants can show injury due to negligence.

(c) The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.

(2) Nothing in this section or in section 24-10-104 shall be construed to constitute a waiver of sovereign immunity where the injury arises from the act, or failure to act, of a public employee where the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided in subsection (1) of this section, a public entity shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against a public entity or a public employee for an injury resulting from a dangerous condition of, or the operation and maintenance of, a public water facility or public sanitation facility. No liability shall be imposed in any such action unless negligence is proven.

24-10-106.1. Immunity and partial waiver - claims against the state - injuries from prescribed fire - on or after January 1, 2012. (1) Notwithstanding any other

provision of this article, the state shall be immune from liability in all claims for injury that lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section or section 24-10-106. In addition to any other claims for which the state waives immunity under this article, sovereign immunity is waived by the state in an action for injuries resulting from a prescribed fire started or maintained by the state or any of its employees on or after January 1, 2012.

(2) Nothing in this section shall be construed to constitute a waiver of sovereign immunity if the injury arises from any act, or failure to act, of a state employee if the act is the type of act for which the state employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided under subsection (1) of this section, the state shall also have the same immunity as a state employee for any act or failure to act for which a state employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against the state for an injury resulting from a prescribed fire started or maintained by the state or any of its employees. No liability shall be imposed in any such action unless negligence is proven.

24-10-106.5. Duty of care. (1) In order to encourage the provision of services to protect the public health and safety and to allow public entities to allocate their limited fiscal resources, a public entity or public employee shall not be deemed to have assumed a duty of care where none otherwise existed by the performance of a service or an act of assistance for the benefit of any person. The adoption of a policy or a regulation to protect any person's health or safety shall not give rise to a duty of care on the part of a public entity or public employee where none otherwise existed. In addition, the enforcement of or failure to enforce any such policy or regulation or the mere fact that an inspection was conducted in the course of enforcing such policy or regulation shall not give rise to a duty of care where none otherwise existed; however, in a situation in which sovereign immunity has been waived in accordance with the provisions of this article, nothing shall be deemed to foreclose the assumption of a duty of care by a public entity or public employee when the public entity or public employee requires any person to perform any act as the result of such an inspection or as the result of the application of such policy or regulation. Nothing in this section shall be construed to relieve a public entity of a duty of care expressly imposed under other statutory provision.

(2) Nothing in this article shall be deemed to create any duty of care.

24-10-107. Determination of liability. Except as otherwise provided in this article, where sovereign immunity is not a bar under section 24-10-106, liability of the public entity shall be determined in the same manner as if the public entity were a private person.

24-10-108. Sovereign immunity a bar. Except as provided in sections 24-10-104 to 24-10-106, sovereign immunity shall be a bar to any action against a public entity for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant. If a public entity raises the issue of sovereign immunity prior to or after the commencement of discovery, the court shall suspend discovery, except any discovery necessary to decide the issue of sovereign immunity, and shall decide such issue on motion. The court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.

24-10-109. Notice required - contents - to whom given - limitations. (1) Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury. Compliance with the provisions of this section shall be a jurisdictional prerequisite to any action brought under the provisions of this article, and failure of compliance shall forever bar any such action.

(2) The notice shall contain the following:

(a) The name and address of the claimant and the name and address of his attorney, if any;

(b) A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;

(c) The name and address of any public employee involved, if known;

(d) A concise statement of the nature and the extent of the injury claimed to have been suffered;

(e) A statement of the amount of monetary damages that is being requested.

(3) (a) If the claim is against the state or an employee thereof, the notice shall be filed with the attorney general. If the claim is against any other public entity or an employee thereof, the notice shall be filed with the governing body of the public entity or the attorney representing the public entity. Such notice shall be effective upon mailing by registered or certified mail, return receipt requested, or upon personal service.

(b) A notice required under this section that is properly filed with a public entity's

agent listed in the inventory of local governmental entities pursuant to section 24-32-116, is deemed to satisfy the requirements of this section.

(4) When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.

(5) Any action brought pursuant to this article shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred; except that, if compliance with the provisions of subsection (6) of this section would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of subsection (6) of this section.

(6) No action brought pursuant to this article shall be commenced until after the claimant who has filed timely notice pursuant to subsection (1) of this section has received notice from the public entity that the public entity has denied the claim or until after ninety days has passed following the filing of the notice of claim required by this section, whichever occurs first.

24-10-110. Defense of public employees - payment of judgments or settlements against public employees. (1) A public entity shall be liable for:

(a) The costs of the defense of any of its public employees, whether such defense is assumed by the public entity or handled by the legal staff of the public entity or by other counsel, in the discretion of the public entity, where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton;

(b) (I) The payment of all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton or where sovereign immunity bars the action against the public entity, if the employee does not compromise or settle the claim without the consent of the public entity; and

(II) The payment of all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his or her duties and within the scope of employment, except where such act or omission is willful and wanton, even though sovereign immunity would otherwise bar the action, when the public employee is operating an emergency vehicle within the provisions of section 42-4-108 (2) and (3), C.R.S., if the employee does not compromise or settle the

claim without the consent of the public entity.

(1.5) Where a claim against a public employee arises out of injuries sustained from an act or omission of such employee which occurred or is alleged in the complaint to have occurred during the performance of his duties and within the scope of his employment, the public entity shall be liable for the reasonable costs of the defense and reasonable attorney fees of its public employee unless:

(a) It is determined by a court that the injuries did not arise out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment or that the act or omission of such employee was willful and wanton. If it is so determined, the public entity may request and the court shall order such employee to reimburse the public entity for reasonable costs and reasonable attorney fees incurred in the defense of such employee; or

(b) The public employee compromises or settles the claim without the consent of the public entity.

(2) The provisions of subsection (1) of this section shall not apply where a public entity is not made a party defendant in an action and such public entity is not notified of the existence of such action in writing by the plaintiff or such employee within fifteen days after commencement of the action. In addition, the provisions of subsection (1) of this section shall not apply where such employee willfully and knowingly fails to notify the public entity of the incident or occurrence which led to the claim within a reasonable time after such incident or occurrence, if such incident or occurrence could reasonably have been expected to lead to a claim.

(3) Repealed.

(4) Where the public entity is made a codefendant with its public employee, it shall notify such employee in writing within fifteen days after the commencement of such action whether it will assume the defense of such employee. Where the public entity is not made a codefendant, it shall notify such employee whether it will assume such defense within fifteen days after receiving written notice from the public employee of the existence of such action.

(5) (a) In any action in which allegations are made that an act or omission of a public employee was willful and wanton, the specific factual basis of such allegations shall be stated in the complaint.

(b) Failure to plead the factual basis of an allegation that an act or omission of a public employee was willful and wanton shall result in dismissal of the claim for failure to state a claim upon which relief can be granted.

(c) In any action against a public employee in which exemplary damages are sought based on allegations that an act or omission of a public employee was willful and wanton, if the plaintiff does not substantially prevail on his claim that such act or omission was willful and wanton, the court shall award attorney fees against the plaintiff or the plaintiff's attorney or both and in favor of the public employee.

(6) The provisions of subsection (5) of this section are in addition to and not in lieu of the provisions of article 17 of title 13, C.R.S.

24-10-111. Judgment against public entity or public employee - effect. (1) Any judgment against a public entity shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against any public employee whose act or omission gave rise to the claim.

(2) Any judgment against any public employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a public entity.

(3) Nothing contained in the provisions of this section shall be construed as preventing the joinder of any public entity or employee of such public entity in the same action.

24-10-112. Compromise of claims - settlement of actions. (1) (a) (I) A claim against the state may be compromised or settled for and on behalf of the state by the attorney general, with the concurrence of the head of the affected department, agency, board, commission, institution, hospital, college, university, or other instrumentality thereof, except as provided in part 15 of article 30 of this title.

(II) Repealed.

(b) Repealed.

(2) Claims against public entities, other than the state, may be compromised or settled by the governing body of the public entity or in such manner as the governing body may designate.

24-10-113. Payment of judgments. (1) A public entity or designated insurer shall pay any compromise, settlement, or final judgment in the manner provided in this section, and an action pursuant to the Colorado rules of civil procedure shall be an appropriate remedy to compel a public entity to perform an act required under this section.

(2) The state and the governing body of any other public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment out of any funds to the credit of the public entity that are available from any or all of the following:

(a) A self-insurance reserve fund;

(b) Funds that are unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes;

(c) Funds that are appropriated for the current fiscal year for the payment of such judgments and not previously encumbered.

(3) If a public entity is unable to pay a judgment during the fiscal year in which it becomes final because of lack of available funds, the public entity shall levy a tax, in a separate item to cover such judgment, sufficient to discharge such judgment in the next fiscal year or in the succeeding fiscal year if the budget of the public entity has been finally adopted for the fiscal year in which the judgment becomes final before such judgment becomes final; but in no event shall such annual levy for one or more judgments exceed a total of ten mills, exclusive of existing mill levies. The public entity shall continue to levy such tax, not to exceed a total annual levy of ten mills, exclusive of existing mill levies, but in no event less than ten mills if such judgment will not be discharged by a lesser levy, until such judgment is discharged. In the event that more than one judgment is unsatisfied and a ten-mill levy is insufficient to satisfy the judgments in one year, the proceeds of the ten-mill levy shall be prorated annually among the judgment creditors in the proportion that each outstanding judgment bears to the total judgments outstanding.

24-10-113.5. Attorney general to notify general assembly. (1) If a final money judgment is obtained against the state, payment of which requires an appropriation, and the appropriate appellate remedies have been exhausted or the time limit for such remedies has expired, the attorney general, within twenty days after such occurrence, shall certify to the speaker of the house of representatives and the president of the senate, or the director of the office of legislative legal services if the general assembly is not in session, the title of the action, the civil action number, and the amount of money due and owing for the payment in full satisfaction of the final judgment.

(2) If a claim against the state is settled and such settlement requires an appropriation by the general assembly, the attorney general, within twenty days after such settlement, shall make the certification required by subsection (1) of this section, which certification shall state the names of the parties and the amount of money necessary for the settlement.

24-10-114. Limitations on judgments - recommendation to general assembly - authorization of additional payment. (1) The maximum amount that may be recovered under this article in any single occurrence, whether from one or more public entities and public employees, shall be:

(a) For any injury to one person in any single occurrence, the sum of three hundred fifty thousand dollars;

(b) For an injury to two or more persons in any single occurrence, the sum of nine

hundred ninety thousand dollars; except that, in such instance, no person may recover in excess of three hundred fifty thousand dollars.

(c) The amounts specified in subsections (a) and (b) of this subsection (1) shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index. On or before January 1, 2018, and by January 1 every fourth year thereafter, the secretary of state shall calculate the adjusted dollar amount for the immediately preceding four-year period as of the date of the calculation. The adjusted amount shall be rounded upward to the nearest one thousand dollar increment. The secretary of state shall certify the amount of the adjustment for the particular four-year period and shall publish the amount of the adjustment on the secretary of state's web site.

(1.5) For purposes of subsection (1) of this section, an assignment or subrogation to recover damages paid or payable for an injury shall not be deemed to be a separate occurrence.

(2) The governing body of a public entity, by resolution, may increase any maximum amount set out in subsection (1) of this section that may be recovered from the public entity for the type of injury described in the resolution. The amount of the recovery that may be had shall not exceed the amount set out in such resolution for the type of injury described therein. Any such increase may be reduced, increased, or repealed by the governing body by resolution. A resolution adopted pursuant to this subsection (2) shall apply only to injuries occurring subsequent to the adoption of such resolution.

(3) Nothing in this section shall be construed to permit the recovery of damages for types of actions authorized under part 2 of article 21 of title 13, C.R.S., in an amount in excess of the amounts specified in said article.

(4) (a) A public entity shall not be liable either directly or by indemnification for punitive or exemplary damages or for damages for outrageous conduct, except as otherwise determined by a public entity pursuant to section 24-10-118 (5).

(b) A railroad operating in interstate commerce that sells to a public entity, or allows the public entity to use, such railroad's property or tracks for the provision of public passenger rail service shall not be liable either directly or by indemnification for punitive or exemplary damages or for damages for outrageous conduct to any person for any accident or injury arising out of the operation and maintenance of the public passenger rail service by a public entity.

(5) Notwithstanding the maximum amounts that may be recovered from a public entity set forth in subsection (1) of this section, an amount may be recovered from the state under this article in excess of the maximum amounts only if paragraph (a) or (b) of this subsection (5) applies:

(a) The general assembly acting by bill authorizes payment of all or a portion of any judgment against the state that exceeds the maximum amount. Any claimant may

present proof of judgment to the general assembly and request payment of that portion of the judgment which exceeds the maximum amount. Any portion of a judgment approved for payment by the general assembly shall be paid from the general fund.

(b) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (b), the state claims board created in section 24-30-1508 (1), referred to in this paragraph (b) as the board, acting in accordance with its authority under section 24-30-1515, compromises or settles a claim on behalf of the state for the maximum liability limits under this article and determines, in its sole discretion, to recommend to the general assembly that an additional payment be made and the general assembly, by bill, authorizes all or any portion of the additional payment. In determining whether to make such recommendation, the board shall consider interests of fairness, the public interest, and the interests of the state. A recommendation made under this paragraph (b) shall not include payment for noneconomic loss or injury and shall be reduced to the extent the claimant's loss is or will be covered by another source, including, without limitation, any insurance proceeds that have been paid or will be paid, and no insurer has a right of subrogation, assignment, or any other right against the claimant or the state for any additional payment or any portion of such payment that is approved by the general assembly. Any additional payment or any portion of such payment approved by the general assembly shall be paid from the general fund. For purposes of this paragraph (b), an "additional payment" means the payment to a claimant in excess of the maximum liability limits pursuant to this paragraph (b) that may be authorized by the general assembly upon a recommendation from the board.

(II) In connection with a recommendation made by the board under subparagraph (I) of this paragraph (b) to make an additional payment to one or more claimants resulting from a claim of an injury arising out of the lower north fork wildfire in March 2012 that is received by the general assembly while the general assembly is adjourned sine die, upon certification from the department of law that the requirements of this paragraph (b) have been satisfied and on or after July 1, 2013, the office of the state controller may pay one or more additional payments to such claimants from moneys previously appropriated by bill until such specifically appropriated moneys are exhausted or replenished.

(III) In connection with any claim arising out of an injury occurring on or after May 25, 2013, that is not described in subparagraph (II) of this paragraph (b), where the board has made a recommendation to the general assembly for an additional payment under this paragraph (b) while the general assembly is adjourned sine die, the payment is authorized where all of the members of the joint budget committee have voted to authorize the additional payment; except that payment in accordance with the recommendation shall not be made until the general assembly has ratified by bill the authorization to make the payment.

24-10-114.5. Limitation on attorney fees in class action litigation. If the plaintiffs prevail in any class action litigation brought against any public entity, the amount of attorney fees which the plaintiffs' attorney is entitled to receive out of any award to the plaintiffs shall be determined by the court; except that such amount shall not exceed two hundred fifty thousand dollars. Such limitation shall apply where the public entity pays the attorney fees directly to the plaintiffs' attorneys or where the public entity is required to pay the attorney fees indirectly through any program it administers by reducing the benefits or amounts due to the individual plaintiffs.

24-10-115. Authority for public entities other than the state to obtain insurance. (1) A public entity, other than the state, either by itself or in conjunction with any one or more public entities may:

(a) Insure against all or any part of its liability for an injury for which it might be liable under this article;

(b) Insure any public employee acting within the scope of his employment against all or any part of such liability for an injury for which he might be liable under this article;

(c) Insure against the expense of defending a claim for injury against the public entity or its employees, whether or not liability exists on such claim;

(d) Insure against all or part of its liability or the liability of a railroad for claims arising from the passenger rail operations of a public entity on property or tracks owned by, or purchased from, a railroad.

(2) The insurance authorized by subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all of the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2);

(d) Any risk management pool of public passenger rail services authorized to be created pursuant to the federal "Product Liability Risk Retention Act of 1981", 15 U.S.C. sec. 3901 et seq., as amended.

(3) A public entity, other than the state and other than a school district, may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S., or such public entity may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund, or both. A school district shall establish and maintain an insurance reserve fund in

accordance with the provisions of section 22-45-103 (1) (e), C.R.S., for liability and property damage self-insurance purposes, including workers' compensation pursuant to section 8-44-204 (2), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. The fund established pursuant to this subsection (3) shall be kept separate and apart from all other funds and shall be used only for the payment of administrative and legal expenses necessary for the operation of the fund and for the payment of claims against the public entity which have been settled or compromised or judgments rendered against the public entity for injury under the provisions of this article and for attorney fees and for the costs of defense of claims and to secure and pay for premiums on insurance as provided in this article.

(4) Policies written pursuant to this section and section 24-10-116 shall insure all of the risks and liabilities arising under this article, including costs of defense, unless the public entity requests in writing and obtains lesser coverage, in which event the policy issued shall conspicuously itemize the risks and liabilities not covered.

(5) A self-insurance fund established by a public entity which is subject to section 29-1-108, C.R.S., shall not be construed to be unexpended funds for budgetary purposes and shall be accumulated and held over for use in subsequent years.

(6) Repealed.

(7) Policies written, self-insurance funds established, or risk management pools entered into by a public entity for the purpose of insuring a public entity as described in paragraph (d) of subsection (1) of this section shall maintain such levels of insurance as are sufficient to insure against the maximum liability permitted against a railroad or its indemnitor pursuant to 49 U.S.C. sec. 28103.

24-10-115.5. Authority for public entities to pool insurance coverage. (1) Public entities may cooperate with one another to form a self-insurance pool to provide all or part of the insurance coverage authorized by this article or by section 29-5-111, C.R.S., for the cooperating public entities. Any such self-insurance pool may provide such coverage by the methods authorized in sections 24-10-115 (2) and 24-10-116 (2), by any different methods if approved by the commissioner of insurance, or by any combination thereof. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5) and (10), C.R.S.

(3) Prior to the formation of a self-insurance pool, there shall be submitted to the

commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, he shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(4) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year.

(5) The commissioner of insurance, or any person authorized by him, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(6) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (4) of this section;

(III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (5) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (6) or any act otherwise prohibited in this section, the

commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

(7) Any public entity pool formed under this article and under article 13 of title 29, C.R.S., and the members thereof, may combine and commingle all funds appropriated by the members and received by the pool for liability or property insurance or self-insurance or for other purposes of the pool.

(8) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of this title and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any public entity which is a member of a self-insurance pool which is organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(9) In addition to liability coverage pursuant to subsection (1) of this section and property coverage pursuant to section 29-13-102, C.R.S., a self-insurance pool authorized by subsection (1) of this section may provide workers' compensation coverage pursuant to section 8-44-204, C.R.S.

24-10-116. State required to obtain insurance. (1) The state shall obtain insurance to:

(a) Insure itself against all or any part of any liability for an injury for which it might be liable under this article;

(b) Insure any of its public employees acting within the scope of their employment against all or any part of his liability for injury for which he might be liable under this article;

(c) Insure against the expense of defending a claim for injury against the state or its public employees, whether or not liability exists on such claim.

(2) The insurance required under subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2).

24-10-117. Execution and attachment not to issue. Neither execution nor attachment shall issue against a public entity in any action for injury or proceeding initiated under the provisions of this article.

24-10-118. Actions against public employees - requirements and limitations. (1) Any action against a public employee, whether brought pursuant to this article, section 29-5-111, C.R.S., the common law, or otherwise, which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant and which arises out of injuries sustained from an act or omission of such employee which occurred or is alleged in the complaint to have occurred during the performance of his duties and within the scope of his employment, unless the act or omission causing such injury was willful and wanton, shall be subject to the following requirements and limitations, regardless of whether or not such action against a public employee is one for which the public entity might be liable for costs of defense, attorney fees, or payment of judgment or settlement under section 24-10-110:

(a) Compliance with the provisions of section 24-10-109, in the forms and within the times provided by section 24-10-109, shall be a jurisdictional prerequisite to any such action against a public employee, and shall be required whether or not the injury sustained is alleged in the complaint to have occurred as the result of the willful and wanton act of such employee, and failure of compliance shall forever bar any such action against a public employee. Any such action against a public employee shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred.

(b) The maximum amounts that may be recovered in any such action against a public employee shall be as provided in section 24-10-114 (1), (2), and (3).

(c) A public employee shall not be liable for punitive or exemplary damages arising out of an act or omission occurring during the performance of his duties and within the scope of his employment, unless such act or omission was willful and wanton.

(d) The fact that a plaintiff sues both a public entity and a public employee shall not be deemed to increase any of the maximum amounts that may be recovered in any such action as provided in this section or in section 24-10-114.

(2) (a) A public employee shall be immune from liability in any claim for injury, whether brought pursuant to this article, section 29-5-111, C.R.S., the common law, or otherwise, which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant and which arises out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment unless the act or omission causing such injury was willful and wanton; except that no such immunity may be asserted in an action for injuries resulting from the circumstances specified in section 24-10-106 (1).

(b) Any member of any state board, commission, or other advisory body appointed pursuant to statute, executive order, or otherwise, and any other person acting as a consultant or witness before any such body, shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as such a member, consultant, or witness, if such person was acting in good faith within the scope of such person's respective capacity, makes a reasonable effort to obtain the facts of the matter as to which action was taken, and acts in the reasonable belief that the action taken by such person was warranted by the facts.

(2.5) If a public employee raises the issue of sovereign immunity prior to or after the commencement of discovery, the court shall suspend discovery; except that any discovery necessary to decide the issue of sovereign immunity shall be allowed to proceed, and the court shall decide such issue on motion. The court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.

(3) Nothing in this section shall be construed to allow any action which lies in tort or could lie in tort regardless of whether that may be the type of action or the form or relief chosen by a claimant to be brought against a public employee except in compliance with the requirements of this article.

(4) The immunities provided for in this article shall be in addition to any common-law immunity applicable to a public employee.

(5) Notwithstanding any provision of this article to the contrary, a public entity may, if it determines by resolution adopted at an open public meeting by the governing body of the public entity that it is in the public interest to do so, defend a public employee against a claim for punitive damages or pay or settle any punitive damage claim against a public employee.

24-10-119. Applicability of article to claims under federal law. The provisions of this article shall apply to any action against a public entity or a public employee in any court of this state having jurisdiction over any claim brought pursuant to any federal law, if such action lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant.

24-10-120. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

ARTICLE 11

24-11-101. Legal holidays - effect. (1) The following days, viz: The first day of January, commonly called New Year's day; the third Monday in January, which shall be observed as the birthday of Dr. Martin Luther King, Jr.; the third Monday in February, commonly called Washington-Lincoln day; the last Monday in May, commonly called Memorial day; the fourth day of July, commonly called Independence day; the first Monday in September, commonly called Labor day; the second Monday in October, commonly called Columbus day; the eleventh day of November, commonly called Veterans' day; the fourth Thursday in November, commonly called Thanksgiving day; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the governor of this state or the president of the United States as a day of fasting or prayer or thanksgiving, are hereby declared to be legal holidays and shall, for all purposes whatsoever, as regards the presenting for payment or acceptance and the protesting and giving notice of the dishonor of bills of exchange, drafts, bank checks, promissory notes, or other negotiable instruments and also for the holding of courts, be treated and considered as is the first day of the week commonly called Sunday.

(2) In case any of said holidays or any other legal holiday so designated falls upon a Sunday, then the Monday following shall be considered as the holiday, and all notes, bills, drafts, checks, or other negotiable instruments falling due or maturing on either of said days shall be deemed to be payable on the next succeeding business day. In case the return or adjourned day in any suit, matter, or hearing before any court comes on any day referred to in this section, such suit, matter, or proceeding, commenced or adjourned as aforesaid, shall not, by reason of coming on any such day, abate, but the same shall stand continued to the next succeeding day at the same time and place, unless the next day is Sunday, when in such case the same shall stand continued to the next succeeding secular or business day at the same time and place. Nothing in this section shall prevent the issuing or serving of process on any of the days mentioned in this section or on Sunday.

(3) The provisions of this section shall not operate to prohibit agencies in the executive branch of state government from doing business on any of the legal holidays named in this article. Employees under the jurisdiction of the state personnel system who are required to work on any of the legal holidays named in this article shall be granted an alternate day off in the same fiscal year or be paid in accordance with the state personnel system or state fiscal rules in effect on April 30, 1979.

24-11-102. Additional holidays - effect. (Repealed)

24-11-103. Saturday half holiday - effect. (Repealed)

24-11-104. Arbor Day - tree planting. The third Friday in April of each year shall be set apart and known as "Arbor Day", to be observed by the people of this state in the planting of forest trees for the benefit and adornment of public and private grounds, places, and ways and in such other efforts and undertakings as shall be in harmony with the general character of the day so established.

24-11-105. Governor to issue proclamation. Annually, at the proper season, the governor shall issue a proclamation calling the attention of the people to the provisions of section 24-11-104 and recommending and enjoining their due observance. The commissioner of education shall promote, by all proper means, the observance of the day.

24-11-106. Good Roads Day. (Repealed)

24-11-107. Proclamation of governor. (Repealed)

24-11-108. Susan B. Anthony Day. The fifteenth day of February in each year, the same being the anniversary of the birth of Susan B. Anthony, shall be known as "Susan B. Anthony Day" and may be observed in the public schools of the state by suitable study and classroom discussion which set forth the importance of the great contribution she made to the cause of freedom.

24-11-109. Leif Erikson Day. The ninth day of October in each year, the same being the anniversary of the discovery of North America in the year 1000 A.D. by Leif Erikson, shall be known as "Leif Erikson Day", and appropriate observance may be held in all public schools of the state in tribute to the discoverer of the North American continent.

24-11-110. Effect of closing public offices. If, on any day when the public office concerned is closed, or on a Saturday, any document is required to be filed with any public office of the state of Colorado, its departments, agencies, or institutions, or with

any public office of any political subdivision of the state, or any appearance or return is required to be made at any such public office, or any official or employee of such public office is required to perform any act or any duty of his office, then any such filing, appearance, return, act, or duty so required or scheduled shall neither be abated nor defaulted, but the same shall stand continued to the next succeeding full business day at such public office at the same time and place.

24-11-111. Colorado Day. On the first Monday of August in each year, commonly called "Colorado Day", appropriate observance may be held by the public in tribute to the anniversary of the 1876 admission of the state of Colorado into the United States of America.

24-11-112. Cesar Chavez Day. (1) The thirty-first day of March in each year, the same being the anniversary of the birth of Cesar Estrada Chavez, shall be known as "Cesar Chavez Day" and appropriate observance may be held by the public and in all public schools of the state in tribute to his unselfish commitment to the principles of social justice and respect for human dignity.

(2) The head of a state agency may allow an employee of the agency to have a day off with pay on Cesar Chavez day in lieu of any other legal holiday described in section 24-11-101 (1) that occurs in the same state fiscal year on a weekday, other than a weekday on which an election is held throughout the state, on which the state agency is required to be open but on which the operations of the agency are required to be maintained at only a minimum level.

(3) On Cesar Chavez day, each state agency shall remain open and conduct the operations of the agency at no less than a minimum level.

(4) A holiday allowed under this section is in lieu of a legal holiday described in section 24-11-101 (1). The total number of legal holidays in a state fiscal year available to an employee of a state agency is not changed by this section.

ARTICLE 12

Oaths and Affirmations

24-12-101. Form of oath. Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful occasion, it is lawful for any person employed to administer the oath to administer it in

the following form: The person swearing, with his hand uplifted, shall swear "by the everliving God".

24-12-102. Form of affirmation. Whenever any person is required to take or subscribe an oath, and in all cases where an oath is to be administered upon any lawful occasion, and such person has conscientious scruples against taking an oath, he shall be permitted to make his solemn affirmation or declaration in the following form: "You do solemnly, sincerely, and truly declare and affirm", which solemn affirmation or declaration is equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely declaring shall incur and suffer the penalties inflicted on persons guilty of perjury in the first degree.

24-12-103. Oaths administered by whom. All courts in this state and each judge, justice, magistrate, referee, clerk, and any deputy clerk thereof, members and referees of the division of labor, members of the public utilities commission, and all notaries public shall have power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding pending, commenced, or to be commenced before them respectively. Such courts, judges, magistrates, referees, clerks, and deputy clerks within their respective districts or counties, and notaries public within any county of this state, shall have the power to administer all oaths of office and other oaths required to be taken by any person upon any lawful occasion and to take affidavits and depositions concerning any matter or thing, process, or proceeding pending, commenced, or to be commenced in any court or on any occasion wherein such affidavit or deposition is authorized or by law required to be taken.

24-12-104. Officers in armed forces empowered to perform notarial acts. (1) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States or any such officer performing inactive-duty training with the equivalent rank of second lieutenant or higher in any component part of the armed forces of the United States, by or for any person who is a member of the armed forces of the United States, or is serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia, or is outside said limits by permission, assignment, or direction of any department or official of the United States government, in connection with any activity

pertaining to the prosecution of any war in which the United States is then engaged.

(2) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, whenever made or taken, are hereby declared legal, valid, and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

(3) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate indorsed upon or attached to the instrument or document which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(4) If the signature, rank, and branch of service or subdivision thereof of any such commissioned officer appears upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section.

(5) If any instrument is acknowledged substantially as provided in this section, whether such acknowledgment has been taken before or after February 27, 1943, such acknowledgment shall be prima facie evidence of proper execution of such instrument and shall carry with it the presumptions provided for by section 38-35-101, C.R.S.

24-12-105. Appointees of officers of home rule cities and city and counties. In all home rule cities and city and counties, the charters of which provide that officers, boards, or commissions named therein shall perform the acts and duties required of county officers by the state constitution or by general law, any deputy, employee, or appointee of such officer, board, or commission may administer any oath or affirmation which, by the state constitution or general law, might be administered by the county officer whose duties are performed by such officer, board, or commission making such appointment or employing such deputy, so long as such deputy, employee, or appointee is employed in such capacity.

24-12-106. False swearing or affirming, perjury. All oaths and affirmations, affidavits, and depositions administered or taken shall subject any person who swears or

affirms falsely and willfully, in the matter material to any issue or point in question, to the penalties inflicted by law on persons guilty of perjury in the first degree.

24-12-107. Oaths taken out of state. All oaths and affirmations required or authorized to be taken by any statute of this state, when the person required to make the same resides out of or is absent from this state, may be made before and administered by any notary public or clerk of any court of record of the state wherein such person may be, such notary or clerk certifying the same under his notarial seal or the seal of such court.

24-12-108. Tax returns - applications for refunds. Any person required to make any return or any application for refund or protest against any deficiency assessment involving any tax imposed by the sales, use, income, motor fuel, and motor vehicle tax laws under oath or affirmation, in lieu of such oath or affirmation, may make a written verification or declaration that it is true and correct and that it is made under the penalties of perjury in the first degree, and the same is valid and complete without any attestation before a notary public or other officer if the signature thereto is witnessed by a legally competent person.

ARTICLE 13

Official Bonds

24-13-101. Clerks of district courts. (Repealed)

24-13-102. Suits on clerk's bond. (Repealed)

24-13-103. Bond filed with secretary of state. (Repealed)

24-13-104. Judge to examine bond. (Repealed)

24-13-105. County board to examine bonds - new bond. It is the duty of the board of county commissioners of each county, at each regular term, on the first day of

each term, to examine and inquire into the sufficiency of the official bond of the county treasurer, sheriff, coroner, county assessor, county clerk and recorder, and county surveyor and all other official bonds given by any county officer, as required by law. If it appears that one or more of the sureties on the official bond of any such county officer have removed from the county, died, or become insolvent or of doubtful solvency, the board of county commissioners shall cause such officer to be summoned to appear before said board, on a day to be named in said summons, to show cause why he should not be required to give a new bond, with sufficient surety. If, at the appointed time, he fails to satisfy said board as to the sufficiency of the present surety, an order shall be entered of record by said board, requiring such officer to file in the office of the county clerk and recorder, within twenty days, a new bond, to be approved as required by law, unless the number and pecuniary ability of other sureties on the bond are such as to satisfy the board that the bond is sufficient, notwithstanding the fact that one or more of the sureties on said bond may have removed, died, or become insolvent or of doubtful solvency, in which case the bond in question, in the discretion of said board, may be held to be sufficient.

24-13-106. Parties interested may offer evidence. All persons interested in the sufficiency of the official bond of any of the officers or persons named in section 24-13-105 may appear at the prescribed time and place and shall be allowed to introduce any evidence lawfully tending to prove the removal, death, insolvency, or doubtful solvency of any surety on such official bond, and the officer or person interested, or any of his sureties, may also appear and introduce any evidence lawfully tending to establish the sufficiency of such official bond.

24-13-107. Record of examination. It is the duty of the board of county commissioners to enter upon their respective records, at the time prescribed in section 24-13-105 for an examination, that an examination and inquiry into the sufficiency of the official bonds within their cognizance has been made and that they severally are deemed sufficient or insufficient as the facts may justify.

24-13-108. Failure to file new bond - vacancy. If any officer or person enumerated in section 24-13-105 fails to file a new bond within the prescribed time when so required by an order entered of record requiring the filing of such new bond, the officer in default shall be deemed to have vacated his office, and the same steps shall be taken to fill such vacancy thus created as are taken to fill a vacancy by the death or resignation of such officer.

24-13-109. Release of sureties - notice. Any person who is the surety of any sheriff, coroner, county clerk and recorder, county treasurer, county surveyor, or other county officer shall have the power of releasing himself from further liability as such surety for such officer by filing in the office of the county clerk and recorder a notice that he is no longer willing to be surety for such officer. If the person so desiring to be released from such surety is suretyship for the county clerk and recorder, in addition to such filing of notice, he shall deliver a copy of the notice to the chairman of the board of county commissioners or, if he is absent, to some other member of said board.

24-13-110. Duty of county clerk and recorder. When any notice is filed with the county clerk and recorder, he shall immediately give notice thereof to such officer, who shall thereupon file other surety, to be approved by the board of county commissioners if the same is then in session or if a session thereof is commenced within ten days after notice has been given, but, if said board is not in session nor a session thereof is commenced within ten days thereafter, the officer within ten days shall file said bond with the county clerk and recorder, who shall judge of the sufficiency of said bond, subject to the decision and approval of said board of county commissioners at their first meeting thereafter. If such notice relates to the surety of the county clerk and recorder, it is the duty of the county commissioner to whom the copy of such notice is given immediately to require said clerk to file other surety to be approved by the board of county commissioners in like manner, but, if said board is not in session, the county commissioner to whom such notice may be given may approve such surety, subject to the decision and approval of the said board at its first meeting thereafter.

24-13-111. Effect of new bond - release. If a new bond is given by any officer, then the former sureties shall be entirely released and discharged from all liability incurred by any such officer as to any business which may have been transacted from and after the time of the approval of the new bond, and the sureties to the new bond shall be liable for all official delinquencies of said officer, whether of omission or commission, which may occur after approval of the new bond.

24-13-112. Embezzlement - vacancy. If any master, clerk of the district court, sheriff, coroner, county judge, county treasurer, county assessor, county clerk and recorder, or other officer embezzles or appropriates to his own use any money which may be paid to him by virtue of his office and is convicted therefor, the court pronouncing such judgment shall declare the office held by such officer to be vacant, and such vacancy shall be filled as provided by law.

24-13-113. Failure to file bond. It is the duty of such sheriff, coroner, county treasurer, county assessor, county clerk and recorder, or other officer, if he fails to give bond, to deliver over to his sureties forthwith all books, moneys, vouchers, papers, and every description of property whatever, pertaining to his office; and the sureties, at any time after failure to file bond, may maintain an action of replevin or other appropriate action to recover such property, money, or effects from their principal.

24-13-114. Officers failing to deliver, not to act - penalty. If any officer designated in section 24-13-105 fails to deliver any money, property, or effects to his sureties or acts or attempts to act in the performance of the duties of his office after failing to give a new bond, he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars.

24-13-115. Effect of release of sureties. The provisions of this article shall not be so construed as to operate as a release of the sureties of any of the aforesaid officers for liabilities incurred previous to the filing of a new bond.

24-13-116. Approval of bonds - clerk of county board. The county treasurer, county assessor, county clerk and recorder, or any county officer shall file his official bond in the office of the county clerk and recorder, which bond shall be executed as required by law and shall be approved by the board of county commissioners in open session. If said board is not in session on the filing of such bond, then the county clerk and recorder shall judge of its sufficiency, subject to the final decision and approval of said board at its first meeting thereafter. If said board is not in session, the county clerk and recorder, in filing his bond, shall present the same to the chairman of the board of county commissioners or, in case of his absence or inability to act, to one of the other members of said board, who shall judge of its sufficiency, subject to the decision and approval of said board at its first meeting thereafter.

24-13-117. Approval of bonds to be of record. It is the duty of the board of county commissioners to make an entry in the records of said board of its approval of all official bonds, and, when so approved by said board, the county clerk and recorder shall record the same in the records of said county for inspection by all persons.

24-13-118. Neglect to examine bonds - penalty. If any board of county commissioners willfully neglects to inquire and examine into the sufficiency of any of the official bonds named in this article, each member of the board is guilty of a public omission of duty and is liable in damages to any person who may receive injury by such neglect, to be recovered before any court of competent jurisdiction in this state by a civil action.

24-13-119. Officers shall not become sureties. No district judge, district attorney, county commissioner, county attorney, county clerk and recorder, or county judge shall become a surety on any official bond given by any county officer in this state.

24-13-120. Forfeiture of office by becoming surety. No such officer shall become surety on any bond or obligation given to any board of county commissioners in this state. A violation of this section or section 24-13-119 shall work a forfeiture of any office held by such officer.

24-13-121. Official bond payable to people. Every official bond of any county officer, if not otherwise provided by law, shall be payable to the people of the state of Colorado, and an action shall lie thereon to the use of any party aggrieved in the name of the people.

24-13-122. Freeholders only acceptable as surety. No individual shall be accepted as a surety on any official bond of any county officer unless he is a freeholder of the county in which said officer may be elected or appointed to office.

24-13-123. Statement of surety - contents. Boards of county commissioners, in their respective counties, at any time, whether before or after the approval of the official bond of any county officer, may require any one or more of the sureties on said bond, within six days after the service upon him of a notice in writing to that effect, to make out, subscribe, and deposit in the office of the county clerk and recorder of such county a statement in writing, verified by his affidavit, containing a list of all property owned by said surety in the state of Colorado, its character, in what county situate, its estimated value, and encumbrances thereon, if any, and also the aggregate amount of indebtedness then owing by him or by any other person for the payment of which he was then liable as surety; and any such surety making a false oath or affirmation in such case is guilty of

perjury in the second degree and is liable to indictment and prosecution therefor.

24-13-124. Approval or rejection of bonds. Nothing in this section or sections 24-13-122 and 24-13-123 shall be construed to abridge, limit, or restrict the powers vested by law in boards of county commissioners to approve or reject, in their discretion, the bonds of county officers in their respective counties, to accept or refuse any surety offered thereon, and to require a new bond to be given in any case when they may deem the bond of any county officer insufficient from any cause for the public security.

24-13-125. Official bonds - expense of premiums. Any state, county, municipal, district, or court officer required by law to give a bond or other obligation as such officer may include, as part of the lawful expenses of executing and performing the duties of his office, such reasonable premium as may be charged by a company authorized under the laws of this state so to do for becoming his surety on such bond or obligation and such reasonable premium as may be charged by such company for becoming surety upon the bond of any deputy, clerk, or employee of such officer who is required by law or by such officer to give bond. Such premium shall not exceed one-half of one percent per annum on the amount or penalty of each bond or obligation.

24-13-126. Premiums, how paid. The expenses provided in section 24-13-125, in the case of state officers and their deputies, clerks, or employees, shall be paid from the state treasury, and the general assembly shall make the necessary appropriations therefor. In the case of all other officers and their deputies, clerks, or employees, such expenses shall be paid from any fund provided by such county, municipality, district, precinct, or court for the payment thereof or for the payment of the incidental or contingent expenses of any such officer, or the same shall be paid by such officer from any fund in his possession from which he is authorized to pay the expenses or salaries of his office.

ARTICLE 14

Liability - State and County Employees

24-14-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agent" means any person duly authorized by an officer or employee to

perform an act within the course of his service or employment.

(2) "Employee" means any employee of the state or its governmental subdivisions.

(3) "Officer" means any elected or appointed public official.

(4) "State" means any agency or department of the state of Colorado, a county, or a city and county.

24-14-102. Purchase of insurance authorized. The head of a department of the state of Colorado, with the approval of the governor or, in the case of the county or city and county, the chief executive officer or board of county commissioners, subject to appropriations being available therefor, is hereby authorized to procure insurance, through the department of personnel as provided in the "Procurement Code", articles 101 to 112 of this title, for the purpose of insuring its officers, employees, and agents against any liability, other than a liability which may be insured against under the provisions of the "Workers' Compensation Act of Colorado", for injuries or damages resulting from their negligence or other tortious conduct during the course of their service or employment. Counties or cities and counties are authorized to insure their officers, employees, and agents against similar liabilities.

24-14-103. Approval of seller - premium cost. Any policy of insurance shall be obtained from an insurer authorized to transact business in this state and deemed by the department of personnel or the appropriate governing body of the governmental subdivision to be responsible and financially sound considering the extent of the coverage required. The premium for such insurance shall be a proper charge against the state or the appropriate governmental subdivision.

24-14-104. Amount of coverage - limitations. (1) The extent of the insurance coverage shall be limited as follows:

(a) For any bodily injury and property damage to one person in any single occurrence, the sum of one hundred fifty thousand dollars;

(b) For any bodily injury and property damage to two or more persons in any single occurrence, the sum of four hundred thousand dollars; except that, in such instance, no person may recover in excess of one hundred fifty thousand dollars.

24-14-105. Limitation of actions. No action arising against an officer, employee, or agent of the state or state governmental subdivision for which insurance coverage is provided in this article shall be brought unless the same is brought within the time period

prescribed in section 13-80-102 or 13-80-102.5, C.R.S., except as set forth in section 13-80-103 (1) (b) and (1) (c), C.R.S.

ARTICLE 15

Seals

24-15-101. Seals. Whenever this title requires the use of a seal in the performance of any duties, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped with indelible ink upon the document requiring the seal.

ARTICLE 15.5

Flag of the United States

24-15.5-101. Display of flag of the United States - definitions. (1) Any state agency that purchases a flag of the United States for display may only display such flag if it has been made in the United States.

(2) For purposes of this article, "state agency" means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

ARTICLE 16

Public Works Fiscal Responsibility
Accounting Act of 1981

24-16-101. Short title. This article shall be known and may be cited as the "Public Works Fiscal Responsibility Accounting Act of 1981".

24-16-102. Legislative declaration. The general assembly hereby finds,

determines, and declares that there is a present need for information concerning the true cost of government public work projects which are performed in whole or in part by employees of or use of equipment, machinery, or materials owned by the state of Colorado.

24-16-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agency of government" means any state agency, department, division, board, bureau, commission, institution, or section which is a budgetary unit exercising purchasing authority or discretion.

(2) "Contract" means any agreement for public works for a fixed or determinable amount duly awarded after advertisement and competitive bid.

(3) "Cost" means the total cost of labor, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, supervision, engineering, clerical and accounting services, the value of the use of equipment, including depreciation, owned by an agency of government, and reasonable estimates of other administrative costs not otherwise directly attributable to the project which may be reasonably apportioned to such project in accordance with generally accepted cost accounting principles and standards.

(4) "Generally accepted cost accounting principles and standards" means those accounting principles and standards promulgated by the cost accounting standards board of the American institute of certified public accountants which pertain to contractors engaged in the performance of government contracts.

(5) "Project" means any public work for which appropriation or expenditure of funds may be reasonably expected to exceed twenty-five thousand dollars in the aggregate for any fiscal year.

(6) "Public work" means any construction, alteration, repair, or improvement of any land, building, structure, facility, road, highway, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety or maintenance programs for the upkeep of public roads, highways, or bridge structures; except that "public works" does not include routine maintenance that is not definable by a stop or start time or by geographical limits.

(7) "Responsible agency of government" means the agency of government which has fiscal accountability for a project.

(8) "Responsible official" means the person having overall responsibility, including delegated authority, for keeping the accounting records of the responsible agency of government.

24-16-104. Prohibition of division of works of public improvement

construction. It is unlawful for any person to divide a works of public improvement construction into two or more separate projects for the sole purpose of evading or attempting to evade the requirements of this article.

24-16-105. Account and record of costs. Whenever an agency of government undertakes any public work project by any means or method other than by contract, it shall cause to be kept and preserved a full, true, and accurate record of the cost of such project. Such records shall be kept and maintained by a responsible official on behalf of the responsible agency of government. To the extent the responsible agency of government contracts with any other agency of government in connection with a project, such other agency shall provide all necessary data or information to enable the responsible agency of government to document a full, true, and accurate record of the cost of such project, which data or information shall be kept in an orderly manner by the responsible agency of government for a period of at least six years after completion of the project. All such records shall be considered public records and shall be made available for public inspection.

24-16-106. Rules and regulations. On or after July 1, 1981, but before January 1, 1982, the department of personnel shall promulgate rules and regulations which are designed to implement the provisions of this article. In promulgating such rules and regulations, the controller may seek the advice of the advisory committee on governmental accounting appointed pursuant to section 29-1-503, C.R.S., but the advice of such committee shall not be binding upon the controller. He shall at all times be concerned with the promulgation and implementation of rules and regulations concerning the obligation of agencies of government to keep certain project records, even if duplicative, in accordance with generally accepted cost accounting principles and standards. Upon request of local government officials, the department of personnel may assist local government officials in implementing cost accounting procedures.

24-16-107. Audit. If any agency of government is alleged to be in violation of or in material noncompliance with this article or the rules and regulations promulgated by the office of the state controller, the legislative audit committee shall be advised, in writing, of the activities alleged to be in violation or noncompliance. The legislative audit committee shall give notice to the agency, which shall have ten days to respond to such allegation. If the said committee thereafter determines that there is a reasonable probability of a violation or material noncompliance, the committee shall take appropriate action and may direct the state auditor to conduct an audit and review of the records being

kept by such agency. If the state auditor determines that the agency has violated or has not complied or is not complying with this article or the rules and regulations, a written report shall be issued to the agency detailing the areas of violation or noncompliance and curative recommendations. The agency shall implement the recommendations of the state auditor within a time period set by him not to exceed six months.

24-16-108. Repeal. (Repealed)

ARTICLE 17

State Department Financial Responsibility
and Accountability

PART 1

STATE DEPARTMENT FINANCIAL RESPONSIBILITY AND ACCOUNTABILITY

24-17-101. Short title. This part 1 shall be known and may be cited as the "State Department Financial Responsibility and Accountability Act".

24-17-102. Control system to be maintained. (1) Each principal department of the executive department of the state government listed in section 24-1-110 shall institute and maintain systems of internal accounting and administrative control within said department, which shall be applicable to all agencies within said department and which shall provide for:

(a) A plan of organization that specifies such segregation of duties as may be necessary to assure the proper safeguarding of state assets;

(b) Restrictions permitting access to state assets only by authorized persons in the performance of their assigned duties;

(c) Adequate authorization and record-keeping procedures to provide effective accounting control over state assets, liabilities, revenues, and expenditures;

(d) Personnel of quality and integrity commensurate with their assigned responsibilities;

(e) An effective process of internal review and adjustment for changes in conditions.

24-17-103. Annual report to controller. Not later than December 31 of each year following April 9, 1988, the head of each principal department shall file, with the controller, the state auditor, and the governor, a written statement that the department's systems of internal accounting and control either do or do not fully comply with the requirements of section 24-17-102. In the event that the statement filed indicates that the systems employed by the department are not in compliance with section 24-17-102, the statement shall further detail specific weaknesses known to exist, together with plans and schedules for correcting any such weaknesses.

24-17-104. Public inspection. The report required under section 24-17-103 shall be available for inspection by members of the public, and the controller shall make copies available for that purpose upon request.

PART 2

STATE CONTINGENCY-BASED CONTRACTS

24-17-201. Short title. This part 2 shall be known and may be cited as the "State Contingency-Based Contracts Act".

24-17-202. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Under certain circumstances, contingency-based contracts can benefit the state by reducing state agencies' fixed contractual costs and linking state agency expenditures to the achievement of desired results, but contingency-based contracts can also have unintended adverse consequences that impact state finances in ways that a contracting state agency might not foresee.

(b) Contracting is a function of the executive branch of state government, but the power to appropriate state moneys is a legislative function, and it is necessary and appropriate to provide limited legislative guidance to the executive branch regarding contingency-based contracts in order to protect state finances and the appropriations process from possible unintended adverse effects of contingency-based contracts.

(2) The general assembly further finds and declares that:

(a) Existing statutes expressly authorize certain state agencies to enter into contingency-based contracts in specified circumstances, and these statutes reflect the considered judgment of the general assembly that contingency-based contracts are

appropriate in those circumstances. It is not the intent of the general assembly to subject contingency-based contracts entered into pursuant to specific statutory authorization to the requirements of this part 2.

(b) Because the office of state planning and budgeting is the executive branch agency that makes state economic forecasts for the executive branch and oversees the participation of the executive branch in the state budgeting process, it is the state agency best suited to determine, in accordance with the guidelines set forth in this part 2, whether a contingency-based contract not expressly authorized by statute is appropriate.

24-17-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Contingency-based contract" means a contract entered into by a state agency and a vendor for services that:

(a) Requires all or part of the vendor's compensation to be computed by multiplying a stated percentage times the amount of measurable savings in the state agency's expenditures or costs of operation that are demonstrably attributable to the vendor's services under the contract; and

(b) Is entered into without the authority of a state statute that specifically authorizes the agency to enter into such a contract.

(2) "Office" means the office of state planning and budgeting created in section 24-37-102.

24-17-204. Review of contingency-based contracts by office of state planning and budgeting. (1) No contingency-based contract shall be deemed valid unless the head of the principal department of state government entering into the contract or containing the agency entering into the contract submits the contract and an analysis of the contract to the office as required by paragraph (b) of subsection (2) of this section and the office approves the contract and transmits its approval in writing to the department. The state controller shall also promptly forward each contingency-based contract that it reviews pursuant to section 24-30-202 to the office.

(2) (a) Whenever a principal department of state government or another state agency enters into a contingency-based contract, the department or agency shall prepare an analysis of the contract that addresses:

(I) The extent to which the contract requires the vendor's compensation to be computed on a contingency basis and the maximum potential contractual liability to pay contingency-based compensation to the vendor;

(II) The extent to which it is necessary to offer contingency-based compensation to the vendor and the amount of any reduction in fixed contractual costs achieved by

offering contingency-based compensation;

(III) The extent to which the contractually specified performance measure used to determine contingency-based compensation is appropriate and capable of being accurately determined;

(IV) The extent to which the contingency-based compensation specified in the contract might affect the state budgeting and appropriations process; and

(V) Any other factors that the department or agency deems relevant to consider in evaluating the contract.

(b) The head of a principal department of state government entering into a contingency-based contract or containing an agency entering into a contingency-based contract shall sign both the contract and the analysis prepared pursuant to paragraph (a) of this subsection (2) and shall submit both the contract and the analysis to the office so that the office may approve or disapprove the contract.

(c) Upon receipt of a contingency-based contract and analysis, the office shall review and either approve or disapprove the contract. The office shall promptly transmit written notification of a decision to approve a contingency-based contract to the head of the principal department that submitted the contract to the office and the joint budget committee of the general assembly. The office shall promptly transmit written notification of a decision to disapprove a contingency-based contract only to the head of the principal department that submitted the contract to the office.

24-17-205. Existing legal requirements not superseded. The provisions of this part 2 shall not be construed to repeal, supersede, or otherwise affect any other statutory provisions that limit the use of or require review or approval of contingency-based contracts. Nothing in this part 2 shall be construed to authorize or prohibit a state agency from entering into a contingency-based contract in the absence of a statute that specifically authorizes the state agency to enter into such a contract.

ARTICLE 18

Standards of Conduct

PART 1

CODE OF ETHICS

24-18-101. Legislative declaration. The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in

the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

24-18-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.

(4) "Financial interest" means a substantial interest held by an individual which is:

(a) An ownership interest in a business;

(b) A creditor interest in an insolvent business;

(c) An employment or a prospective employment for which negotiations have begun;

(d) An ownership interest in real or personal property;

(e) A loan or any other debtor interest; or

(f) A directorship or officership in a business.

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district.

(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.

(7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.

(9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

24-18-103. Public trust - breach of fiduciary duty. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:

(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or

(b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:

(I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift of substantial value includes without limitation:

(a) A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or

(b) The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, official, or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the officer, member, official, or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:

(a) Campaign contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;

(b) An unsolicited item of trivial value;

(b.5) A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government official, or employee by a person other than a professional lobbyist.

(c) An unsolicited token or award of appreciation as described in section 3 (3) (c) of article XXIX of the state constitution;

(c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government official, or employee;

(d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of section 3 (3) (f) of article XXIX of the state constitution;

(e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in accordance with the provisions of section 3 (3) (e) of article XXIX of the state constitution;

(f) A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by the public officer, member of the general assembly, local government official,

or employee in accordance with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203 (3) (d);

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 24-6-203, and do not relieve an incumbent in or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

24-18-105. Ethical principles for public officers, local government officials, and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority.

(3) A public officer, a local government official, or an employee should not, within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking

to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

(5) Public officers, local government officials, and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

24-18-106. Rules of conduct for members of the general assembly. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the member of the general assembly committing the act has breached his fiduciary duty and the public trust. A member of the general assembly shall not accept a fee, a contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation.

(2) It shall not be a breach of fiduciary duty and the public trust for a member of the general assembly to:

(a) Use state facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates;

(b) Accept or receive a benefit as an indirect consequence of transacting state business; or

(c) Accept the payment of or reimbursement for actual and necessary expenses for travel, board, and lodging from any organization declared to be a joint governmental agency of this state under section 2-3-311 (2), C.R.S., if:

(I) (A) The expenses are related to the member's attendance at a convention or meeting of the joint governmental agency at which the member is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state of Colorado or for some other legitimate state purpose;

(B) The travel, board, and lodging arrangements are appropriate for purposes of the member's attendance at the convention or meeting;

(C) The duration of the member's stay is no longer than is reasonably necessary for the member to accomplish the purpose of his or her attendance at the convention or meeting;

(D) The member is not currently and will not subsequent to the convention or meeting be in a position to take any official action that will benefit the joint governmental agency; and

(E) The attendance at conventions or meetings of the joint governmental agency has been approved by the executive committee of the legislative council or by the leadership of the house of the general assembly to which the member belongs; or

(II) The general assembly pays regular monthly, annual, or other periodic dues to

the joint governmental agency that are invoiced expressly to cover travel, board, and lodging expenses for the attendance of members at conventions or meetings of the joint governmental agency.

(3) Notwithstanding any other provision of law, no member of the general assembly shall lobby, solicit lobbying business or contracts, or otherwise establish a lobbying business or practice respecting issues before the general assembly prior to the expiration of his or her term. Where the member tenders his or her resignation prior to the expiration of his or her term, the requirements of this subsection (3) shall apply up through the date of the member's resignation from office.

24-18-107. Ethical principles for members of the general assembly. (1) The principles in this section are intended only as guides to a member of the general assembly in determining whether or not his conduct is ethical.

(2) A member of the general assembly who has a personal or private interest in any measure or bill proposed or pending before the general assembly shall disclose the fact to the house of which he is a member and shall not vote thereon. In deciding whether or not he has such an interest, a member shall consider, among other things, the following:

(a) Whether the interest impedes his independence of judgment;

(b) The effect of his participation on public confidence in the integrity of the general assembly; and

(c) Whether his participation is likely to have any significant effect on the disposition of the matter.

(3) An interest situation does not arise from legislation affecting the entire membership of a class.

(4) If a member of the general assembly elects to disclose the interest, he shall do so as provided in the rules of the house of representatives or the senate, but in no case shall failure to disclose constitute a breach of the public trust of legislative office.

24-18-108. Rules of conduct for public officers and state employees. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A public officer or a state employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects, regulates, or supervises in the course of his official duties;

(b) Assist any person for a fee or other compensation in obtaining any contract, claim, license, or other economic benefit from his agency;

(c) Assist any person for a contingent fee in obtaining any contract, claim, license, or other economic benefit from any state agency; or

(d) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A head of a principal department or a member of a quasi-judicial or rule-making agency may perform an official act notwithstanding paragraph (d) of subsection (2) of this section if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) Repealed.

24-18-108.5. Rules of conduct for members of boards and commissions. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

24-18-109. Rules of conduct for local government officials and employees. (1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:

(a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal

or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

(b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:

(a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or

(b) Accept or receive a benefit as an indirect consequence of transacting local government business.

24-18-110. Voluntary disclosure. A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.

24-18-111. Powers of the secretary of state. (Repealed)

24-18-112. Board of ethics for the executive branch - created - duties. (1) There is hereby created a board of ethics for the executive branch of state government in the office of the governor. The board shall consist of five members to be appointed by and serve at the pleasure of the governor.

(2) The board of ethics for the executive branch shall:

(a) Comment, when requested by the governor, on each proposed gubernatorial

appointment, including the heads of the principal departments and the senior members of the governor's office based upon the provisions of this article;

(b) Upon written request of the governor, review complaints of any violation of the provisions of this article by a member of the executive branch of state government;

(c) Make written recommendations to the governor concerning his requests; and

(d) Review appeals brought before the board of ethics pursuant to section 24-30-1003 (4).

24-18-113. Board of ethics for the general assembly - created - duties. (1) (a) There is hereby created a board of ethics for the general assembly. The board shall consist of four legislative members. One member shall be appointed by and serve at the pleasure of the majority leader of the house of representatives; one member shall be appointed by and serve at the pleasure of the majority leader of the senate; one member shall be appointed by and serve at the pleasure of the minority leader of the house of representatives; and one member shall be appointed by and serve at the pleasure of the minority leader of the senate.

(b) The terms of the members appointed by the majority and minority leaders of the house of representatives and the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the majority and minority leaders of the house of representatives and the senate shall each appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the majority and minority leaders of the house of representatives and the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the majority and minority leaders of the house of representatives and the senate 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 majority and minority leaders of the house of representatives and the senate shall continue in office until the member's successor is appointed.

(2) The board of ethics for the general assembly shall, upon written request of a member of the general assembly, issue advisory opinions concerning issues relating to the requesting member's conduct and the provisions of this article.

PART 2

PROSCRIBED ACTS RELATED TO CONTRACTS AND CLAIMS

24-18-201. Interests in contracts. (1) Members of the general assembly, public officers, local government officials, or employees shall not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment. For purposes of this section, the term:

(a) "Be interested in" does not include holding a minority interest in a corporation.

(b) "Contract" does not include:

(I) Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(II) Merchandise sold to the highest bidder at public auctions;

(III) Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;

(IV) A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than ten percent of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(V) A contract with respect to which any member of the general assembly, public officer, local government official, or employee has disclosed a personal interest and has not voted thereon or with respect to which any member of the governing body of a local government has voted thereon in accordance with section 24-18-109 (3) (b) or 31-4-404 (3), C.R.S. Any such disclosure shall be made: To the governing body, for local government officials and employees; in accordance with the rules of the house of representatives and the senate, for members of the general assembly; and to the secretary of state, for all others.

24-18-202. Interest in sales or purchases. Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

24-18-203. Voidable contracts. Every contract made in violation of any of the provisions of section 24-18-201 or 24-18-202 shall be voidable at the instance of any party to the contract except the officer interested therein.

24-18-204. Dealings in warrants and other claims prohibited. State officers, county officers, city and county officers, city officers, and town officers, as well as all other local government officials, and their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, city and county, city, or town warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city and county, city, or town thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, or clerk, and evidences of the funded indebtedness of such state, county, city and county, city, or town.

24-18-205. Settlements to be withheld on affidavit. (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part 2 shall suspend such settlement or payment and cause such officer to be prosecuted for such violation by the district attorney of the appropriate jurisdiction.

(2) If there is judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

24-18-206. Penalty. A person who knowingly commits an act proscribed in this part 2 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition to the penalties provided in section 18-1.3-501, C.R.S., the court may impose a fine of no more than twice the amount of the benefit the person obtained or was attempting to obtain in violating a provision of this part 2.

ARTICLE 18.5

Independent Ethics Commission

24-18.5-101. Independent ethics commission - establishment - membership - subpoena power - definitions. (1) As used in this article, unless the context otherwise requires:

(a) "Article XXIX" means article XXIX of the state constitution approved by the

voters at the 2006 general election.

(b) "Commission" means the independent ethics commission created in section 5 (1) of article XXIX.

(2) (a) The independent ethics commission, originally established in the office of administrative courts in the department of personnel created in section 24-30-1001, is hereby transferred to and established in the judicial department as an independent agency, effective on June 10, 2010. The commission shall consist of five members. The appointing authorities for the commission members, the order of appointment of such members, and other requirements pertaining to commission membership shall be as specified in section 5 (2) of article XXIX. Subject to the requirements of paragraph (b) of this subsection (2), the member appointed by the senate pursuant to section 5 (2) (a) (I) of article XXIX shall be appointed by the president of the senate with the approval of two-thirds of the members elected to the senate. Subject to the requirements of paragraph (b) of this subsection (2), the member appointed by the house of representatives pursuant to section 5 (2) (a) (II) of article XXIX shall be appointed by the speaker of the house of representatives with the approval of two-thirds of the members elected to the house of representatives.

(b) In connection with the appointment of commission members, no more than two members appointed to the commission shall be affiliated with the same political party.

(c) The commission members shall be appointed to four-year terms; except that the first member appointed by the senate and the first member appointed by the governor shall initially serve two-year terms. Appointments to the commission by the senate and the house of representatives shall be made no later than May 1, 2007, and the initial terms of commission members shall commence July 1, 2007.

(3) Commission members shall serve without compensation; except that commission members shall be reimbursed for the actual and necessary expenses that they incur in carrying out their duties and responsibilities as commission members.

(4) In accordance with the provisions of section 5 of article XXIX, the powers and duties of the commission shall be as follows:

(a) To hear complaints, issue findings, and assess penalties on ethics issues arising under article XXIX and other standards of conduct and reporting requirements as provided by law; and

(b) (I) To issue advisory opinions and letter rulings on ethics issues arising under article XXIX and other standards of conduct and reporting requirements as provided by law.

(II) The commission shall prepare a response to a request for an advisory opinion from a public officer, member of the general assembly, local government official, or government employee as to whether particular action by such officer, member, official, or employee satisfies the requirements of article XXIX as soon as practicable after the

request is made to the commission.

(III) Any person who is not a public officer, member of the general assembly, local government official, or government employee may submit a request to the commission for a letter ruling concerning whether potential conduct of the person making the request satisfies the requirements of article XXIX. In such case, the commission shall issue a response to the request as soon as practicable.

(IV) Each advisory opinion or letter ruling, as applicable, issued by the commission shall be a public document and shall be promptly posted on a web site that shall be maintained by the commission; except that, in the case of a letter ruling, the commission shall redact the name of the person requesting the ruling or other identifying information before it is posted on the web site.

(5) (a) Subject to the provisions of paragraph (c) of this subsection (5), the commission shall dismiss as frivolous any complaint filed under article XXIX that fails to allege that a public officer, member of the general assembly, local government official, or government employee has accepted or received any gift or other thing of value for private gain or personal financial gain.

(b) For purposes of this subsection (5):

(I) "Official act" shall have the same meaning as set forth in section 24-18-102 (7).

(II) "Private gain" or "personal financial gain" means any money, forbearance, forgiveness of indebtedness, gift, or other thing of value given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a public officer, member of the general assembly, local government official, or government employee.

(c) This subsection (5) is repealed if the Colorado supreme court holds, in response to one or more written questions submitted by the general assembly pursuant to section 3 of article VI of the state constitution, that the standard of accepting or receiving "any gift or other thing of value for private gain or personal financial gain" specified in paragraph (a) of this subsection (5) is unconstitutional in applying section 3 (1) or (2) of article XXIX.

(6) Pursuant to the provisions of section 5 (1) of article XXIX, the commission shall adopt reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of article XXIX and any other standards of conduct and reporting requirements as provided by law. Any rules shall be promulgated in accordance with the requirements of article 4 of this title.

(7) Subject to available appropriations, the commission may employ such staff as it deems necessary to enable it to carry out its functions in accordance with the requirements of this article and article XXIX.

(8) No subpoena requiring the attendance of a witness or the production of documents shall be issued by the commission unless a motion to issue any such subpoena

has been made by one member of the commission and approved by no fewer than four members of the commission.

(9) Any final action of the commission concerning a complaint shall be subject to judicial review by the district court for the city and county of Denver.

(10) Any state employee on the staff of the commission as of June 10, 2010, shall be transferred with the agency and shall become an employee of the agency.

ARTICLE 19

Payment of Postemployment Compensation
to Government-supported Employees

24-19-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The payment of compensation to government-supported officials or employees after such officials or employees have ended their employment creates unnecessary costs, which ultimately are borne by the taxpayers of this state.

(b) In order to reduce government costs, it is necessary for the state to limit the payment of postemployment compensation to government-supported officials and employees.

(c) The continued payment of compensation to any official or employee after such official or employee has ended his or her service with a governmental unit or government-financed entity not only affects the finances of such governmental unit or government-financed entity, but also has a serious impact on the state as a whole because of the total effect of such compensation payment arrangements on the ability of state and local governments to provide services using the scarce resources that are available. Further, the general assembly finds and declares that the provision of large payments to government-supported officials and employees after their employment has ended has caused grave damage to the trust of the citizens of this state in their state and local government officials. Because of these concerns, the general assembly finds and declares that this is a matter of statewide concern.

24-19-102. Definitions. For the purposes of this article, unless the context otherwise requires:

(1) "Government-financed entity" means any organization, group, or other entity if:

(a) Such entity is composed of members which are governmental units or who are

officials or employees of governmental units; and

(b) At least fifty percent of the annual operating budget for such entity is derived from dues, contributions, or other payments received from governmental units.

(2) "Government-supported official or employee" means any person who is employed or who was employed by a governmental unit or by a government-financed entity and who is or was a manager, an official, or an administrator for such governmental unit or government-financed entity.

(3) (a) "Governmental unit" means the state of Colorado, any department, division, section, unit, office, commission, board, institution, institution of higher education, or other agency of the executive, legislative, or judicial branch of the state government, or any local government, authority, public corporation, body politic, or other instrumentality of the state.

(b) "Governmental unit" does not include the university of Colorado hospital authority created pursuant to section 23-21-503, C.R.S.

(4) "Local government" means a county, municipality, city and county, or school district or a special district created pursuant to the "Special District Act", article 1 of title 32, C.R.S.

(5) (a) "Postemployment compensation" means compensation paid to a government-supported official or employee after termination of such government-supported official or employee's employment from a particular employment position with a governmental unit or a government-financed entity or after termination of the performance of actual services for such governmental unit or government-financed entity in such employment position if such compensation was not earned prior to such termination or, for an official or employee who becomes employed in a new position with the governmental unit or government-financed entity after such termination, if such compensation was not earned in the new position. "Postemployment compensation" shall include, but is not limited to, the provision of any unearned postemployment employee benefits. "Postemployment compensation" does not include the following:

(I) Any retirement benefits earned by a government-supported official or employee during the employment of such official or employee with a governmental unit or government-financed entity;

(II) Any payment made as a part of a bona fide early retirement program that is available to a class of five or more government-supported officials or employees;

(III) Any payments of deferred compensation that have been earned by a government-supported official or employee during the employment of such official or employee with a governmental unit or government-financed entity;

(IV) Any workers' compensation payment; or

(V) Any unemployment compensation payment.

(b) The term "postemployment compensation" includes any retirement benefits or any payments of deferred compensation to be paid into a retirement fund or deferred

compensation plan after termination of performance of actual services for the particular employment position in the usual course of said employment. The prohibition of postemployment compensation is intended to eliminate any employment contract provision that binds the employer to make payments into a retirement fund or deferred compensation program after termination of performance of actual services in an employment position. Said prohibition is not intended to forbid the receipt of benefits or payments earned during actual performance of services if these benefits or payments are to be credited to or received by the employee after termination of actual performance of services for an employment position.

(c) Unless otherwise excluded by the provisions of this article, the term "postemployment compensation" includes any payment made to a government-supported official or employee after the term of employment of such official or employee in a particular employment position has ended pursuant to a settlement agreement between a governmental unit or government-financed entity and the official or employee; except that such payment is not postemployment compensation if such payment is made as part of a bona fide settlement of a legitimate legal dispute.

24-19-103. Prohibition against postemployment compensation - exception. (1) Except as provided in subsection (2) of this section, notwithstanding any other provision of law to the contrary, no governmental unit or government-financed entity shall pay postemployment compensation to any government-supported official or employee.

(2) (a) At the option of the appointing authority for any government-supported official or employee, such official or employee may be provided postemployment compensation that consists of the payment of up to a maximum of three months of salary for such official or employee and the provision of up to a maximum of three months of employee benefits for such official or employee. No postemployment compensation shall be provided other than cash payments and the provision of employee benefits. Postemployment compensation may be approved and provided only if the government-supported official or employee who is to receive such compensation was employed by the governmental unit or government-financed entity for less than five years; except that postemployment compensation may be approved and provided for an official or employee of a state institution of higher education or of the Auraria higher education center, regardless of the length of employment.

(b) Postemployment compensation may be provided to any government-supported official or employee only if the appointing authority for the official or employee takes positive action to approve such compensation. The provisions of this subsection (2) shall not be construed to authorize any employment contract term requiring the provision of postemployment compensation in violation of the provisions of section 24-19-104.

Postemployment compensation payments shall be solely the option of the appointing authority for a government-supported official or employee and no official or employee shall be entitled to or have any right to receive any postemployment compensation.

(3) Any employment contract, employment contract extension, or other agreement between a governmental unit or government-financed entity and a government-supported official or employee that is not substantially in compliance with this section is null and void. Any payment made to any person by a governmental unit or government-financed entity in violation of this section is illegal and the recipient of such payment shall return the payment to the governmental unit or government-financed entity.

24-19-104. Terms of employment contracts - public inspection. (1) Except as expressly permitted pursuant to subsection (1.5) of this section, if any governmental unit or government-financed entity enters into an employment contract or employment contract extension with a government-supported official or employee, such employment contract or employment contract extension shall contain terms that clearly state that:

(a) Such employment contract is subject to termination by either party to such contract at any time during the term of such contract and that such official or employee shall be deemed to be an employee-at-will;

(b) No compensation, whether as a buy-out of the remaining term of the contract, as liquidated damages, or as any other form of remuneration, shall be owed or paid to such government-supported official or employee upon or after the termination of such contract except for compensation that was earned prior to termination prorated to the date of termination; and

(c) If the contract is not substantially in compliance with the prohibition against payment of postemployment compensation, the contract is null and void.

(1.5) (a) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, each system of higher education and each campus of each state institution of higher education may have in effect employment contracts or employment contract extensions having a duration not more than five years with not more than six government-supported officials or employees if:

(I) The governing board of the institution determines that the contract or extension is necessary for the hiring or retaining of the employee in light of prevailing market conditions and competitive employment practices in other states;

(II) The contract contains a clause that the institution remains free to terminate the contract or extension without penalty if sufficient funds are not appropriated.

(b) Nothing in this subsection (1.5) shall be construed to exempt any governmental unit or government-financed entity from the requirements of section 24-19-103.

(c) Notwithstanding the provisions of paragraph (a) of subsection (1) of this

section or paragraph (a) of this subsection (1.5), each system of higher education and each campus of each state institution of higher education may have in effect an unlimited number of employment contracts or employment contract extensions having a duration of not more than five years with an unlimited number of government-supported officials or employees if the employment contracts or employment contract extensions are for research to be performed in university settings. A contract executed pursuant to this paragraph (c) shall include a provision that the contract shall become unenforceable if, during the term of the contract, the system of higher education or campus of a state institution of higher education that is a party to the contract:

(I) Ceases to be an enterprise, as defined in section 20 (2) (d) of article X of the state constitution; and

(II) Lacks present cash reserves sufficient to pledge irrevocably to satisfy the terms of the contract.

(d) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section or paragraph (a) of this subsection (1.5), each system of higher education and each campus of each state institution of higher education may, subject to the approval of the chief executive officer of the system or institution and any rules or limitations established by the chief executive officer, have in effect an unlimited number of term employment contracts or term employment contract extensions having a duration of not more than three years with an unlimited number of government-supported officials or employees if the term employment contracts or term employment contract extensions are for half-time or longer, non-tenure-track classroom teaching appointments. A person employed pursuant to a term employment contract or term employment contract extension described in this paragraph (d) may have duties in addition to classroom teaching, as described in the contract or contract extension. A term employment contract or term employment contract extension executed pursuant to this paragraph (d) at a minimum shall include a provision stating the contract or contract extension is unenforceable if, during the term of the contract or contract extension, the system of higher education or campus of a state institution of higher education that is a party to the contract:

(I) Ceases to be an enterprise, as defined in section 20 (2) (d) of article X of the state constitution; and

(II) Lacks present cash reserves sufficient to pledge irrevocably to satisfy the terms of the contract.

(2) If any governmental unit or government-financed entity enters into an employment contract or employment contract extension with any government-supported official or employee on or after July 1, 1993, such governmental unit or government-financed entity shall make the terms of such contract available to the public for inspection and copying during regular business hours.

(3) The provisions of this section shall not be interpreted to authorize the termination of any government-supported official or employee for any reason that is

contrary to applicable federal, state, or local law.

(4) (a) No governmental unit or government-financed entity shall enter into an employment contract with a government-supported official or employee or extend an existing employment contract with a government-supported official or employee if such employment contract or contract extension contains any provisions that are intended to evade the requirements of this article. Contractual provisions that are prohibited under the provisions of subsection (1) of this section include, but are not limited to, any provision that allows a government-supported official or employee to earn an unreasonably large portion of contractual compensation during the early stages of the term of employment of such government-supported official or employee.

(b) The provisions of paragraph (a) of this subsection (4) shall not be interpreted to prohibit the reimbursement of any actual relocation expenses of government-supported officials or employees or the payment of reasonable incentives for accepting employment to government-supported officials or employees.

24-19-105. Settlement agreements - public inspection - filing with the department of personnel. (1) (a) Notwithstanding any other law to the contrary, if any settlement agreement between a governmental unit or government-financed entity and a government-supported official or employee settles any employment dispute between such parties and involves the payment of any compensation to such official or employee after the term of employment of such official or employee in a particular employment position has ended, information regarding any amounts paid or benefits provided under such settlement agreement shall be a matter of public record. Any governmental unit or government-financed entity that is a party to such a settlement agreement shall make such information available for public inspection and copying during regular business hours.

(b) If a state governmental unit enters into a settlement agreement to settle any employment dispute with a government-supported official or employee, the state governmental unit shall file a copy of the final settlement agreement with the department of personnel, which shall be a public record pursuant to the provisions of part 2 of article 72 of this title.

(2) The provisions of subsection (1) of this section shall apply to:

(a) Any settlement agreement entered into on or after July 1, 1993; and

(b) Any settlement agreement entered into prior to July 1, 1993, if no other provision of law would prohibit public disclosure of the provisions of such settlement agreement.

24-19-106. Existing employment contracts - contract extensions. The provisions of this article shall not apply to any employment contract which was in

existence before July 1, 1993; except that the provisions of this article shall apply to any extension of an existing contract if such contract does not contain any term which would prohibit the application of the provisions of this article to such contract extension.

24-19-107. Open records. If a governmental unit is required under the provisions of this article to make any employment contracts or any information regarding amounts paid or benefits provided under any settlement agreements available to the public, such employment contracts or information shall be deemed to be public records, as such term is defined in section 24-72-202 (6), and shall be subject to the provisions of part 2 of article 72 of this title.

24-19-108. Exceptions. (1) The provisions of this article shall not apply to the following:

(a) Any employee employed by the state government or any other governmental unit who is to hold his or her position of employment during efficient service or until reaching retirement age under an employment system denominated as civil service, classified service, or any similar employment system classification;

(b) Any tenured or tenure track faculty member whose primary job assignment is teaching, research, or both teaching and research and who is employed at a state institution of higher education or any specialty track faculty member whose primary job assignment is clinical care and who is employed at a state institution of higher education;

(c) Any employee employed by a unit of local government whose governing body is directly elected by the electors of such local government; or

(d) Any certified employee who is separated from state service due to lack of work, lack of funds, or reorganization and who receives postemployment compensation or other benefits authorized by a layoff plan established by the state personnel director pursuant to section 24-50-124 (1) (d) (I).

24-19-109. Enforcement of article - civil suit. If any governmental unit or government-financed entity makes any payment or enters into any agreement in violation of this article, the provisions of this article may be enforced through a civil suit filed in a court of competent jurisdiction.

ARTICLE 19.5

Alternative Forms of Payment to the State

24-19.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative forms of payment" means forms of payment, including but not limited to credit, charge, or debit cards, other than cash or check.

(2) "Collector state governmental entity" means any state governmental entity that collects moneys payable to the state that the state governmental entity must remit to one or more other state or local governmental entities.

(3) "Moneys payable to the state" means moneys owed or paid to any state governmental entity other than bail bonds, judicial bonds, or other moneys that the state governmental entity must return to the payer upon the satisfaction of one or more specified conditions by the payer.

(4) "Provider of alternative forms of payment" means a person or entity, including but not limited to an issuer of credit, charge, or debit cards, that provides its customers with the ability to use one or more alternative forms of payment.

(5) "State governmental entity" means the state, any department, agency, or other entity of the state, any state-sponsored institution of higher education, or any authorized agent of any of the foregoing.

24-19.5-102. Acceptance of alternative forms of payment for the payment of moneys payable to the state - allocation of costs. (1) Any state governmental entity responsible for the collection of moneys payable to the state may accept one or more alternative forms of payment for the payment of such moneys in accordance with the provisions of this article.

(2) A collector state governmental entity that chooses to accept one or more alternative forms of payment for the payment of moneys payable to the state that the collector state governmental entity must remit to one or more other governmental entities shall either:

(a) Remit to such other governmental entities the gross amount of any payments made by alternative forms of payment that the collector state governmental entity is required to remit to such other governmental entities notwithstanding the deduction of any moneys from such gross amount by any provider of alternative forms of payment pursuant to a master agreement or other agreement authorized by this article; or

(b) Enter into an intergovernmental agreement with each such other governmental entity regarding the allocation of the costs of accepting such alternative forms of payment.

24-19.5-103. Limitations on convenience fees for the use of alternative forms of payment.

(1) and (2) (Deleted by amendment, L. 2003, p. 1441, § 1, effective April 29,

2003.)

(3) A state governmental entity may impose a convenience fee on persons who use alternative forms of payment, but the amount of any convenience fee imposed on or after April 29, 2003, shall not exceed the actual additional cost incurred by the state governmental agency to process the transaction by alternative form of payment. Any convenience fee on a transaction involving an alternative form of payment shall be imposed in accordance with the master agreement negotiated by the state treasurer and the rules of the alternative payment provider.

24-19.5-104. Master agreements - authority of state treasurer. (1) The state treasurer may negotiate and enter into one or more contractual master agreements with providers of alternative forms of payment in accordance with law. To ensure that state governmental entities accept alternative forms of payment in the most consumer-oriented, uniform, and cost-effective manner possible, any state governmental entity that wishes to accept one or more alternative forms of payment shall do so by joining in any master agreements entered into by the state treasurer with respect to such alternative forms of payment. However, the existence of a master agreement covering a particular alternative form of payment shall not require any state governmental entity to accept such alternative form of payment.

(2) The state treasurer shall enter into no more than one master agreement covering any particular alternative form of payment. Any provider of alternative forms of payment that wishes to have one or more state governmental entities accept the alternative forms of payment that it provides shall be a party to any master agreements covering such alternative forms of payment and shall be subject to the same terms and conditions as all other providers of alternative forms of payment that are parties to such agreements. However, this subsection (2) shall not require the state treasurer to include any particular provider of alternative forms of payment as a party to any master agreement.

(3) Notwithstanding the provisions of subsection (1) of this section, the following state governmental entities may accept alternative forms of payment without joining a master agreement entered into by the state treasurer:

(a) Judicial or legislative state governmental entities that are not part of the executive branch of state government; and

(b) State governmental entities that, on or before August 4, 1999, were accepting one or more alternative forms of payment for the payment of moneys payable to the state and had one or more contracts with one or more providers of alternative forms of payment that enabled the state governmental entity to accept such alternative forms of payment.

(4) No later than sixty days following the end of any given fiscal year, the state treasurer shall report to the joint budget committee the total amount of:

(a) Gross payments payable to the state that were made to state governmental

entities by alternative forms of payment pursuant to master agreements during such fiscal year; and

(b) Net revenues remitted to state governmental entities by providers of alternative forms of payment pursuant to master agreements during such fiscal year.

(5) The state treasurer may promulgate rules governing master agreements, including but not limited to rules governing the negotiation and administration of such agreements. The state treasurer shall promulgate such rules in accordance with article 4 of this title.

24-19.5-105. Provider of alternative forms of payment required to make payment. Any provider of alternative forms of payment that approves a transaction made by an alternative form of payment for the payment of moneys to a state governmental entity shall remit to the state governmental entity the net revenue of the approved transaction due to the state governmental entity.

ARTICLE 19.7

Recovery of Federal Reimbursement for
Costs Associated with Illegal Immigration

24-19.7-101. Legislative declaration. (1) The general assembly finds that:

(a) The costs incurred by Colorado in addressing illegal immigration have increased in the last three years and are placing a burden on the state's budgetary and human resources;

(b) The areas in which these costs have dramatically increased include, but are not limited to, identifying illegal immigrants, processing illegal immigrants through the criminal justice system, incarcerating illegal immigrants, and providing education, medical assistance, health care, and foster care for illegal immigrants;

(c) At the same time, federal funding to assist states in dealing with illegal immigration has decreased, yet the federal government is asking state governments to do even more with their own funds to enforce federal immigration laws and preserve homeland security, which are essentially federal responsibilities; and

(d) The federal government is in arrears on its obligation to reimburse states for costs incurred by the states in dealing with illegal immigration.

(2) The general assembly, therefore, determines that it is necessary for the state of Colorado to protect its interests and seek the recovery of reimbursement available under federal law for the costs incurred by this state in dealing with illegal immigration.

24-19.7-102. Illegal immigration - recovery of state's costs - attorney general to pursue remedies. (1) On and after July 31, 2006, the attorney general, on behalf of the state of Colorado, shall pursue all available remedies to recover any moneys owing from the federal government to the state for the reimbursement of costs incurred by the state in dealing with illegal immigration.

(2) On or before December 31, 2006, and on or before December 31, 2007, the attorney general shall file a written report with the governor, the president of the senate, the speaker of the house of representatives, and the chair of the joint budget committee that details the progress and status of the attorney general's pursuit of remedies.

ARTICLE 19.8

Directive to the Attorney General to Demand
Federal Enforcement of Existing Federal Immigration Laws

24-19.8-101. Legislative declaration. The general assembly hereby finds and declares that the failure to enforce immigration laws at the federal level places an undue burden on state government resources and that there is a limitation on what can be done at the state level to enforce the federal laws and to implement laws at the state level. The general assembly further finds that the state of Colorado spends a disproportionate share of its limited tax revenue on public services and benefits such as health care, law enforcement, criminal defense and incarceration, and education that are provided to illegal aliens as a result of the federal government's failure to enforce immigration laws. Therefore, the Colorado state attorney general shall initiate or join other states in a lawsuit against the United States attorney general to demand the enforcement of all existing federal immigration laws by the federal government.

ARTICLE 19.9

Restrictions on Travel-related
Expenditures by Public Entities

24-19.9-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Covered person" means a member of the board of directors or comparable governing body, officer, or employee of a public entity.

(2) "Institution of higher education" means a state university or college, community college, junior college, local district college, or area vocational school described in title 23, C.R.S.

(3) "Public entity" means any instrumentality of the state that is not an agency of the state and that is not subject to administrative direction by any department, commission, bureau, or agency of the state and includes any service authority, law enforcement authority, special purpose authority, or institution of higher education. "Public entity" shall not include any county, municipality, school district, or any special district formed pursuant to title 32, C.R.S.

(4) "Special purpose authority" shall have the same meaning as set forth in section 24-77-102 (15).

(5) "Travel-related expenditures" means expenditures made by a public entity to cover expenses incurred by a covered person for lodging, meals, and incidental expenses in connection with travel undertaken by the covered person for business-related purposes.

24-19.9-102. Restrictions on travel-related expenditures - covered persons - mandatory reimbursement of excess - exemptions. (1) (a) In the absence of extenuating circumstances, no public entity may make travel-related expenditures on behalf of any covered person in an amount that would exceed, on a daily basis, two times the maximum allowable federal per diem rate that governs the location in which the person is traveling, rounded up to the nearest whole dollar, as determined by the United States general services administration, as of October 1 of the calendar year immediately preceding the fiscal year in which the per diem rate is to be used.

(b) Notwithstanding any other provision of this section, the public entity may make:

(I) Lodging expenditures that are above two times the federal per diem rate for travel-related expenditures in connection with an educational conference where an entity other than the public entity is hosting the conference and the person or entity organizing the conference selected the conference hotel or hotels; or

(II) Travel expenditures that are directly related to a program or a business purpose of a state institution of higher education or a state hospital authority.

(c) In the circumstances described in subparagraph (I) or (II) of paragraph (b) of this subsection (1), the public entity shall make available for review by its governing body or for public inspection, upon the provision of reasonable notice, itemization of any expenditures satisfying such exceptions to the requirements of this section.

(d) Notwithstanding any other provision of this article, "travel-related expenditures" shall not include the actual costs of travel undertaken by the covered person for business-related purposes including, without limitation, airline fares, taxicab fares, automobile rentals, or reimbursement for automobile mileage expenses.

(2) If the public entity makes travel-related expenditures on behalf of a covered person in excess of the amount authorized by subsection (1) of this section, the covered person shall reimburse the fund of the public entity from which such moneys were diverted for the entire sum in excess of such authorized amount.

(3) A public entity shall make no travel-related expenditures on behalf of the spouse or a member of the immediate family of a covered person. In the event a public entity makes travel-related expenditures on behalf of the spouse or a member of the immediate family of a covered person, the covered person shall reimburse the fund of the public entity from which such moneys were diverted for the entire sum spent by the entity on such expenditures.

24-19.9-103. Enforcement - complaint procedure - sanctions. (1) Any person who believes that a violation of section 24-19.9-102 has occurred may file a written complaint with the secretary of state within one hundred eighty days of the date of the alleged violation. The secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint. The administrative law judge shall hold a hearing within fifteen days of the referral of the complaint and shall render a decision within fifteen days of the hearing. The defendant shall be granted an extension of up to thirty days upon the defendant's motion or longer upon a showing of good cause. If the administrative law judge determines that such violation has occurred, such decision shall include any appropriate order, sanction, or relief, including:

(a) An order directing the covered person, or the spouse or a member of the immediate family of a covered person, as applicable, on whose behalf travel-related expenditures were made by the public entity in violation of section 24-19.9-102, to reimburse the fund of the public entity from which such moneys were diverted for some or all of the expenditures in accordance with the requirements of section 24-19.9-102;

(b) Injunctive relief; or

(c) A restraining order to enjoin the continuance of the violation.

(2) The decision of the administrative law judge shall be final and subject to review by the court of appeals, pursuant to section 24-4-106 (11). The secretary of state and the administrative law judge are not necessary parties to the review. The decision may be enforced by the secretary of state or, if the secretary of state does not file an enforcement action within thirty days of the decision, in a private cause of action by the person filing the complaint. Any private action brought under this section shall be brought within one year of the date of the violation in state district court. The prevailing party in a private enforcement action shall be entitled to reasonable attorney fees and costs.

STATE OFFICERS

ARTICLE 20

Governor

PART 1

GOVERNOR

24-20-101. Office at seat of government - secretary. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive; and he shall keep a secretary at said office during his absence.

24-20-102. Journal to be kept - contents. The governor shall cause a journal to be kept in the executive office, in which shall be made an entry of every official act done by him, at the time when done. If, in case of an emergency, acts are done elsewhere than in such office, an entry thereof shall be made in the journal as soon thereafter as possible.

24-20-103. Keep military record - entries. The governor shall cause a military record to be kept, in which shall be made an entry of every act done by him as commander in chief of the militia.

24-20-104. Publication policy - reports to general assembly.

(1) Repealed.

(2) The governor shall review all reports on the operations of all agencies in the executive branch submitted by the heads of the principal departments in accordance with the provisions of section 24-1-136. Upon approval, the governor shall make available to each member of the general assembly, at the opening of each regular session, a copy of each such report, accounting to the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the executive branch of state government. The governor shall notify, in the most cost-effective manner available, each member of the general assembly of the availability of the reports and offering to provide each member with a copy of the reports.

24-20-105. Lieutenant governor - governor - succession to office. Succession to the office of the lieutenant governor and to the office of the governor shall be as provided

for in section 13 of article IV of the state constitution.

24-20-106. Governor may employ counsel. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, with the consent of the attorney general, he may employ counsel to assist the proper officer to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, the governor may employ additional counsel to assist in the cause.

24-20-107. Expenses allowed on certificate of governor. Expenses incurred under section 24-20-106 and in causing the laws to be executed may be allowed by the governor and upon his certificate shall be audited and paid from any money in the treasury not otherwise appropriated.

24-20-108. Action by governor - emergency proclamation. Upon recommendation of the coordinator of environmental problems, the governor may, after thorough investigation and evaluation of the situation, take such action as may be necessary to prevent or minimize any significant risk of serious danger to the public health arising from any activity, condition, or the use of any material. In such event, the governor may issue an emergency proclamation and may order a moratorium or prohibition which may restrict, limit, or control such activity, condition, or use; but no such order shall be effective for an initial period of longer than fifteen days, and the effective period of such order shall not be extended for more than fifteen days beyond the initial period.

24-20-109. Right of senate to reconfirm new governor's appointment of reappointed executive director. When the executive director of a principal department of state government is appointed by the governor with the consent of the senate to serve at the pleasure of the governor, he shall be subject to reconfirmation of the senate if, after initial election of a new governor, he is reappointed to the same position by such new governor.

24-20-110. Transfer of employees to office of innovation and technology. On July 1, 1999, certain employees of the Colorado advanced technology institute prior to said date shall be transferred to and become employees of the office of technology and

innovation created in the office of the governor. Any such employees who are classified employees in the state personnel system at the time of the transfer shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations. The transfer of employees pursuant to this section shall be made in accordance with the provisions of section 12 of House Bill 99-1359, enacted at the first regular session of the sixty-second general assembly.

24-20-111. Climate change position created - duties - report. (1) (a) There shall be a position created by the governor within the executive branch, which position must include the term "climate change" in its title, to assess climate change issues in the state.

(b) The organizational location of the position created under paragraph (a) of this subsection (1) of this section shall be at the discretion of the governor and may utilize existing resources as appropriate. In order to reduce the costs associated with creating the climate change position, nothing in this section precludes the person named to the position established under paragraph (a) of this subsection (1) of this section from holding other titles or performing other functions within any department or office of the executive branch.

(2) The duties of the position created pursuant to subsection (1) of this section include, at a minimum:

(a) Development and periodic update of a climate action plan or similar document that sets forth a strategy, including specific policy recommendations, that the state could use to address climate change and reduce its greenhouse gas emissions; and

(b) Collaboration with other entities regarding climate change preparedness studies.

(3) (a) The governor or his or her designee shall submit an annual report to the house agriculture, livestock, and natural resources committee, the house transportation and energy committee, and the senate agriculture, natural resources, and energy committee, or any successor committees, on climate change issues generally, the current climate action plan developed under this section, and the specific ways in which climate change affects the state. The report may address, as appropriate, the correlations between climate change and wildfires, bark beetle infestation, snowpack, water storage, drought, and statewide emissions of greenhouse gases. The report shall include information regarding efforts to reduce emissions of gases and to reform practices known to exacerbate climate change effects. The report shall also include additional prospective proposals to prepare the state for the effects of climate change and proposals to further reduce the factors that contribute to climate change within Colorado.

(b) The development of a climate action plan in accordance with this section must take into account previous action plans developed by the state and goals and directives contained in executive orders issued by the governor.

(c) The report required by this subsection (3) is exempt from the automatic expiration described in section 24-1-136 (11).

24-20-112. Implementation of section 16 of article XVIII of the Colorado constitution - list of banned substances - cultivation and laboratory practices - education oversight and materials. (1) The governor shall designate a state agency to create a list of substances that may not be used in the cultivation or processing of marijuana as authorized pursuant to article 43.4 of title 12, C.R.S. The designated agency may consult with other state agencies in compiling the list. The state agency shall promulgate rules for the list of substances that may not be used in the cultivation of marijuana.

(2) The governor shall designate a state agency to work with a private advisory group to develop good cultivation and handling practices for the marijuana industry. The designated agency is encouraged to assist in the formation of a private advisory group. If a private advisory group develops good cultivation and handling practices, an entity licensed pursuant to article 43.4 of title 12, C.R.S., that follows those practices may include a statement of compliance on its label after receiving certification of compliance. The designated agency may consult with other state agencies to receive technical assistance.

(3) The governor shall designate a state agency to work with a private advisory group to develop good laboratory practices for the retail marijuana industry. The designated agency is strongly encouraged to assist in the formation of a private advisory group. The designated agency may consult with other state agencies to receive technical assistance.

(4) The governor shall designate a state agency that must establish an educational oversight committee composed of members with relevant experience in marijuana issues. The committee shall develop and implement recommendations for education of all necessary stakeholders on issues related to marijuana use, cultivation, and any other relevant issues. The committee shall encourage professions to include marijuana education, if appropriate, as a part of continuing education programs.

(5) The governor shall designate a state agency that shall establish educational materials regarding appropriate retail marijuana use and prevention of marijuana use by those under twenty-one years of age. In establishing educational materials, to the greatest extent possible, the state agency shall utilize established best practices and existing federal and state resources.

PART 2

INSURRECTION - FIREARMS PROHIBITED

24-20-201. Insurrection - firearms prohibited. (Repealed)

24-20-202. Permit to bear arms. (Repealed)

24-20-203. Constitutional rights preserved. Nothing in this part 2 shall be construed so as to call in question the right of any person to keep and bear arms in the defense of his home, person, or property or in aid of the civil power when thereto legally summoned.

24-20-204. Violation - penalty. (Repealed)

PART 3

AN EMERGENCY CAUSED BY OR RELATED TO THE USE OF ENERGY

24-20-301 to 24-20-310. (Repealed)

PART 4

OFFICE OF ENERGY CONSERVATION

24-20-401 to 24-20-409. (Repealed)

ARTICLE 21

Secretary of State - Department of State

PART 1

GENERAL PROVISIONS

24-21-101. Office at seat of government - duties - bond. (1) The secretary of state shall keep office at the seat of government and perform all the duties which may be

required of the secretary of state by law. The secretary of state shall have charge of and keep all the acts and resolutions of the territorial legislature and of the general assembly of the state, the enrolled copy of the constitution of the state, and all bonds, books, records, maps, registers, and papers of a public character which may be deposited, to be kept in the office. The secretary of state shall give a bond to the state of Colorado in the sum of ten thousand dollars, conditioned for the faithful discharge of the duties of the office, said bond to be approved by the governor and attorney general and to be deposited in the office of the state treasurer.

(2) The secretary of state shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

24-21-102. Custody of state property. (Repealed)

24-21-103. Countersign commissions - record. All commissions issued by the governor shall be countersigned by the secretary of state, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and term of office.

24-21-104. Fees of secretary of state. (1) (a) It is the duty of the secretary of state to charge fees, which shall be determined and collected pursuant to subsection (3) of this section, for filing each body corporate and politic document, for filing each facsimile signature, for each notary public's commission, for each foreign commission, for each official certificate, for administering each oath, for all transcripts or copies of papers and records, computer tapes, microfilm, or microfiche, and for other papers officially executed and other official work that may be done in the secretary of state's office. The secretary of state shall not deliver any such commission, file for record any certificate, or do any such official work until the fee or sum so fixed to be collected therefor has first been paid. At the time of service of any subpoena upon the secretary of state or any of his or her deputies or employees a fee of fifty dollars and a fee of ten dollars for meals and mileage at the rate prescribed for state officers and employees in section 24-9-104 for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena, shall be paid to the department of state cash fund. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, to the department of state cash fund, the sum of forty-four dollars for each day of attendance to cover the expenses of the person named in the subpoena.

(b) Notwithstanding the amount specified for any fee in paragraph (a) of this subsection (1), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(2) Except as otherwise provided by statute, the secretary of state is authorized to maintain an accounts receivable system for the collection of fees charged for papers officially executed and all other official work which may be done in his office.

(3) (a) This subsection (3) shall apply, where referenced by statute, to all fees charged by the secretary of state.

(b) The department of state shall adjust its fees so that the revenue generated from the fees approximates its direct and indirect costs, including the cost of maintenance and improvements necessary for the distribution of electronic records; except that the department may reduce its fees to generate revenue in an amount less than costs if necessary pursuant to section 24-75-402 (3). Such costs shall not include the costs paid by the amounts appropriated by the general assembly from the general fund to the department of state for elections pursuant to section 24-21-104.5. Such fees shall remain in effect for the fiscal year following the adjustment. All fees collected by said department shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund, which fund is hereby created. All moneys credited to the department of state cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund. The moneys credited to the department of state cash fund shall be available for appropriation by the general assembly to the department of state in the general appropriation bill or pursuant to section 24-9-105 (2).

(c) Beginning July 1, 1984, and each July 1 thereafter, whenever moneys appropriated to the department of state during the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the department of state for the next fiscal year, and such amount shall not be raised from fees collected by the department of state. If a supplemental appropriation is made to the department of state for its activities, the fees of the department of state shall be adjusted by an additional amount that is sufficient to compensate for such supplemental appropriation. Funds appropriated to the department of state in the general appropriation bill from the department of state cash fund shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by the department of state.

(d) (I) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, for the fiscal year beginning July 1, 1984, the general assembly, acting by bill, may direct the state treasurer to deduct from the department of state cash fund any

unappropriated moneys in said fund and to credit such moneys to the general fund.

(II) Repealed.

(III) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on July 1, 1997, the state treasurer shall deduct one million dollars from the department of state cash fund and transfer such sum to the state rail bank fund created in section 43-1-1309, C.R.S.

(IV) and (V) Repealed.

(VI) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on July 1, 1998, the state treasurer shall deduct three million dollars from the department of state cash fund and transfer such sum to the state public school fund created in section 22-54-114, C.R.S.

(VII) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, in addition to any transfers authorized in H.B. 98-1234, on July 1, 1998, the state treasurer shall deduct one million dollars from the department of state cash fund and transfer such sum to the state public school fund created in section 22-54-114, C.R.S.

(VIII) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on July 1, 1998, the state treasurer shall deduct one million seven hundred thousand dollars from the department of state cash fund and transfer such sum to the children's basic health plan trust fund created in section 25.5-8-105, C.R.S.

(IX) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on July 1, 1998, the state treasurer shall deduct one million dollars from the department of state cash fund and transfer such sum to the Colorado tourism promotion fund created in section 24-32-1306.

(X) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on March 27, 2002, the state treasurer shall deduct one million two hundred thousand dollars from the department of state cash fund and transfer such sum to the general fund.

(XI) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on March 5, 2003, the state treasurer shall deduct two million two hundred thousand dollars from the department of state cash fund and transfer such sum to the general fund.

(XII) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on March 5, 2003, the state treasurer shall deduct five hundred thousand dollars from the department of state cash fund and transfer such sum to the general fund.

(XII.5) Notwithstanding any provision of paragraph (b) of this subsection (3) to the contrary, on April 20, 2009, the state treasurer shall deduct two million one hundred seventy-five thousand dollars from the department of state cash fund and transfer such sum to the general fund.

(XIII) to (XV) Repealed.

(e) (Deleted by amendment, L. 97, p. 1484, § 1, effective July 1, 1997.)

(f) Repealed.

(g) All moneys collected by the office of the secretary of state pursuant to section 4-9-525, C.R.S., shall be transferred to the state treasurer and credited to the department of state cash fund pursuant to this subsection (3).

(h) (Deleted by amendment, L. 98, p. 1331, § 42, effective June 1, 1998.)

(i) and (j) Repealed.

24-21-104.5. General fund appropriation - cash fund appropriation - elections. The general assembly is authorized to appropriate moneys from the department of state cash fund to the department of state to cover the costs of the local county clerk and recorders relating to the conduct of general elections and November odd-year elections. If the amount of moneys in the department of state cash fund is insufficient to cover such costs, the general assembly may appropriate additional general fund moneys to cover such costs after exhausting all moneys in the department of state cash fund. The intent of the general assembly is to authorize the appropriation of department of state cash fund moneys and general fund moneys to the department of state to offset some of the costs of local county clerk and recorders associated with the additional election duties and requirements resulting from the passage of section 20 of article X of the state constitution and from the increased number of initiatives that are being filed.

24-21-104.7. Acceptance of gifts and grants. The department of state may receive and expend any gift or grant, including federal funds, if such gift or grant involves no state funds and is available for the purpose of exercising the powers and performing the duties of the secretary of state as specified in section 1-1-107, C.R.S. Subject to appropriation by the general assembly, the department may provide matching funds when necessary to receive any such gift or grant.

24-21-105. Deputy - responsibility. The secretary of state may appoint a deputy to act for him if he deems it necessary, who shall have full authority to act in all things relating to the office. The secretary shall be responsible for all acts of such deputy.

24-21-106. May employ clerical assistance. The secretary of state is hereby authorized to employ, in addition to his deputy, clerical assistants pursuant to section 13 of article XII of the state constitution.

24-21-107. Publications.

(1) Repealed.

(2) Publications by the secretary of state circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136. Any fee collected pursuant to this subsection (2) shall be deposited in the department of state cash fund created in section 24-21-104 (3).

24-21-108. Hearings. The secretary of state, when authorized by law to conduct a hearing, shall conduct such hearing in conformance with the provisions of section 24-4-105; except that hearings related to petitions or certificates of designation or nomination filed under section 1-4-901, C.R.S., shall not be required to be conducted under the provisions of section 24-4-105.

24-21-109. Documents in court proceedings - designation of person to attend court proceedings. Subject to provisions of section 13-25-115, C.R.S., documents from the office of secretary of state used in court proceedings shall be acknowledged, exemplified, verified, or attested to in a manner which shall make unnecessary the personal appearance of the secretary of state in a court proceeding to acknowledge, exemplify, verify, or attest to the validity of such documents. The secretary of state may designate a person to attend court proceedings if the secretary of state is subpoenaed for the purpose of acknowledging, exemplifying, verifying, or attesting to the validity of documents furnished by that office. The revenues derived from fees as established in section 24-21-104 (1) shall be deposited in the department of state cash fund created in section 24-21-104 (3).

24-21-110. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department of state or any authorized agent of such department shall require the applicant's name, address, and social security number.

(2) The department of state or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or

warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department of state, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department of state or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department of state shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department of state and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department of state is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department of state or any authorized agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-21-111. Electronic filing - authority - electronic access - passwords - rules. (1) (a) Notwithstanding any provision of law to the contrary, the secretary of state may require any filing to be made by electronic means as determined by the secretary of state.

(b) In order to ensure the security of the secretary of state's on-line business filing system, the secretary shall implement, under such conditions as the secretary may determine, a password-protected system for and take appropriate actions to address fraudulent activities against altering data in any filings, updates, or other filing requirements under title 7, C.R.S., while still allowing for access to and retrieval of publicly available records, including a certificate of good standing, without a password.

(2) Where a document is stored by the secretary of state or the department of state and available to the public by electronic means, the secretary of state, to the extent it is reasonable and feasible, may designate electronic access as the sole means of access to the document.

(3) The secretary of state may use a phase-in period or any other method to mitigate hardship caused by mandatory electronic services that are required pursuant to subsections (1) and (2) of this section. The secretary of state may provide exceptions from such mandatory electronic services where hardship or other good cause is shown. If the

secretary of state requires any filing to be made by electronic means or designates electronic access as the sole means of access to a document, the secretary of state shall assure that such filing may be made or such access attained by means that do not require use by the public of customized or specially designed electronic hardware or software.

(4) As used in this section, unless the context otherwise requires:

(a) "Document" means a document, record, or other information.

(b) "Filing" means a document required or permitted by law to be filed with the department of state or the secretary of state or a document required or permitted by law to be delivered to the department or the secretary of state and filed by the department or the secretary of state.

24-21-111.5. Electronic filing system - improvements - integration with other systems. (1) At the earliest practicable date, the secretary of state shall develop and implement enhancements to the on-line business filing information systems. The enhancements must include at least the following:

(a) Enhancements to user accounts that:

(I) Allow for the association of multiple business records in one account;

(II) Allow a user to file multiple documents at one time;

(III) Create a system that allows a user to pay for multiple filings at one time; and

(IV) Create, at the secretary's discretion, the ability for a user to store payment information, view the user's balance, view the user's transaction history, and add money to the user's account;

(b) Enhancements for registered agents and to record management systems that allow a registered agent to quickly identify the business entities and charitable organizations for which the registered agent is listed and to determine when reports are due;

(c) Enhancements for external certifications that allow users to obtain certified documents, certificates of fact, and any other similar authentications that the secretary deems necessary;

(d) Enhancements that allow for the on-line filing of documents that would guide the user through the filing process;

(e) Enhancements that allow for the integration of any documents filed pursuant to title 7, C.R.S., with any documents filed pursuant to article 16 of title 6, C.R.S., as well as any changes the secretary deems necessary to implement such integration, including changes involving the filing of registration statements, amendments, and renewals, and changes to the search function; and

(f) Enhancements that allow users greater search functionality, provide more useful and specific search results, and allow for greater usability.

24-21-112. Electronic verification program - notice - definitions. (1) As used in this section:

(a) "Electronic verification program" or "e-verify program" means the electronic employment verification program that is authorized in 8 U.S.C. sec. 1324a and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(b) "Employer" means a person transacting business in Colorado who, at any time, employs another person to perform services of any nature and who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(2) The secretary of state, in consultation with the department of labor and employment, shall post on the secretary of state's web site information pertaining to the prohibition against hiring or continuing to employ an unauthorized alien, as defined in 8 U.S.C. sec. 1324a (h) (3), and the availability of and the requirements for participation in the electronic verification program as a means for employers to verify the work eligibility status of new employees. The web site posting required by this subsection (2) shall appear in the same format as required by section 8-2-124 (2) (a), C.R.S., and shall appear in a conspicuous location on the secretary of state's web site. The secretary of state's web site shall also provide a link to the e-verify web site available through the internet portal for the United States citizenship and immigration services, or its successor agency.

24-21-113. Secretary of state business software licensing - business computer systems maintenance and enhancement cash fund. (1) The secretary of state may charge fees for the licensing or sale of business and licensing software developed by the department of state.

(2) The secretary of state shall transmit all fees collected pursuant to subsection (1) of this section to the state treasurer, who shall credit them to the business computer systems maintenance and enhancement cash fund, which fund is hereby created. The secretary of state shall use the moneys credited to the fund only for the maintenance or enhancement of the department of state's business computer systems. Moneys transferred to the fund shall not be deposited in or transferred to the general fund of this state or any other fund. The moneys credited to the fund are available for appropriation by the general assembly to the department of state in the general appropriation bill.

24-21-114. Secretary of state collection of business information. Beginning thirty days after January 1, 2014, the secretary of state shall request that each individual who files documents with the secretary of state pursuant to part 3 of article 90 of title 7, C.R.S., submit information to the secretary of state upon initial registration of a business and when updating a business registration. The secretary of state shall request that each

reporting entity, as that term is defined in section 7-90-102 (58), C.R.S., to which the filing relates, submit the following information about the reporting entity: Gender; race, including whether the person is Latino, African American, Asian, Anglo, native American, or other; veteran status; whether the reporting entity is a person with a disability; and the national American industry classification system code or its successor code of the reporting entity's business, if applicable. The individual is not required to submit the information. The secretary of state shall make the information available to the public on the secretary of state's web site in a searchable manner by the information submitted.

Editor's note: This section is effective January 1, 2014.

PART 2

ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, A SEXUAL OFFENSE, OR STALKING

24-21-201 to 24-21-214. (Repealed)

PART 3

REDACTION OF TAX IDENTIFICATION NUMBERS

24-21-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Redact" means to obscure information contained in a copy of a secured transaction record.

(2) "Secured transaction record" means a record that has been filed in the office of the secretary of state pursuant to part 5 of article 9 or article 9.5 or 9.7 of title 4, C.R.S.

(3) "Tax identification number" means a grouping of numerical digits in a secured transaction record that the secretary of state deems likely to be the social security number or individual taxpayer identification number of an individual identified in such secured transaction record.

24-21-302. Redaction of tax identification number from secured transaction records - liability - rules. (1) The secretary of state may redact any tax identification

number contained in a secured transaction record and, for this purpose, may use commercially available or other redaction software or other methods determined by the secretary of state to be cost effective.

(2) Subject to the provisions of section 4-9-522, C.R.S., the secretary of state shall retain the unredacted original of a secured transaction record that contains a tax identification number. Notwithstanding any provision of part 2 of article 72 of this title or any other provision of law, the secretary of state shall not be required to open any such unredacted original to public inspection; except that a complete copy of the unredacted original of such secured transaction record shall be furnished upon application to the secretary of state for a certified copy of that specific secured transaction record.

(3) (a) Any person who believes that the secretary of state has redacted information in a copy of a specific secured transaction record other than the social security number or individual taxpayer identification number of an individual identified in such secured transaction record may apply to the secretary of state for the restoration of such redacted information.

(b) If, upon application pursuant to paragraph (a) of this subsection (3), the secretary of state determines that such redacted information is not the social security number or individual taxpayer identification number of an individual identified in such secured transaction record, the secretary of state shall restore such redacted information so that the information is perceivable, accessible, and open to public inspection.

(c) Nothing in this section shall preclude the restoration of redacted information that the secretary of state determines should not have been redacted.

(4) The secretary of state shall not be liable for redacting or failing to redact a tax identification number pursuant to this section.

(5) The secretary of state may promulgate rules in accordance with article 4 of this title to administer the provisions of this section, including any rules necessary to establish procedures for requesting the redaction of a tax identification number or the restoration of redacted information that is not the social security number or individual taxpayer identification number of an individual identified in such secured transaction record.

ARTICLE 22

State Treasurer

24-22-101. Oath - bond and sureties - conditions of bond. (1) On or before the second Tuesday in January after his election and before entering upon his duties, the state treasurer shall take and subscribe to the oath required by the state constitution and shall give a bond to the people of the state of Colorado in the sum of one million dollars, with

not less than ten individual sureties or one or more surety companies authorized to do business in this state. The bond and each surety shall be approved by the governor and the attorney general and held in the custody of the secretary of state.

(2) The conditions of said bond shall be in substance that the state treasurer and all persons employed in the treasury department under his supervision shall faithfully discharge their respective duties and trusts and that the state treasurer shall be held responsible against all risks and losses whatsoever for all state moneys coming into his hands or received by the treasury department.

(3) If the bond is furnished by one or more surety companies, the entire premium therefor shall be paid by the state, and the general assembly shall appropriate the amount thereof.

(4) Whenever the governor, with the concurrence of the attorney general, deems the surety on said bond to be insufficient for the said sum of one million dollars, he may demand, and the state treasurer shall give, additional bond with sureties, at the cost of the state, to be approved by the governor and the attorney general.

24-22-102. State treasurer may administer oaths. The state treasurer has power to administer all oaths and affirmations required by law in matters concerning the duties of his office.

24-22-103. Seal of office. The state treasurer shall keep a seal of office, which shall be used to authenticate all writings, instruments, and documents certified from his office.

24-22-104. Access to all state offices. The state treasurer shall have full and free access to the offices of all departments, institutions, and agencies of the state government for the inspection and examination of such books, records, accounts, and papers as concern any of his duties.

24-22-105. Acceptance of gifts, legacies, and devises. The state treasurer shall accept gifts, legacies, and devises of money and other property to the state, in the name of and on behalf of the state, with the approval of the governor and subject to the disposition thereof by the general assembly in accordance with the direction of the donor or devisor.

24-22-106. Care of records - delivery to successor in office. The state treasurer

shall exercise diligence and care in the safekeeping and preservation of all books, records, papers, documents, and other things pertaining to his office and in the custody and safekeeping of all securities of which he is the official custodian and shall deliver the same to his successor in office or to any person authorized by law to receive the same.

24-22-107. Duties and powers of state treasurer. (1) The state treasurer shall prepare and submit to the governor a quarterly report showing the condition of the state treasury, the amount of state moneys on hand and on deposit, the amount of securities held in custody, a list of the funds and accounts carried on the records of the treasury department, and such other information as he may deem appropriate.

(2) He shall furnish information in writing to the governor or either house of the general assembly, whenever requested, upon any subject pertaining to the treasury department or touching upon any duty of his office.

(3) Repealed.

(4) He may issue publications circulated in quantity outside the executive branch of state government in accordance with the provisions of section 24-1-136.

(5) He shall perform any other duty which may be required by law.

(6) The state treasurer shall be the state's cash management officer responsible for the efficient management of all state cash and shall perform the duties necessary to carry out such function, in consultation with the governor.

(6.5) The state treasurer may provide technical assistance to any state or local governmental entity, upon the request of such entity, concerning the efficient management of the entity's public funds. Such technical assistance may include, but is not limited to, providing advice or recommendations relative to cash management, investments, and banking services. The treasurer shall not be liable to any state or local governmental entity for any loss of public funds resulting from the technical assistance provided to such entity by the treasurer if the treasurer, in the good faith performance of the treasurer's duties as a public official, has complied with the standards established in part 6 of article 75 of this title for the investment of public funds in securities. A state or local governmental entity may reimburse the treasurer for any reasonable travel expenses incurred by the treasurer in providing technical assistance pursuant to this subsection (6.5) to such state or local governmental entity.

(7) The state treasurer shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

24-22-108. Willful neglect of duty - penalty. If the state treasurer willfully neglects or refuses to perform any duty imposed upon him by law, or is guilty of bribery,

compensation for past official behavior, soliciting unlawful compensation, or trading in public office, or accepts or receives any fee or reward not allowed by law for the performance of any legal duty, or knowingly does any act not authorized by law or in any manner other than as required by law, he is guilty of a misdemeanor in office and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, and, upon any such conviction, the court may adjudge that he be removed from office.

24-22-109. Willful refusal to pay warrant - penalty. If the state treasurer willfully refuses to pay any warrant lawfully drawn upon him, he shall forfeit and pay to the holder thereof four times the amount thereof, which forfeiture may be recovered by action of debt against him and the sureties on his official bond, or otherwise according to law, and he is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than one year.

24-22-110. Personal profit on state moneys unlawful - penalty. Any person holding the office of state treasurer or any person employed in the department of the treasury who, directly or indirectly, accepts or receives from any person, for himself or herself or otherwise than on behalf of the state, any fee, reward, or compensation, either in money or other property or thing of value, in consideration of the deposit or investment of state moneys with any such person or in consideration of any agreement or arrangement touching upon the use of state moneys commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-22-111. Unlawful acts of other persons - penalty. Any person who, directly or indirectly, pays or gives to any person holding the office of state treasurer or to any person employed in the treasury department under the supervision of the state treasurer any fee, reward, or compensation, either in money or other property or thing of value, in consideration of the deposit or investment of state moneys with any person or in consideration of any agreement or arrangement touching upon the use of state moneys commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-22-112. Power of state treasurer to issue and sell notes. (Repealed)

24-22-113. Power of state treasurer to loan money to the Colorado financial

reporting system project - repeal. (Repealed)

24-22-114. Business training and promotion cash fund - repeal. (Repealed)

24-22-115. Tobacco litigation settlement cash fund - health care supplemental appropriations and overexpenditures account - creation. (1) (a) There is hereby created in the state treasury the tobacco litigation settlement cash fund. The cash fund shall consist of all moneys transmitted to the state treasurer in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver other than moneys credited to the tobacco litigation settlement trust fund pursuant to section 24-22-115.5. Except as provided in subsection (2) of this section, all interest derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund; except that, beginning with the fiscal year 2001-02, and each fiscal year thereafter, all interest derived from the deposit and investment of moneys in the cash fund shall be credited to the breast and cervical cancer prevention and treatment fund created pursuant to section 25.5-5-308, C.R.S. Except as provided in subsection (2) of this section, all moneys in the cash fund shall be subject to appropriation by the general assembly for such purposes as may be authorized by law in accordance with the terms of the settlement agreements and the consent decree. Except as provided in subsection (2) of this section, at the end of the 2004-05 and 2005-06 fiscal years, but prior to the making of any transfer of moneys from the cash fund to the general fund at the end of the fiscal year as required by this paragraph (a), an amount needed, up to one million dollars, to pay the state's share of the annual funding required by the "Home- and Community-based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S., shall be transferred from the cash fund to the Colorado autism treatment fund created pursuant to section 25.5-6-805, C.R.S. Except as provided in subsection (2) of this section, at the end of any fiscal year commencing on or after July 1, 2004, but before July 1, 2006, all unexpended and unencumbered moneys in the cash fund, all moneys in the cash fund not appropriated for the following fiscal year, and all moneys in the cash fund not required for transfers pursuant to section 24-75-1104.5 (1) in the following fiscal year shall be transferred to the general fund.

(b) Except as provided in subsection (2) of this section, for the 2006-07 fiscal year

and the 2007-08 fiscal year, an amount needed, up to one million dollars, to pay the state's share of the annual funding required by the "Home- and Community-based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S., shall be transferred from the tobacco litigation settlement cash fund to the Colorado autism treatment fund created pursuant to section 25.5-6-805, C.R.S. The amount to be transferred shall be taken into account when determining the amount of cash fund moneys available for allocation to tobacco settlement programs pursuant to section 24-75-1104.5 (1.5) and shall be transferred at the end of the 2006-07 fiscal year and at the end of the 2007-08 fiscal year. On and after July 1, 2011, all unexpended and unencumbered moneys in the cash fund shall remain in the fund until expended in order to reduce the share of allocations made from current-year receipts of settlement moneys as required by section 24-75-1104.5 (1.3).

(2) (a) There is hereby created in the state treasury, as an account within the tobacco litigation settlement cash fund established pursuant to subsection (1) of this section, the tobacco settlement defense account, which shall be used by the department of law: To defend the state in lawsuits arising out of challenges to or arising under the provisions of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver, or duly enacted Colorado laws related to the tobacco litigation settlement, including, but without limitation, this section, sections 24-22-115.5 and 24-22-116, and parts 2 and 3 of article 28 of title 39, C.R.S.; to defend the state against claims of entitlement to tobacco litigation settlement moneys by any person, as defined in section 2-4-401 (8), C.R.S.; to enforce and defend all rights and obligations of the state under said settlement agreements, decree, or laws; and to resolve any dispute with any participating manufacturer, as defined in section 39-28-302 (6), C.R.S., or nonparticipating manufacturer, as defined in section 39-28-302 (5), C.R.S., that arises under the provisions of said settlement agreements, decree, or laws. Notwithstanding the provisions oftlineof subsection (1) of this section and section 24-22-115.5, the tobacco settlement defense account consists of all tobacco litigation settlement moneys received by the attorney general and transmitted to the state treasurer to compensate the state for attorney fees, court costs, or other expenses incurred by the state in obtaining the tobacco litigation settlement, all tobacco litigation settlement moneys transferred to the account as required by section 24-75-1104.5 (1) (a), and all interest derived from the deposit and investment of moneys in the tobacco settlement defense account. Any moneys received by the state treasurer to compensate the state for attorney fees, court costs, or other expenses,

including all interest derived from the deposit and investment of such moneys after receipt by the state treasurer, shall be transferred to the tobacco settlement defense account for use in accordance with the provisions of this subsection (2).

(b) All moneys in the tobacco settlement defense account shall be subject to annual appropriation by the general assembly to the department of law. Notwithstanding the provisions of subsection (1) of this section, at the end of any fiscal year, all unexpended and unencumbered moneys and all moneys not appropriated for the following fiscal year in the tobacco settlement defense account shall remain in the tobacco settlement defense account to be used for the purposes set forth in this subsection (2).

(c) (I) Notwithstanding any provision of this subsection (2) to the contrary, on March 27, 2002, the state treasurer shall deduct three million five hundred thousand dollars from the tobacco settlement defense account in the tobacco litigation settlement cash fund and transfer such sum to the general fund.

(II) In order to restore the amount transferred from the tobacco settlement defense account in the tobacco litigation settlement cash fund pursuant to subparagraph (I) of this paragraph (c), moneys from the general fund shall be transferred to the tobacco settlement defense account in accordance with section 24-75-217.

(d) Notwithstanding any provision of this subsection (2) to the contrary, on March 5, 2003, the state treasurer shall deduct thirty-three million two hundred twenty-six thousand seven hundred seventy-eight dollars from the tobacco litigation settlement cash fund and transfer such sum to the general fund.

(e) Notwithstanding any provision of this subsection (2) to the contrary, on June 5, 2003, the state treasurer shall deduct five million six hundred fifty-one thousand one hundred five dollars from the tobacco litigation settlement cash fund and transfer such sum to the general fund for use in the 2002-03 fiscal year.

(f) Notwithstanding any provision of this subsection (2) to the contrary, upon receipt of any moneys paid to the state treasurer in April 2003 in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver, other than attorney fees and costs, the state treasurer shall deduct twenty-one million six hundred sixty thousand six hundred nine dollars of such amount from the tobacco litigation settlement cash fund and transfer such sum to the general fund for use in the 2002-03 fiscal year.

(g) Repealed.

(3) (Deleted by amendment, L. 2007, p. 141, § 1, effective March 22, 2007.)

(4) (a) The health care supplemental appropriations and overexpenditures account is hereby created in the tobacco litigation settlement cash fund. Notwithstanding any other provision of this section or section 24-22-115.5, upon receipt of any moneys paid to the state treasurer in April 2007 in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver, other than attorney fees and costs, the state treasurer shall credit to the account twenty-four million four hundred thousand dollars of such moneys not required to be allocated to tobacco settlement programs for the 2007-08 fiscal year pursuant to section 24-75-1104.5 (1). All interest and income earned on the deposit and investment of moneys in the account shall be credited to the breast and cervical cancer prevention and treatment fund created in section 25.5-5-308, C.R.S. Six million two hundred thousand dollars of the moneys in the account may be used only for overexpenditures or supplemental appropriations to the children's basic health plan trust created pursuant to section 25.5-8-105, C.R.S., for the 2006-07 and 2007-08 fiscal years or, to the extent not needed for that purpose, for overexpenditures or supplemental appropriations for the Colorado benefits management system for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years. All other moneys in the account may be used only for overexpenditures or supplemental appropriations for the Colorado benefits management system for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years. All moneys in the account not appropriated for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years pursuant to a supplemental appropriations bill enacted by the general assembly or approved for overexpenditure by a majority of the members of the joint budget committee of the general assembly as evidenced by the receipt by the state controller of written confirmation of such approval pursuant to section 24-75-111 (1) (c) (I) (C) on or before April 15, 2010, shall be transferred to the general fund on April 16, 2010.

(b) An overexpenditure made from the health care supplemental appropriations and overexpenditures account pursuant to paragraph (a) of this subsection (4) shall be made pursuant to, and subject to the requirements of, section 24-75-111. If the general assembly does not enact a supplemental appropriation for the full amount of such an overexpenditure during the next regular session following the overexpenditure, the unreleased portion of the succeeding fiscal year's appropriation restricted pursuant to section 24-75-111 (4) (a) shall revert, upon adjournment of the general assembly sine die, to the tobacco litigation settlement cash fund and be allocated as specified in this section, section 24-22-115.5, and part 11 of article 75 of this title.

(c) Notwithstanding any provision of this section to the contrary, the state treasurer shall transfer to the general fund any unexpended and unencumbered moneys remaining in the health care supplemental appropriations and overexpenditures account as of June 30, 2012.

24-22-115.5. Legislative declaration - tobacco litigation settlement trust fund - creation. (1) The general assembly hereby finds and declares that:

(a) The purpose of the tobacco litigation settlement trust fund created by this section is to provide a permanent source of tobacco litigation settlement moneys so that all programs or funds authorized by law to be funded with tobacco litigation settlement moneys can be fully funded without appropriations of general fund moneys; and

(b) It is the intent of the general assembly that all interest derived from the deposit and investment of moneys in the tobacco litigation settlement trust fund be retained in the trust fund until such time as actuarially sound projections of future interest earnings indicate that the interest to be derived from the deposit and investment of moneys in the trust fund will be sufficient to fully fund any programs or funds authorized by law to be funded by tobacco litigation settlement moneys.

(2) (a) There is hereby created in the state treasury the tobacco litigation settlement trust fund. The principal of the trust fund shall consist of:

(I) The first thirty-three million dollars of all moneys, other than attorney fees and costs, paid to the state treasurer in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.,* Case No. 97 CV 3432, in the district court for the city and county of Denver;

(II) For the 2005-06 fiscal year, up to twenty-one percent of the moneys, other than attorney fees and costs, paid to the state treasurer in accordance with the settlement agreements and the consent decree in the preceding fiscal year, less the amount transferred to the general fund pursuant to section 24-22-115 (3).

(III) (Deleted by amendment, L. 2004, p. 1706, § 2, effective June 4, 2004.)

(IV) Repealed.

(a.5) Repealed.

(a.7) (I) The principal of the tobacco litigation settlement trust fund shall not be expended or appropriated for any purpose; except that moneys in the trust fund may be appropriated to the children's basic health plan trust as provided in section 24-75-1104.5 (1) (c). All interest derived from the deposit and investment of moneys in the trust fund

shall be credited to the trust fund. Such interest shall become subject to appropriation by the general assembly for the funding of any programs or funds authorized by law to be funded by tobacco litigation settlement moneys at such time as the state auditor certifies that actuarially sound projections of future interest earnings indicate that such interest will be sufficient to fully fund such programs and funds. No part of such trust fund, principal or interest, shall be transferred to the general fund or any other fund or used or appropriated except as provided in this section.

(II) and (III) Repealed.

(b) (I) Notwithstanding any provision of this section to the contrary, on March 5, 2003, the state treasurer shall transfer the balance of moneys in the tobacco litigation settlement trust fund to the general fund.

(II) Repealed.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (2), any moneys paid to the state treasurer in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.,* Case No. 97 CV 3432, in the district court for the city and county of Denver, other than attorney fees and costs, after March 5, 2003, but before July 1, 2003, shall be credited to the tobacco litigation settlement cash fund created by section 24-22-115 (1).

(d) Notwithstanding any other provision of this section, on July 1, 2004, the state treasurer shall transfer the balance of moneys in the tobacco litigation settlement trust fund to the general fund.

(3) (a) The state treasurer shall contract with one or more private, professional fund managers, professional fund advisors, or portfolio managers for the investment of moneys in the tobacco litigation settlement trust fund as provided in this section. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113. Such moneys may also be invested in domestic and international equities; except that:

(I) Any investment of tobacco litigation settlement trust fund moneys in the common or preferred stock, or both, of any single corporation shall not exceed five percent of the then book value of the trust fund;

(II) The tobacco litigation settlement trust fund shall not acquire more than five percent of the outstanding stock or bonds of any single corporation; and

(III) The aggregate amount of moneys of the tobacco litigation settlement trust fund invested in common or preferred stock or in corporate bonds, notes, or debentures that are convertible into common or preferred stock shall not exceed sixty percent of the

then book value of the trust fund. No more than fifteen percent of these investments shall be in the common or preferred stock of corporations not organized under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia or of the Dominion of Canada or any province thereof.

(a.5) In addition to the types of investments specified in paragraph (a) of this subsection (3), the state treasurer may invest moneys in the tobacco litigation settlement trust fund in any type of security, regardless of its maturity date, in which a public entity may invest public funds pursuant to section 24-75-601.1 (1) (d) or (1) (e).

(b) The state treasurer may make payments without appropriation of all actual and necessary charges for expenses related to the investment of the tobacco litigation settlement trust fund moneys. Such payments shall be made from investment assets or income.

24-22-115.6. Miscellaneous tobacco litigation settlement moneys. (1) Notwithstanding the provisions of sections 24-22-115 and 24-22-115.5, any tobacco litigation settlement moneys received by the state shall be subject to appropriation by the general assembly if the purpose for which such moneys may be expended is not specified or approved by a court or other non-Colorado authority.

(2) When any agency of state government proposes that any tobacco litigation settlement moneys are custodial in nature, the agency shall notify the joint budget committee in writing and shall explain the basis for determining that the moneys are custodial and shall set forth the purpose for which the agency intends to expend such moneys.

24-22-116. Legislative declaration - exclusion of revenue in tobacco litigation settlement funds from fiscal year spending. (1) The general assembly hereby finds and declares that:

(a) In 1992, the voters of this state approved section 20 of article X of the state constitution, which limits fiscal year spending of state government;

(b) Section 20 (2) (e) of article X defines "fiscal year spending" to include all revenues and expenditures except those for refunds and those from certain sources, such as federal funds and damage awards;

(c) In exercising its legislative prerogative to enact legislation to implement section 20 of article X as it relates to state government, the general assembly enacted article 77 of this title during the 1993 regular session;

(d) As part of this implementing legislation, the general assembly defined certain terms that were necessary for the implementation of section 20 of article X but were not defined by the constitutional provision;

(e) The general assembly defined "damage award" to include any pecuniary compensation received by the state as a result of any judgment or allowance in favor of the state;

(f) The exclusion from state fiscal year spending of monetary awards to the state as the result of court action is consistent with the purpose of section 20 of article X, which is to protect taxpayers from unwarranted tax increases, since such monetary awards are not revenue raised by the state from taxpayers;

(g) The inclusion in state fiscal year spending of revenue over which the state has no control might imperil other state projects and programs, since fluctuations in such revenue can cause the state to exceed its constitutional spending limit and the refund of excess revenue could take away from another part of the state's budget;

(h) Due to this potential impact, the inclusion of such monetary awards in state fiscal year spending would discourage or prevent the state from pursuing legal action to protect the state's interests as authorized by law;

(i) All of the moneys received by the state in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.,* Case No. 97 CV 3432, in the district court for the city and county of Denver, and credited to the tobacco litigation settlement cash fund created in section 24-22-115 (1), including moneys transferred to the tobacco settlement defense account created in said cash fund pursuant to section 24-22-115 (2), or the tobacco litigation settlement trust fund created in section 24-22-115.5 are in settlement of the state of Colorado's antitrust, consumer protection, public nuisance, racketeering, and other statutory claims for relief against defendants in said action;

(j) (I) The moneys received by the state in accordance with said master settlement agreements and said consent decree are in settlement of nine statutory claims for relief made by the state against defendants in said action, three of which were based upon violations of the "Colorado Consumer Protection Act", two of which were based upon violations of the "Colorado Organized Crime Control Act", two of which were based upon violations of state public nuisance statutes, and only one of which was based upon violations of the "Colorado Antitrust Act of 1992" and the impact of such violations on increased health care costs and expenditures of the state; and

(II) The state will take any legal action necessary to oppose any claim of the federal government to any portion of the moneys received by the state in accordance with said master settlement agreements and said consent decree for claims not related to such increased health care costs and expenditures and for any amount of such moneys in excess

of federal payments made for such increased health care costs and expenditures;

(k) Monetary awards to the state as the result of said court action, including those distributed to local governments, satisfy the definition of "damage awards" and therefore are excluded from fiscal year spending.

(2) (a) (I) For purposes of section 20 of article X of the state constitution and article 77 of this title, any moneys credited to the tobacco litigation settlement cash fund in accordance with section 24-22-115 (1), including moneys transferred to the tobacco settlement defense account created in said cash fund pursuant to section 24-22-115 (2), or the tobacco litigation settlement trust fund in accordance with section 24-22-115.5 are damage awards, as defined in section 24-77-102 (2), or interest accruing on such damage awards. Any moneys credited to or expended from the tobacco litigation settlement cash fund, including the tobacco settlement defense account, or the tobacco litigation settlement trust fund, are not included in state fiscal year spending, as defined in section 24-77-102 (17), for any state fiscal year.

(II) Repealed.

(b) For purposes of section 20 of article X of the state constitution and article 77 of this title, any moneys expended from the tobacco litigation settlement cash fund created in section 24-22-115 (1), including the tobacco settlement defense account created in said cash fund pursuant to section 24-22-115 (2), or the tobacco litigation settlement trust fund created in section 24-22-115.5 and received by any local government are damage awards or interest accruing on such damage awards and are not included in the fiscal year spending of the receiving local government for any budget year.

24-22-117. Tobacco tax cash fund - accounts - creation - legislative declaration. (1) (a) There is hereby created in the state treasury the tobacco tax cash fund, which fund is referred to in this section as the "cash fund". The cash fund shall consist of moneys collected from the cigarette and tobacco taxes imposed pursuant to section 21 of article X of the state constitution. All interest and income derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund; except that all interest and income derived from the deposit and investment of moneys in the cash fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the cash fund at the end of a fiscal year shall remain in the cash fund and shall not be credited or transferred to the general fund or any other fund, except as otherwise provided in this section.

(b) Repealed.

(c) For each fiscal year from the 2004-05 fiscal year through the 2007-08 fiscal year and for the 2012-13 fiscal year and each fiscal year thereafter, the general assembly shall annually appropriate three percent of the moneys estimated to be deposited in that

fiscal year into the cash fund, plus three percent of the interest and income earned on the deposit and investment of moneys in the cash fund, and, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the general assembly shall annually appropriate three percent of the moneys estimated to be deposited in that fiscal year into the cash fund, for health-related purposes to provide revenue for the state's general fund and the old age pension program and for municipal and county governments to compensate proportionately for tax revenue reductions attributable to lower cigarette and tobacco sales resulting from the implementation of the tax imposed pursuant to section 21 of article X of the state constitution, as follows:

(I) (A) Twenty percent of the moneys specified in this paragraph (c) to the state's general fund for health-related purposes.

(B) Beginning in fiscal year 2006-07 and for fiscal year 2007-08 through fiscal year 2010-11, of the moneys specified in sub-subparagraph (A) of this subparagraph (I), fifty percent shall be appropriated for the purposes of providing immunizations performed by county or district public health agencies in areas that were served by county public health nursing services prior to July 1, 2008, and fifty percent shall be appropriated to the pediatric specialty hospital fund, created in paragraph (e) of subsection (2) of this section, for the purposes of augmenting hospital reimbursement rates for regional pediatric trauma centers as defined in section 25-3.5-703 (4) (f), C.R.S., under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.

(B.5) Beginning in fiscal year 2011-12 and for each fiscal year thereafter, of the moneys specified in sub-subparagraph (A) of this subparagraph (I), fifty percent shall be appropriated for the purposes of providing immunizations performed by county or district public health agencies in areas that were served by county public health nursing services prior to July 1, 2008, and fifty percent shall be appropriated for expenditures in the children's basic health plan created in article 8 of title 25.5, C.R.S.

(C) Repealed.

(II) Fifty percent of the moneys specified in this paragraph (c) to provide health-related services under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., for persons who qualify to receive old age pensions; and

(III) Thirty percent of the moneys specified in this paragraph (c) to the department of revenue to be apportioned to municipal and county governments in amounts consistent with the provisions of section 39-22-623, C.R.S.

(2) There are hereby created in the state treasury the following funds:

(a) (I) The health care expansion fund to be administered by the department of health care policy and financing. The state treasurer and the controller shall transfer an amount equal to forty-six percent of the moneys deposited into the cash fund, plus forty-six percent of the interest and income earned on the deposit and investment of moneys in the cash fund, to the health care expansion fund; except that, for fiscal year 2004-05, the state treasurer and the state controller shall transfer an amount equal to forty-six percent

of the moneys deposited into the cash fund less the amount of money sufficient to fund the reinstatement of medical assistance benefits for legal immigrants as provided for in House Bill 05-1086, enacted at the first regular session of the sixty-fifth general assembly, and except that, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the health care expansion fund only an amount equal to forty-six percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the health care expansion fund shall be credited to the health care expansion fund; except that all interest and income derived from the deposit and investment of moneys in the health care expansion fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the health care expansion fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(II) Except as provided in subparagraph (III) of this paragraph (a), for fiscal year 2005-06 and each fiscal year thereafter, moneys in the health care expansion fund shall be annually appropriated by the general assembly to the department of health care policy and financing for the following purposes:

(A) To increase eligibility in the children's basic health plan, article 8 of title 25.5, C.R.S., for children and pregnant women from one hundred eighty-five percent to two hundred percent of the federal poverty line;

(B) To remove the asset test under the medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., for children and families;

(C) To expand the number of children that can be enrolled in the children's home- and community-based service waiver program, section 25.5-6-901, C.R.S., and the children's extensive support waiver program;

(D) To increase eligibility in the medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., to at least sixty percent of the federal poverty line for a parent of a child who is eligible for the medical assistance program or the children's basic health plan, article 8 of title 25.5, C.R.S.;

(E) To fund medical assistance to legal immigrants pursuant to section 25.5-5-201, C.R.S.;

(F) To pay for enrollment increases above the average enrollment for state fiscal year 2003-04 in the children's basic health plan, article 8 of title 25.5, C.R.S., or, for state fiscal year 2011-12 and for each fiscal year thereafter, to pay for costs associated with children enrolled in the medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., whose family income is more than one hundred percent but does not exceed one hundred thirty-three percent of the federal poverty line and who would have been eligible for enrollment in the children's basic health plan prior to September 1, 2011;

(G) To provide up to five hundred forty thousand dollars for cost-effective marketing to increase the enrollment of eligible children and pregnant women in the

children's basic health plan, article 8 of title 25.5, C.R.S.;

(H) To provide presumptive eligibility to pregnant women under the medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S.; and

(I) To provide funding for extending medicaid eligibility for persons who are in the foster care system immediately prior to emancipation, as set forth in section 25.5-5-201 (1) (n), C.R.S.

(III) Moneys transferred to the health care expansion fund in fiscal year 2004-05, less the amount necessary for the administrative costs of the department of health care policy and financing to facilitate the program expansions specified in subparagraph (II) of this paragraph (a), shall remain in the health care expansion fund as a reserve. Beginning in fiscal year 2005-06 and for each fiscal year thereafter, ten percent of the moneys transferred in each fiscal year to the health care expansion fund and any unexpended and unencumbered moneys remaining in the health care expansion fund at the end of a fiscal year shall remain in the fund and be added to the reserve until the first time the reserve balance is equal to the amount annually transferred to the health care expansion fund. Moneys in the health care expansion fund that are designated as reserve moneys, up to one-half of the amount annually transferred to the health care expansion fund, may be expended only if the appropriations necessary to sustain the populations specified in subparagraph (II) of this paragraph (a) exceed the annual transfer of moneys to the health care expansion fund.

(IV) and (V) Repealed.

(b) (I) The primary care fund to be administered by the department of health care policy and financing. The state treasurer and the controller shall transfer an amount equal to nineteen percent of the moneys deposited into the cash fund, plus nineteen percent of the interest and income earned on the deposit and investment of those moneys, to the primary care fund; except that, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the primary care fund only an amount equal to nineteen percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the primary care fund shall be credited to the primary care fund; except that all interest and income derived from the deposit and investment of moneys in the primary care fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the primary care fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(II) For fiscal year 2005-06 and each fiscal year thereafter, moneys in the primary care fund shall be annually appropriated by the general assembly to the department of health care policy and financing for comprehensive primary care as specified in part 3 of article 3 of title 25.5, C.R.S.

(III) to (V) Repealed.

(c) (I) The tobacco education programs fund to be administered by the department of public health and environment. The state treasurer and the controller shall transfer an amount equal to sixteen percent of the moneys deposited into the cash fund, plus sixteen percent of the interest and income earned on the deposit and investment of those moneys, to the tobacco education programs fund; except that, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the tobacco education programs fund only an amount equal to sixteen percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the tobacco education programs fund shall be credited to the tobacco education programs fund; except that all interest and income derived from the deposit and investment of moneys in the tobacco education programs fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the tobacco education programs fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(II) The interest and income derived from the deposit and investment of moneys in the tobacco education programs fund and credited to the tobacco education programs fund may be used to give credit to a wholesaler or distributor for taxes paid on cigarettes or other tobacco products that are bad debts pursuant to sections 39-28-104 and 39-28.5-107, C.R.S.; except that the interest earned on the tobacco education programs fund shall be used only for that portion of the bad debt attributable to the taxes imposed pursuant to section 21 of article X of the state constitution.

(III) For fiscal year 2005-06 and each fiscal year thereafter, moneys in the tobacco education programs fund shall be annually appropriated by the general assembly as follows:

(A) To the prevention services division of the department of public health and environment for the tobacco education, prevention, and cessation programs specified in part 8 of article 3.5 of title 25, C.R.S.; and

(B) Up to three hundred fifty thousand dollars to the division of liquor enforcement in the department of revenue for the purpose of enforcing laws relating to the sale of tobacco to minors.

(III.5) For fiscal year 2011-12 and for each fiscal year thereafter, the general assembly may annually appropriate moneys in the tobacco education programs fund to the department of health care policy and financing in order to allow the department to obtain federal matching funds for the Colorado quitline program.

(IV) Repealed.

(d) (I) The prevention, early detection, and treatment fund to be administered by the department of public health and environment. The state treasurer and the controller shall transfer an amount equal to sixteen percent of the moneys deposited into the cash fund, plus sixteen percent of the interest and income earned on the deposit and investment

of those moneys, to the prevention, early detection, and treatment fund; except that, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the state treasurer and the controller shall transfer to the prevention, early detection, and treatment fund only an amount equal to sixteen percent of the moneys deposited into the cash fund. All interest and income derived from the deposit and investment of moneys in the prevention, early detection, and treatment fund shall be credited to the prevention, early detection, and treatment fund; except that all interest and income derived from the deposit and investment of moneys in the prevention, early detection, and treatment fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended and unencumbered moneys remaining in the prevention, early detection, and treatment fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. The moneys in the prevention, early detection, and treatment fund shall be annually appropriated by the general assembly to the department of public health and environment for allocation by the department consistent with the provisions of this paragraph (d).

(II) Of the moneys appropriated annually by the general assembly to the department of public health and environment pursuant to subparagraph (I) of this paragraph (d), moneys shall be annually allocated by the department of public health and environment for breast and cervical cancer screenings pursuant to section 25-4-1505, C.R.S., and transferred to the department of health care policy and financing for the breast and cervical cancer treatment program established in section 25.5-5-308, C.R.S., in the following amounts not to exceed five million dollars in any fiscal year:

(A) For the 2005-06 fiscal year, fourteen percent of the amount appropriated pursuant to subparagraph (I) of this paragraph (d);

(B) For the 2006-07 fiscal year, sixteen percent of the amount appropriated pursuant to subparagraph (I) of this paragraph (d);

(C) For the 2007-08 fiscal year, eighteen percent of the amount appropriated pursuant to subparagraph (I) of this paragraph (d); and

(D) For the 2008-09 fiscal year and each fiscal year thereafter, twenty percent of the amount appropriated pursuant to subparagraph (I) of this paragraph (d).

(III) For fiscal year 2005-06, and each fiscal year thereafter, fifteen percent of the moneys transferred to the prevention, early detection, and treatment fund shall be transferred to the health disparities grant program fund created in paragraph (f) of this subsection (2) for the health disparities grant program in part 22 of article 4 of title 25, C.R.S.

(IV) Repealed.

(IV.5) For fiscal year 2008-09, and each fiscal year thereafter, after the allocation and transfer required by subparagraphs (II) and (III) of this paragraph (d), of the moneys in the prevention, early detection, and treatment fund, two million dollars shall be transferred to the department of health care policy and financing for medicaid disease

management and treatment programs, authorized by section 25.5-5-316, C.R.S., that address cancer, heart disease, and lung disease or the risk factors associated with such diseases.

(V) (A) For fiscal year 2008-09 and each fiscal year thereafter, after the allocation of the moneys pursuant to subparagraphs (II), (III), and (IV.5) of this paragraph (d), moneys in the prevention, early detection, and treatment fund shall be annually appropriated by the general assembly to the prevention services division of the department of public health and environment for the cancer, cardiovascular disease, and chronic pulmonary disease prevention, early detection, and treatment program established in part 3 of article 20.5 of title 25, C.R.S.

(B) and (C) Repealed.

(VI) Pursuant to the declaration of a state fiscal emergency as described in subparagraph (III) of paragraph (b) of subsection (6) of this section, notwithstanding any provisions of subparagraphs (II), (III), (IV.5), and (V) of this paragraph (d) to the contrary, for fiscal year 2011-12, the general assembly shall appropriate moneys in the prevention, early detection, and treatment fund for the purposes described in subparagraphs (II), (III), (IV.5), and (V) of this paragraph (d), as well as any other health-related purpose and to serve populations enrolled in the children's basic health plan and the Colorado medical assistance program at the programs' respective levels of enrollment as of January 1, 2005.

(e) Repealed.

(f) (I) The health disparities grant program fund to be administered by the department of public health and environment. Moneys shall be transferred to the health disparities grant program fund as described in subparagraph (III) of paragraph (d) of this subsection (2). All interest and income derived from the deposit and investment of moneys in the health disparities grant program fund shall be credited to the health disparities grant program fund; except that all interest and income derived from the deposit and investment of moneys in the health disparities grant program fund during the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years shall be credited to the general fund. Any unexpended or unencumbered moneys remaining in the health disparities grant program fund at the end of the fiscal year shall remain in the fund and shall not be credited to the general fund or any other fund. The moneys in the health disparities grant program fund shall be annually appropriated by the general assembly to the department of public health and environment for allocation by the department of public health and environment consistent with the provisions of paragraph (d) of this subsection (2).

(II) to (IV) Repealed.

(3) For purposes of section 20 of article X of the state constitution and article 77 of this title, any moneys collected or expended from the imposition of the cigarette and tobacco tax imposed pursuant to section 21 of article X of the state constitution are not included in fiscal year spending, as defined in section 20 of article X of the state

constitution, and are excluded from the spending limit contained in section 24-75-201.1 and any corresponding spending limits on local governments receiving such revenues.

(4) Moneys appropriated to the health care expansion fund, the primary care fund, and the prevention, early detection, and treatment fund shall be used to supplement revenues that are appropriated by the general assembly for health-related purposes as of January 1, 2005, and shall not be used to supplant those appropriations.

(5) The moneys generated by the implementation of the tax pursuant to section 21 of article X of the state constitution shall be appropriated by the general assembly and utilized by the recipients of the moneys only for such purposes as are specified in section 21 of article X of the state constitution. The moneys shall not be utilized:

(a) For the purposes of lobbying as defined in section 24-6-301 (3.5) (a); or

(b) To support or oppose any ballot issue or ballot question.

(6) (a) Notwithstanding any other provision of law, the general assembly may use revenue generated by the implementation of the cigarette and tobacco taxes pursuant to sections 39-28-103.5 and 39-28.5-102.5, C.R.S., and section 21 of article X of the state constitution for any health-related purpose and to serve populations enrolled in the children's basic health plan and the Colorado medical assistance program at the respective program levels of enrollment as of January 1, 2005. Such use of revenue shall be preceded by a declaration of a state fiscal emergency, which shall be adopted by a joint resolution, approved by a two-thirds majority vote of the members of the senate and of the house of representatives, and signed by the governor. The declaration shall apply only to a single fiscal year.

(b) to (d) Repealed.

(7) The general assembly hereby finds and declares that for purposes of this section and section 21 (5) of article X of the state constitution, interest or income credited to the general fund pursuant to paragraph (a) of subsection (1) of this section and paragraphs (a) to (d) and (f) of subsection (2) of this section are not revenues generated by operation of section 21 (2) of article X of the state constitution.

PRINCIPAL DEPARTMENTS

ARTICLE 30

Department of Personnel -
State Administrative Support Services

PART 1

GENERAL PROVISIONS

24-30-101. Department of personnel - state support services. On and after July 1, 1995, in an effort to eliminate unnecessary functions, avoid duplication, reduce costs, increase efficiency, and improve services to the state and the public, the rights, powers, duties, functions, obligations, and divisions of the department of administration are transferred to the department of personnel.

24-30-102. Construction of terms. On and after July 1, 1995, when any law of this state refers to the executive director of the department of administration, said law shall be construed as referring to the executive director of the department of personnel, also referred to as the state personnel director as specified in section 14 of article XII of the state constitution. When any law of this state refers to the department of administration, said law shall be construed as referring to the department of personnel.

24-30-103. Property conveyed or leased to federal government. (Repealed)

PART 2

ACCOUNTS AND CONTROL

24-30-201. Accounts and control - controller. (1) The powers, duties, and functions concerning accounts and control as set forth in this part 2 shall be the responsibility of the state controller. The controller shall be appointed by the executive director of the department of personnel, subject to the provisions of section 13 of article XII of the state constitution. The controller shall be bonded in such amount as the executive director shall fix. The powers and duties of the controller shall be:

(a) To keep in continuous touch with the operations, plans, and needs of the several departments and other agencies of the state and with the sources and amounts of revenue and other receipts of the state;

(b) Repealed.

(c) To examine and approve work programs and quarterly allotments to the several departments and changes therein;

(d) To examine and approve all statements and reports on the financial condition and estimated future financial condition and the operations of the state government and the several budget units before any such reports are released to the governor, to the general assembly, or for publication; receive and deal with all requests for information as to financial conditions and operations of the state; and prepare such statements of unit costs and other cost statistics as may be required from time to time or requested by the

governor or the general assembly;

(e) To manage the finances and financial affairs of the state, except as otherwise provided in section 5 (2) of article VIII of the state constitution and by law for institutions of higher education and for the Auraria higher education center;

(f) To coordinate all the procedures for financial administration and financial control so as to integrate them into an adequate and unified system, including the devising, prescribing, and installing of accounting forms, records, and procedures for all state agencies;

(g) To conduct all central accounting and fiscal reporting for the state as a whole;

(h) To maintain a current audit of all cash, cash receipts, and receivables; to preaudit and control the incurring of obligations; and to preaudit all disbursements;

(i) To issue warrants for the payment of claims against the state;

(j) Pursuant to rules and regulations promulgated by the executive director of the department of personnel, to assist state agencies in their efforts to recover moneys owing to the state and to collect, on behalf of the state, accounts referred to the controller under rules and regulations authorizing such referral under defined circumstances, as further specified in section 24-30-202.4;

(k) To control all supply stocks, property, and equipment in use and enforce the keeping of inventory accounts;

(l) To make available to each member of the general assembly by November 1 of each year a report on all capital leases having a total value of five hundred thousand dollars or more, concerning real property pursuant to sections 24-82-102, 24-82-801, and 24-82-1204, concerning personal property pursuant to the "Procurement Code", articles 101 to 112 of this title, and concerning lease-purchase agreements pursuant to section 24-82-801. The controller shall notify, in the most cost-effective manner available, each member of the general assembly of the availability of the report and offer to provide the members with copies of the report. The controller shall require and each department and agency of the executive branch shall submit to the controller by October 1 of each year a report on capital leases having a total value of five hundred thousand dollars or more, concerning real property pursuant to section 24-82-102, concerning personal property pursuant to the "Procurement Code", articles 101 to 112 of this title, and concerning lease-purchase agreements pursuant to section 24-82-801, the payments of which are financed by appropriated funds to which the department or agency is a party. For the purpose of this paragraph (l), "capital lease" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

(2) The powers, duties, and functions concerning accounts and control and the office of the controller shall be administered as if transferred by a **type 2** transfer to the department of personnel.

24-30-202. Procedures - vouchers and warrants - rules - penalties. (1) No disbursements shall be made in payment of any liability incurred on behalf of the state, other than from petty cash or by any alternative means of payment approved by fiscal rule promulgated by the controller, unless there has been previously filed with the office of the state controller a commitment voucher. The commitment voucher may be in the form of an advice of employment, a purchase order, a copy of a contract, or a travel authorization or in other form appropriate to the type of transaction as prescribed by the controller. Any state contract involving the payment of money by the state shall contain a clause providing that the contract shall not be deemed valid until it has been approved by the controller or such assistant as he may designate. Such contracts entered into on or after July 1, 1997, shall also contain a clause notifying the other party to the contract of the controller's authority to withhold debts owed to state agencies under the vendor offset intercept system pursuant to section 24-30-202.4 (3.5) (a) (I) and the types of debts that are subject to withholding under said system. The form and content of and procedures for filing such vouchers shall be prescribed by the fiscal rules promulgated by the controller.

(2) The controller, or such assistant as he may designate, shall examine each commitment voucher to ascertain whether or not the proposed expenditure is authorized by the appropriation and allotment to which it is proposed to be charged, whether or not the prices or rates are in accordance with law or administrative rules or are fair and reasonable and whether or not the amount of the expenditure exceeds the unencumbered balance of the allotment. The controller or his designated assistant shall record his approval or disapproval either on the face of each voucher or by electronically entering such approval or disapproval in the state computer-based accounting system. The head of the state department, institution, or other agency involved shall be notified of any proposed expenditures that are disallowed.

(3) In no event shall the head of any state department, institution, or other agency or the controller, either by himself or through any assistant designated by him, approve any commitment voucher involving expenditure of any sum in excess of the unencumbered balance of the appropriation to which the resulting disbursement would be charged. No person shall incur or order or vote for the incurrence of any obligation against the state in excess of or for any expenditure not authorized by appropriation and approved commitment voucher except as expressly authorized by this section. Any such obligation so raised in contravention of this section shall not be binding against the state but shall be null and void ab initio and incapable of ratification by any administrative authority of the state to give effect thereto against the state. But every person incurring or ordering or voting for the incurrence of such obligation and his surety shall be jointly and severally liable therefor.

(4) The controller is hereby authorized to grant special authority for any department, institution, or other agency, during any fiscal year, to make specific

purchases of supplies or materials to be used in the next ensuing fiscal year or to enter into contracts in anticipation of appropriations already made or to be made for the next ensuing fiscal year for any purpose authorized by any existing law, including contracts by the department of transportation for state highway reconstruction, repair, maintenance, and capacity expansion projects to be funded by the revenues appropriated out of the capital construction fund under section 24-75-302 (2), but in no case for any amount exceeding that necessary to meet the requirements for the first quarter of the next fiscal year. No such purchase order shall be issued nor contract entered into unless such purchase order or contract has been approved and countersigned by the controller or the controller's authorized agent, whose duty it shall be to see that the special authority so granted is not exceeded; except that this restriction shall not apply to contracts for capital outlay projects for which appropriations have been provided for obligations to be incurred in two or more fiscal years. Payments made at the close of a fiscal year under such authority shall be treated as deferred charges to the appropriations and expenses of the next ensuing fiscal year until the beginning of such year.

(5) (a) No money of the state or for which the state is responsible shall be withdrawn from the treasury or otherwise disbursed for any purpose except to pay obligations under expenditures authorized by appropriation and allotment and not in excess of the amount so authorized. Each such expenditure shall have been authorized by the head of the department, institution, or other agency by or for which the expenditure was made. Such authorization shall contain the manual or facsimile signature of the head of the department, institution, or agency or any assistant designated by him. The controller, or his authorized agent, shall have approved a commitment voucher therefor, and a claim on a prescribed form shall have been submitted to and approved by the controller or his agent. The provisions of this section shall not be construed to apply to withdrawals of funds from any state depository bank for immediate redeposit in any other state depository bank or for investment.

(b) If a state department, institution, or agency enters into a contract to purchase real property or any interest therein that has a total purchase price of more than one hundred thousand dollars, the contract must contain a contingency clause that requires the state to secure an appraisal of the subject real property or interest therein prior to closing by an independent appraiser licensed in the state of Colorado to substantiate the purchase price and that makes the closing of the purchase contingent on the approval of the contract by the state controller. When the state department, institution, or agency entering into the contract receives the appraisal, the state department, institution, or agency shall provide a copy of the appraisal to the state controller. This paragraph (b) shall not apply to the acquisition of property by the department of transportation for the construction, maintenance, or supervision of the public highways of this state, nor shall it apply to any additional lease-purchase agreement entered into pursuant to the master lease program authorized by part 7 of article 82 of this title.

(c) (I) If a state department, institution, or agency enters into an option to purchase real property or any interest therein that has a total purchase price of more than one hundred thousand dollars, the appraisal requirement described in paragraph (b) of this subsection (5) must occur prior to closing on the purchase of the real property or interest therein.

(II) Prior to a state department, institution, or agency entering into an option to purchase real property or any interest therein that has a total purchase price of more than one hundred thousand dollars, the state department, institution, or agency shall obtain a written broker opinion of value completed by an independent broker licensed in the state of Colorado or an appraisal by an independent appraiser licensed in the state of Colorado of the subject property in order to complete a thorough analysis of the property or interests therein being considered. The opinion of value or the appraisal must be forwarded to the state controller prior to the state controller approving the option to purchase contract.

(5.5) Any commitment voucher that provides that the financial obligations of the state in subsequent fiscal years are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available shall not be deemed to create any state multiple-fiscal year direct or indirect debt or other financial obligation whatsoever for purposes of section 20 (4) (b) of article X of the state constitution. If a lease-purchase agreement is subject to the requirement of specific authorization by the general assembly under part 8 of article 82 of this title, such committees shall make a recommendation to the general assembly concerning whether to authorize the lease-purchase agreement involving the issuance of certificates of participation or other instruments. The department of personnel and the Colorado commission on higher education shall maintain comparative data which will assist in determining the relative costs to the state, over the entire term of the arrangement, of financing the purchase or lease of property through pay-as-you-go methods, certificates of participation, or other arrangements.

(6) The controller shall prescribe the form of warrants to be drawn upon the state treasurer. All warrants for approved expenditures and claims shall be drawn and issued under direction of the controller or his authorized agent and transmitted to the department of the treasury to be recorded.

(7) Each warrant drawn and issued shall be signed by the controller and countersigned by the state treasurer. Facsimiles of such signature and countersignature may be affixed by a mechanical device. The signature of the controller on a warrant, however affixed, shall constitute full and complete authority to the state treasurer to pay the amount thereof upon presentation to him.

(8) Each warrant drawn and issued shall bear a notation clearly printed in a prominent position upon its face stating that it shall be void after six months from its date of issue. Upon satisfactory proof furnished of loss or destruction, during said six-month period, of any warrant drawn and issued in payment of an approved expenditure or claim,

the controller shall cause a duplicate of such lost or destroyed warrant to be drawn and issued in favor of the original payee or his or her assignee, as the case may be. The issuing state agency shall thereupon void said original warrant, and, if it thereafter is presented for payment, the state treasurer shall refuse payment thereof.

(8.5) Any other provision of law to the contrary notwithstanding, the controller may, after adequate notification to the state treasurer, make payment by means of an electronic fund transfer. Payment by electronic fund transfer shall be in lieu of payment by state warrant and shall discharge the controller's obligation with respect to payment. Any unauthorized use of the electronic fund transfer capability shall be reported to the controller within twenty-four hours after occurrence or disclosure becomes known. Immediately upon discovery of unauthorized use, measures which will prevent further unauthorized use shall be implemented.

(9) (a) During the month of May of each year, a list of all warrants drawn and issued during the last completed fiscal year that have not then been presented to the state treasurer for payment shall be posted in a conspicuous place in the offices of the controller and the state treasurer. Such list shall recite the number, date of issue, name of payee, and amount of each such warrant. Every warrant so listed that shall remain unpaid on the last working day in the month of June of each year shall be scheduled for cancellation as of said date and expunged from the records of the controller and the state treasurer, and the amount thereof shall be credited to the general fund or, if practicable, to the account to which originally charged; except that the amount of any warrant drawn on the wildlife cash fund created in section 33-1-112 (1), C.R.S., other than a warrant refunding a license fee submitted as part of an unsuccessful limited license application, shall be credited to said fund.

(b) If at any time thereafter application is made to the controller for reissuance of any warrant which has been cancelled and expunged from the records and it appears that the expenditure or claim which the cancelled warrant represented is still valid and unpaid, the controller shall issue a new warrant, and the amount thereof shall be charged to the fund or account to which the amount of the cancelled warrant was previously credited.

(c) In the event of any conflict between this subsection (9) and any provision of the "Unclaimed Property Act", article 13 of title 38, C.R.S., the provisions of the "Unclaimed Property Act" shall control; except that this subsection (9) shall control with regard to:

(I) A tax warrant;

(II) Repealed.

(III) That portion of a warrant representing moneys received from the federal government;

(IV) A warrant drawn on the wildlife cash fund created in section 33-1-112 (1), C.R.S., other than a warrant refunding a license fee submitted as part of an unsuccessful limited license application.

(d) Notwithstanding any provision of this subsection (9) to the contrary, the provisions of this subsection (9) shall not apply to any warrant drawn by an institution of higher education or by the Auraria higher education center that is exempt from the state fiscal rules pursuant to paragraph (b) of subsection (13) of this section.

(10) The attorney general shall be the legal adviser of the controller and to the attorney general shall be referred any question concerning the legality of any obligation by or claim against the state.

(11) It is the duty of the controller to keep up to date a detailed list of all sources from which moneys accrue to the state, classified according to the departments, institutions, and other agencies responsible for the collection of the moneys, showing for each of the several units: The several kinds of taxes, fees, and other charges collected or to be collected; the name of the person responsible for collecting public moneys from each such source; and the name of the employee actually engaged in collecting, handling, and depositing such moneys. The controller has the power, and it is his duty with respect to each state tax, to prescribe or approve such accounts and procedures as will provide adequate accounting and current internal audit control of unpaid taxes and other charges and the proceeds of collections and as will furnish the information required for the maintenance of the general accounts of the state. The controller has the power and it is his duty to prescribe the forms to be used by the several units for licenses, permits, and certificates for which fees are prescribed by law and to establish controls of the supplies of such forms.

(12) The controller shall prescribe and cause to be installed a unified and integrated system of accounts for the state. Except as otherwise provided in sections 24-75-201 (2) and 25.5-4-201, C.R.S., such system shall be based upon the accrual system of accounting, as enunciated by the governmental accounting standards board, which shall include:

(a) A set of budgetary control accounts for each fund, which shall be maintained pursuant to the accounts and control functions of the department of personnel;

(b) A set of general controlling proprietary and operating accounts for each fund, which shall be maintained pursuant to the accounts and control functions of the department of personnel, recording the transactions of the fund in summary form and showing the actual current assets, prepaid expenses, current liabilities, deferred credits to income, reserves, actual income, actual expenditures, and current surplus or deficit as the case may be;

(c) A uniform classification of the sources of revenue and nonrevenue receipts, which shall be observed by all the departments, institutions, and other agencies;

(d) A standard classification of the departments, institutions, and other agencies and their principal functions, by major functions of government;

(e) A standard classification of expenditures by activities;

(f) A unified classification of ordinary recurring expenses, extraordinary expenses,

and capital outlays, respectively, by the kinds of commodities and services involved, which shall be observed in reporting expenditures, in preparing budget estimates, and in allotting appropriations.

(13) (a) The controller shall promulgate fiscal rules to carry out the functions assigned and the procedures prescribed by this section. Such rules relating to the forms, records, and procedures involved in financial administration shall be binding upon the several departments, institutions, including institutions of higher education except as otherwise provided in paragraph (b) of this subsection (13), and other agencies of the state and upon their several officers and employees.

(b) It is the intent of the general assembly that fiscal rules promulgated by the controller shall be applicable to any institution of higher education; except that the governing board of an institution of higher education that has adopted fiscal procedures and has determined that the fiscal procedures provide adequate safeguards for the proper expenditure of the moneys of the institution may elect to exempt the institution from the fiscal rules promulgated by the controller pursuant to this subsection (13), including any procedures or forms required by law to be promulgated by the controller and any review or approval required to be performed by the controller, and shall not be required to comply with rules promulgated pursuant to this subsection (13) or with the provisions of subsection (1), (5) (b), (20.1), (22), or (26) of this section. The provisions of this paragraph (b) shall also apply to the board of directors of the Auraria higher education center with regard to the expenditure of moneys of the auraria higher education center.

(c) Repealed.

(d) An institution of higher education, including the auraria higher education center, that is exempt from the state fiscal rules pursuant to paragraph (b) of this subsection (13) shall continue to provide to the controller such information as is necessary to enable the controller to meet the obligations set forth in subsection (11) of this section and sections 24-17-102 and 24-30-204; except that an institution of higher education shall be required to provide only such data and reports as are readily accessible to the institution or presently generated by the institution.

(14) If the controller or any other state employee knowingly draws or issues any warrant upon the state treasurer not authorized by law, he is guilty of a misdemeanor in office and, upon conviction thereof, shall be punished by a fine of a sum four-fold the amount of such warrant, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(15) Any person holding the office of state treasurer or controller or any other state officer or employee who, directly or indirectly, receives from any person, body of persons, association, or corporation, for himself or herself or otherwise than in behalf of the state, any reward, compensation, or profit, either in money or other property or thing of value, in consideration of the loan to or deposit with any such person, body of persons, association, or corporation of any public money or other property belonging to the state or

in the consideration of the approval or payment of any claim against the state or any other agreement or arrangement touching the use of such money or uses or knowingly permits the use of any such money for any purposes not authorized by law commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(16) Any person who, directly or indirectly, pays or gives to anyone holding the office of state treasurer or controller or to any other state officer or employee or other person any reward or compensation, either in money or other property or things of value, in consideration of the loan to or deposit with any such person, body of persons, association, or corporation of any public money belonging to the state or for which the state is responsible or in consideration of the approval or payment of any claim against the state or of any other agreement or arrangement touching the use of such money commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(17) Any state officer or employee who willfully neglects or refuses to perform his duty as prescribed in this section or as prescribed in the fiscal rules promulgated by the controller in conformity with this section is guilty of a misdemeanor in office and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

(18) (a) to (e) Repealed.

(f) All state agencies are required to make and preserve records of employees' wages and hours and other conditions and practices of employment.

(g) to (j) Repealed.

(19) If any money of the state is paid out from any appropriation or fund for any purpose and such money, or any part thereof, is for any reason subsequently refunded to the state, the controller is authorized to order the money so refunded to be credited to the fund or appropriation from which it was originally paid.

(20) Repealed.

(20.1) The controller, or the controller's designee, is hereby authorized, upon written request made to the controller, to allow any state department, institution, or agency to draw upon its appropriation a sum set by fiscal rule promulgated by the controller, which fiscal rule may not authorize a sum in excess of two thousand five hundred dollars, and considered appropriate for the circumstances, to be used for the payment of incidental expenses. Items of postage, express, telegrams, and other incidental expenses may be paid from such moneys. At the end of each month, or as often as is practicable, the department, institution, or agency making such incidental expenditures shall submit a voucher to the controller covering the total amount of such expenditures and shall submit a list of all such expenditures, together with proper receipts, if any, and the controller shall draw the controller's warrant against the proper appropriation to cover all items of expenditures which the controller approves. The controller is also authorized, upon the request of any state department, institution, or agency, to allow a reasonable advance of moneys to employees and officials for authorized travel on official state

business not to exceed an amount set by fiscal rule promulgated by the controller.

(21) If, as a result of fire or other insured loss to state property, the state receives moneys from any insurance company, the controller is authorized to deposit such moneys in an account from which he may, without regard to the provisions of part 3 of article 37 of this title and without further legislative action, reimburse contractors for repair, replacement, or reconstruction of state properties damaged or destroyed under a contract executed in accordance with state contracting laws and procedures in effect at the time of the execution of the contract. If the amount of insurance recovery exceeds the actual cost of such repair, replacement, or reconstruction, any balance remaining in said account after payment of actual costs shall revert to the general fund. With respect to the loss or damage to state property which is not insured or the loss or damage to state property which is insured but the insurance does not fully cover the loss or damage, the controller may, with the approval of the governor, without further legislative action, reimburse contractors for the repair, replacement, or reconstruction of such state property up to a maximum amount of one hundred thousand dollars; except that the controller is not authorized to provide for reimbursement for repair, replacement, or reconstruction of state property if the state is self-insured for loss or damage to state property.

(22) The controller shall make uniform and equitable fiscal rules controlling the types of perquisites which may be allowed state employees in the executive branch of government in addition to their regular salaries. Such rules shall include the eligibility of employees to receive such perquisites, the charges to be made for such perquisites, and the method of payment of such charges to the state. Before such rules become effective, they shall be approved by the governor. No employee shall have authority to grant to himself or herself or to any other employee under his or her supervision any perquisite, nor shall any employee receive any perquisite without full payment therefor, except as provided for by statute or by the rules of the controller as authorized in this section. Charges prescribed by such rules shall be reviewed annually by the controller.

(23) Repealed.

(24) (a) The controller shall promulgate fiscal rules requiring that disbursements made in the payment of any liability incurred on behalf of the executive branch of this state be made within forty-five days after such liability was incurred or shall pay interest from the forty-fifth day at a rate of one percent per month on the unpaid balance until the account is paid in full.

(b) As used in paragraph (a) of this subsection (24), "liability incurred on behalf of the state" means the receipt of supplies, as defined in section 24-101-301 (22), or services, as defined in section 24-101-301 (20), and receipt of a correct notice of the amount due, by the state agency procuring such supplies or services from a nongovernmental entity. No liability is incurred on behalf of the state if a good faith dispute exists as to the state's obligation to pay all or a portion of the account. Nothing in this subsection (24) shall be construed to affect any provision for the time of payment in a

written contract between a state agency procuring services or supplies and a nongovernmental entity.

(25) (a) (Deleted by amendment, L. 2005, p. 278, § 9, effective August 8, 2005.)

(b) On July 1, 1985, the controller shall, by fiscal rule, provide for the assessment of a reasonable monetary penalty based on cost against any person who issues a check returned for insufficient funds to any state department, institution, or agency in payment of fees, fines, or other moneys due the state.

(c) For the purposes of this subsection (25), "insufficient funds" means not having a sufficient balance in account with a bank or other drawee for the payment of a check when presented for payment within thirty days after issue.

(d) The penalty provided for in this subsection (25) shall be assessed in addition to any other penalties provided by law except for the penalty provided in section 24-35-114 relating to checks issued to the department of revenue.

(26) The controller shall promulgate equitable fiscal rules concerning travel policies applicable to state employees, including methods of transportation, travel advances, reimbursements, travel allowances, use of travel agents, and use of state or privately owned vehicles, and may promulgate such rules for the implementation of a state travel policy as he deems necessary to assure fair and reasonable expenditures. The controller shall make available a report no later than February 1 of each year to the governor, the joint budget committee, and the legislative audit committee regarding the travel expenses of state employees for the prior fiscal year. Such report shall include, but shall not be limited to, an itemized list of the travel expenses of each department including in-state travel, out-of-state travel, and out-of-country travel. The controller shall notify, in the most cost-effective manner available, the governor, the joint budget committee, and the legislative audit committee of the availability of the report and offering to provide copies of the report.

(27) To avoid the imposition of duplicative or excessively burdensome or numerous reporting requirements upon state-supported institutions of higher education and to encourage the promulgation of reporting rules that, to the extent possible, require such institutions to provide only data and reports readily accessible to or presently generated by such institutions, the controller shall consult with the Colorado commission on higher education before adopting, amending, or repealing rules affecting or creating reporting requirements applicable to such institutions.

24-30-202.4. Collection of debts due the state - controller's duties - creation of debt collection fund - definitions - reciprocal debt collection agreements. (1) The state controller shall advise and assist the various state agencies concerning the collection of debts due the state through such agencies, in accordance with rules promulgated by the executive director of the department of personnel, to achieve the prompt collection of

debts due such agencies. The controller may delegate the responsibility for the collection of debts to the central collection services section of the division of finance and procurement, or any successor section, in the department.

(2) Except as otherwise provided for institutions of higher education pursuant to section 23-5-113, C.R.S., and except for those debts under the jurisdiction of the department of revenue referred to in section 24-35-108 (1) (a), under the jurisdiction of the judicial department referred to in section 16-11-101.6, C.R.S., and under the jurisdiction of the department of labor and employment related to overpayment of unemployment insurance benefits and delinquent taxes referred to in section 8-79-102, C.R.S., all state agencies shall refer to the state controller debts due the state that the agency has been unable to collect within thirty days after such debts have become past due, together with the data and information necessary for the controller to institute collection procedures. Debts are not subject to referral pursuant to this subsection (2) if payment arrangements have been made and payments due in accordance with the terms of the arrangements are not delinquent. The controller may grant a waiver to the requirement that a state agency refer debts within such thirty-day period based upon a documented request and justification provided by a state agency, pursuant to rules promulgated by the department of personnel under article 4 of this title. A waiver may include but shall not be limited to extended periods to collect delinquent debts. For accounts where no waiver to assignment has been granted, the controller shall use all state collection capabilities to collect that debt, including, but not limited to, the certification of that debt to the department of revenue for offset of that debt against any tax refund due the debtor under the provisions of subparagraph (II) of paragraph (a) of subsection (3) of this section. No later than one hundred eighty days after receipt by the controller, the controller or the controller's designee shall legally assign all debts that are not claims in process of collection to private counsel or private collection agencies that appear on the list of private counsel or private collection agencies. For the purposes of this section, "claims in process of collection" means any debts on which payments are being made, on which payments have been promised, on which suit has been brought, or any other debts as defined in rules promulgated by the department of personnel pursuant to article 4 of this title. The private counsel or private collection agencies included in the list of private counsel or private collection agencies shall be selected through competition pursuant to the provisions of the "Procurement Code", articles 101 to 112 of this title. Criteria for selection of the private counsel or private collection agencies shall be developed by the executive director of the department of personnel in consultation with the controller, affected state agencies, and the private collection community.

(2.5) (a) The department of personnel may provide debt collection services, including lottery offsets, limited gaming offsets, and state tax refund offsets, for accounts assigned to central collection services by political subdivisions of the state under contract with central collection services. The provisions of this section governing the time for

referral of accounts to private collection agencies, write off, release, or compromise of debts does not govern the debt collection services provided to political subdivisions except as agreed between the department and such political subdivisions or state agencies and institutions.

(b) Upon verification by the appropriate state agency, state-supported institution of higher education, or political subdivision of the state of the amount of a debt due the state, institution, or political subdivision, the state controller may certify to the department of revenue any unpaid debt to be offset against a tax refund due the debtor pursuant to section 39-21-108 (3), C.R.S. Before certifying an unpaid debt to the department of revenue, the state controller shall give written notice to the debtor that the debt will be offset against a tax refund due the debtor and that the debtor may, within thirty days of the postmark of the written notice, request a hearing to dispute the tax refund offset. Such a hearing must be held within thirty calendar days following receipt of the request from the debtor. If the agency, institution, or political subdivision that referred the debt to the controller certifies that the debt was the subject of a final agency determination or judicial decision or that the debt has been reduced to judgment, the debtor may not dispute the validity of the debt at the hearing. If, at the hearing, the dispute is resolved in favor of the debtor, the debtor is entitled to a refund of any money due plus interest, if requested, pursuant to sections 39-21-110 and 39-21-110.5, C.R.S. The executive director of the department of personnel shall promulgate rules, in accordance with article 4 of this title, that specify provisions for adequate notice and opportunity for hearing. The state controller may write off, release, or compromise, any debt as authorized by paragraph (c) of subsection (3) of this section.

(3) (a) (I) Upon referral to the controller of debts due the state, the controller shall institute procedures for collection thereof pursuant to the rules and regulations promulgated therefor by the executive director of the department of personnel.

(II) Upon verification by the appropriate state agency of the amount of the debt due the state, the controller may certify to the department of revenue any unpaid debt due the state to be offset against a tax refund due the debtor, pursuant to section 39-21-108 (3), C.R.S. Before any unpaid debt is certified to the department of revenue, the controller shall give written notice to the debtor that the debt shall be offset against a tax refund due the debtor and shall notify the debtor that the debtor may, within thirty days of the postmark of the written notice from the controller, request a hearing to dispute the tax refund offset. Such hearing shall be held within thirty calendar days from receipt of the request from the debtor. If the agency that referred the debt to the controller certifies that the debt was the subject of a final agency determination or judicial decision or that the debt has been reduced to judgment, the debtor may not dispute the validity of the debt at the hearing. No money shall be refunded or offset against a tax refund due the debtor if such a hearing is requested until such time as the hearing is completed and a decision is rendered. If at the hearing the dispute is resolved in favor of the debtor, the debtor shall

be entitled to a refund of any moneys due plus interest, pursuant to section 39-21-110.5, C.R.S. Provisions for adequate notice and opportunity for hearing shall be made by rules and regulations promulgated by the executive director of the department of personnel. Any debts may be written off, released, or compromised pursuant to paragraph (c) of this subsection (3).

(b) (Deleted by amendment, L. 91, p. 839, § 1, effective January 1, 1992.)

(c) The state controller, with the consent of the state treasurer, is authorized to write off, release, or compromise any debt due the state, but only in accordance with the rules applicable thereto. Such rules may provide delegated authority and criteria for write off, release, and compromise of debts and may include provisions to prohibit the referral of debts for tax offset based on the age or amounts of debts. The rules governing write off, release, and compromise of debts may include provisions authorizing the collection of principal, interest, and other collection fees and costs, including the fees required in subsection (8) of this section.

(d) Proceeds of debts collected by the state controller or by a private counsel or private collection agency shall be accounted for and paid into the fund from which the receivable was derived, and if the fund is no longer in existence, it shall be paid into the general fund. Revenues collected by the controller to pay for state collection activities shall be deposited in the debt collection fund.

(e) There is hereby created in the state treasury a fund to be known as the debt collection fund. Subject to annual appropriation by the general assembly, moneys in the debt collection fund may be used by the controller to offset a shortfall during the fiscal year in the revenue available to pay for the expenses incurred by the controller in collecting debts owed the state. The debt collection fund balance at the end of any fiscal year shall not exceed twenty-five percent of the annual appropriated budget for the collection of debts owed the state. Net revenues collected in excess of twenty-five percent of the debt collection fund balance shall revert to the general fund at the end of each fiscal year.

(f) Notwithstanding any provision of paragraph (e) of this subsection (3) to the contrary, on June 30, 2012, the state treasurer shall deduct two hundred forty-nine thousand four hundred ninety-four dollars from the debt collection fund and transfer such sum to the general fund.

(g) Notwithstanding any provision of this section to the contrary, for the 2011-12 fiscal year the general assembly may appropriate moneys in the debt collection fund created in paragraph (e) of this subsection (3) to the department of revenue for the purpose of modifying the program administered through the "Gambling Payment Intercept Act", part 6 of article 35 of this title, to include the collection of unpaid debts due to the state.

(3.5) (a) (I) The controller shall approve disbursements from state funds from the state's central accounting system in accordance with section 24-30-202 (2). If the

controller finds that there is an unpaid balance or debt owing to state agency claimants for any of the following, the controller, upon notice of withholding to the payee, shall withhold the amount of the disbursement that does not exceed the amount of the unpaid balance or debt:

(A) Any unpaid child support debt as set forth in section 14-14-104, C.R.S., or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., as certified by the department of human services;

(B) Any unpaid balance of tax, accrued interest, or other charges specified in article 21 of title 39, C.R.S., that is subject to offset under section 39-21-108 (3), C.R.S., and owing by the payee according to the records of the controller;

(C) Any unpaid debt owing to the state or any agency thereof by such payee, the amount of which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment as certified by the controller;

(D) Any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1) (p), C.R.S., found to be owing to such division by such payee as a result of final agency determination; or

(E) Any amount required to be paid to the unemployment compensation fund pursuant to articles 70 to 82 of title 8, C.R.S., the amount of which has been: Determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment; and referred to the controller for collection pursuant to section 8-79-102 (2), C.R.S.

(II) Any moneys withheld for payment of child support debt or child support arrearages pursuant to subparagraph (I) of this paragraph (a) shall be deposited with the state treasurer for disbursement by the department of human services. For all names and amounts certified by the department of human services pursuant to section 26-13-111, C.R.S., the controller shall provide to the department of human services the payees' names and associated amounts deposited with the state treasurer pursuant to this subparagraph (II) and any other identifying information as required by the department of human services.

(III) Any moneys withheld for payment of an unpaid balance of tax, interest, or other charges specified in subparagraph (I) of this paragraph (a) and subject to offset under section 39-21-108 (3), C.R.S., shall be deposited with the state treasurer. For all names and amounts submitted by the executive director of the department of revenue pursuant to section 39-21-114 (10), C.R.S., the controller shall provide to said department the payees' names and associated amounts deposited with the state treasurer pursuant to this subparagraph (III).

(IV) Any moneys withheld for payment of an unpaid debt owing to the state pursuant to subparagraph (I) of this paragraph (a) shall be deposited with the state treasurer. For all names and amounts certified by the central collections unit pursuant to

this section, the controller shall provide to the central collections unit the payees' names and associated amounts deposited with the state treasurer pursuant to this subparagraph (IV).

(V) All moneys withheld for payment of a student loan division debt pursuant to subparagraph (I) of this paragraph (a) shall be deposited with the state treasurer for disbursement by the state treasurer to the division. For all names and amounts certified by the division pursuant to section 23-3.1-104 (1) (q), C.R.S., the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this subparagraph (V).

(VI) The controller shall deposit with the state treasurer any moneys withheld for payment of unemployment compensation debt pursuant to subparagraph (I) of this paragraph (a), and the state treasurer shall credit the moneys to the unemployment compensation fund. For all names and amounts certified by the division of unemployment insurance pursuant to section 8-79-102 (2), C.R.S., the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this subparagraph (VI).

(VII) Any approved disbursement in excess of the unpaid balance or debt shall be paid to the approved payee.

(b) In the event that there are debts for unpaid child support, as set forth in section 26-13-111, C.R.S., debts for an unpaid balance of tax, interest, or other charges pursuant to article 21 of title 39, C.R.S., and other debts owing to the state or any agency thereof as set forth in subparagraph (I) of paragraph (a) of this subsection (3.5), the amount withheld pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5) shall be credited to the unpaid debts and shall be applied first to those unpaid debts in the order they appear in this paragraph (b), and any remaining amounts shall be prorated among other unpaid debts withheld pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5) on the basis of the ratio of the amount of each such remaining unpaid debt as compared to the total amount of the remaining unpaid debts.

(c) The controller shall charge for disbursements withheld pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5) and shall credit amounts so collected to the vendor offset implementation fund, which fund is hereby created in the state treasury. The amount of such charges shall be negotiated by the controller with departments using the vendor offset intercept system.

(4) (Deleted by amendment, L. 99, p. 689, § 9, effective August 4, 1999.)

(5) No contract for the collection of state debts under the provisions of this section shall be awarded for a term in excess of that permitted by the provisions of the "Procurement Code", articles 101 to 112 of this title.

(6) Any contract awarded to private counsel or private collection agency shall require that such contractee remain licensed under such contractee's respective occupational licensing statutes or regulations during the term of the contract. Such

contract shall require that a private counsel or private collection agency shall at all times act in compliance with the provisions of the "Colorado Fair Debt Collection Practices Act", article 14 of title 12, C.R.S., and in compliance with any rules or regulations promulgated by the executive director.

(7) The controller shall establish specific performance policies and standards for measuring state agency performance in collecting debts due the state.

(8) (a) The department of personnel may add a collection fee to the amount of a debt's principal and accruing interest referred to the state controller pursuant to this section except where other specific statutory authority, requirements under federal programs, or written agreement with the debtor provide otherwise. The department shall determine upon annual review the amount of the collection fee, which shall approximate the reasonable costs incurred by the controller in collecting debts. The collection fee may include a fee to recover the collection costs incurred by either the controller, private counsel, or private collection agencies, but in no case shall the aggregate fee for the controller or private collection agencies exceed twenty-one percent and in no case shall the aggregate fee for private counsel exceed twenty-five percent.

(b) The debtor shall be liable for repayment of the total amount of a debt due to the state, including the collection fee plus allowable fees and costs pursuant to paragraph (c) of this subsection (8) and the delinquency charge pursuant to section 24-79.5-102. Any court-ordered award that is insufficient to cover the total amount outstanding shall be applied first to the principal amount owed, then to court costs, then to attorney fees, then to interest, and then to any delinquency charge.

(c) If such a debt due to the state is litigated and the state prevails, in addition to the collection fee, the debtor shall also be liable for the following:

(I) Reasonable attorney fees as may be determined by the court;

(II) Court costs as described in section 13-16-122, C.R.S.; and

(III) Fees incurred by the state's attorney in processing the litigation and collection of any judgment.

(d) If such a debt due to the state is in the form of a check, draft, or order not paid upon presentment and referred to the department of personnel for collection, the department is entitled, in addition to the collection fee, to collect damages as specified in section 13-21-109 (1) (b) (II) and (2) (a), C.R.S.

(9) Except as provided in the "Colorado Fair Debt Collection Practices Act", article 14 of title 12, C.R.S., within five days after the initial communication with a debtor in connection with the collection of any debt, the controller, private counsel, or private collection agency shall, unless the information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice with the disclosures specified in paragraphs (a) and (b) of this subsection (9). If such disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying debtors of that fact. Such disclosures shall state:

(a) The amount of the debt, including an itemization of any fees assessed as provided for in paragraph (a) of subsection (8) of this section; and

(b) The name of the creditor to whom the debt is owed.

(10) (a) Notwithstanding any other provision of law, and pursuant to 31 U.S.C. sec. 3716 (b) and (h) (1), the department of personnel, at the request of any executive, judicial, or legislative branch agency of the state, state-supported institution of higher education, or political subdivision of the state, may enter into a reciprocal agreement with the United States government to offset:

(I) The claim of any person against the state, including any state tax refund to which the person may be entitled, to any debt of the person owed to the United States government that the United States government has certified as final, due, and owing, with all appeals and legal actions having been waived or exhausted; and

(II) Any nontax claim of any person against the United States government to any liquidated debt of the person owed to the state. Any fees associated with any offset of federal moneys will be deducted by the United States government from the amount of moneys offset, which may then be added to the balance of the debt owed, but any fees associated with any offset of state moneys will not be charged to the United States government.

(b) Notwithstanding any other provision of law, the department of personnel, at the request of any executive, judicial, or legislative branch agency, state-supported institution of higher education, or political subdivision of the state, may enter into a reciprocal agreement with any state to offset:

(I) The claim of any person against the state to any debt of the person owed to any state that has certified the debt as final, due, and owing, with all appeals and legal actions having been waived or exhausted; and

(II) Any claim of any person against any state to any liquidated debt of the person owed to the state.

(c) If multiple creditors have certified liquidated debt against the same person on a claim against the state pursuant to this section, the debts of the state, any state-supported institution of higher education, or any political subdivision of the state shall be credited first in the priority established in paragraph (b) of subsection (3.5) of this section, with the understanding that any state agency or state-supported institution of higher education debt will be paid first before any debt for a political subdivision of the state assigned to central collection services. If there is any balance due the claimant after settling the whole demands of the state, any executive, judicial, or legislative branch agency of the state, any state-supported institution of higher education, and any political subdivision of the state, the balance shall be credited to the liquidated debts certified by the United States government and then to the liquidated debts certified by any other state in the order in which the claims were filed with the state treasurer. If there is a balance due the claimant after satisfaction of all liquidated debts as itemized in this section and any court-ordered

payments, the balance shall be paid to the claimant.

24-30-202.5. Assistant state solicitors general. The state solicitor general shall appoint such assistants as are reasonably necessary to perform the legal services which the controller may require to carry out the duties of collection of debts due the state.

24-30-202.7. Lottery winnings offset - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Debtor" means a person who owes an outstanding debt.

(b) "Outstanding debt" means any unpaid debt due to the state that is referred pursuant to section 24-30-202.4 (2) to the state controller or the central collection services section of the division of finance and procurement, or any successor section, in the department of personnel, including the collection fee and any allowable fees and costs pursuant to section 24-30-202.4 (8). "Outstanding debt" includes any debt collected by the department of personnel for a political subdivision of the state under contract with central collection services, with the understanding that any state agency or state-supported institution of higher education debt will be paid before any debt for a political subdivision of the state assigned to central collection services.

(2) Beginning January 1, 2012, the department of personnel shall periodically certify to the department of revenue information regarding debtors with an outstanding debt. Such information shall include the social security number of the debtor, the amount of the debtor's outstanding debt, and any other identifying information required by the department of revenue.

(3) Upon receiving notification from the department of revenue that a lottery cash prize winner appears among those certified by the department of personnel, the department of revenue shall notify the debtor, in writing, that the state intends to offset the debtor's outstanding debt against the debtor's winnings from the state lottery. Such notification shall include information on the debtor's right to object to the offset and to request an administrative review pursuant to the rules of the department of personnel.

(4) Upon notification by the department of revenue of amounts deposited with the state treasurer pursuant to section 24-35-212, the proceeds of the outstanding debt collected shall be accounted for and deposited into the fund or funds required pursuant to section 24-30-202.4 (3) (d).

(5) The executive director of the department of personnel shall promulgate rules pursuant to article 4 of this title establishing procedures to implement this section.

24-30-203. Refunds of money erroneously collected. (1) In all cases not

otherwise provided for by specific statute, whenever any money not owed or belonging to the state of Colorado is collected or received by the state of Colorado through mistake either of law or of fact, upon proper showing made to the satisfaction of the head of the department of the state of Colorado which collected or received such money and upon proper voucher drawn by such department head and approved by the governor and controller, the controller is authorized to draw a warrant to refund such money to the person from whom it was collected or received. Such refund shall be made from the fund into which such money was deposited. No refund made under the authority of this section shall be made unless a claim therefor is filed within one year after such money is collected or received by the state of Colorado.

(2) Nothing in this section shall alter, modify, or amend the procedure, time of filing claims, or methods of processing or paying refunds specifically provided for in other statutes.

24-30-203.5. Recovery audits - legislative declaration - contracting - reporting - definitions. (1) (a) The general assembly hereby finds and declares that:

(I) Improper payments are a serious problem for state agencies given the magnitude and complexity of state operations;

(II) Improper payments waste state and federal moneys and detract from the efficiency and effectiveness of state agency operations by diverting resources from their intended uses;

(III) An improper payment occurs when a vendor or other entity receives a payment from a state agency in error or in excess of the legal amount to which the vendor or other entity is entitled.

(b) The general assembly further finds and declares that:

(I) Recovery audits are a nationally recognized best practice for disbursements management and provide insight for improving operational efficiency and internal controls in the disbursement of state and federal moneys;

(II) In order to improve the economy and efficiency of state agency operations, it is necessary, appropriate, and in the best interests of the state to require the state controller to contract for recovery audits to recoup improper payments by state agencies of state or federal tax dollars, fees, gifts, grants, donations, and other state and federal moneys not specifically excluded by law or rule; and

(III) Recovery audits will not cost the state any money because the contractor's costs are deducted from any dollars recovered, which makes recovery audits self-funding.

(2) As used in this section, unless the context otherwise requires:

(a) "Consultant" means a private contractor that has recovery audit expertise.

(b) "Improper payment" means a payment by a state agency to a vendor or other entity that is made in error or is in excess of the amount to which the recipient is entitled,

including, but not limited to:

(I) A payment to a recipient who does not meet applicable eligibility requirements for receiving the payment;

(II) A duplicate payment;

(III) A payment resulting from an invoice or pricing error;

(IV) A payment resulting from a failure to apply an applicable discount, rebate, or other allowance;

(V) A payment resulting from a failure to comply with a purchasing agreement; and

(VI) A payment resulting from any other inadvertent error.

(c) "Recovery audit" means a financial management technique used to identify improper payments made by a state agency to vendors and other entities in connection with the payment activities of the state agency.

(d) "State agency" has the same meaning as set forth in section 24-3-101. "State agency" does not include a state institution of higher education.

(3) (a) On or before July 31, 2017, and on or before July 31 of every third year thereafter, the state controller shall contract with one or more experienced consultants to conduct recovery audits for the period of three fiscal years that ends on the June 30 immediately preceding the applicable July 31 contracting deadline.

(b) A contract with a consultant entered into as required by paragraph (a) of this subsection (3) shall:

(I) Provide for reasonable compensation for the recovery audit services provided under the contract, which, notwithstanding any other provision of law, shall include compensation determined by the application of a specified percentage to the total amount collected by the consultant in the course of the consultant's recovery audit and related collection activities;

(II) Specify limitations on the scope of the powers that may be exercised by the consultant and procedures to be followed by the consultant in conducting recovery audits to the extent deemed necessary and appropriate by the state controller and the consultant to ensure that the due process rights of any person from whom the consultant seeks recovery of an improper payment are adequately protected; and

(III) Require any data or information determined by the state agency being audited to be confidential to be securely transmitted and maintained by the consultant in accordance with the security policies, standards, and guidelines established by the state chief information security officer or the state chief information officer pursuant to section 24-37.5-403.

(c) Notwithstanding any provision of law to the contrary and except to the extent prohibited by federal law or regulations or by an agreement between the state or a state agency and the federal government, the government of another state, or an agency or other government entity of another state, the state controller or a state agency being

subjected to a recovery audit, and any contractor or vendor that has a contract with such a state agency, shall provide a consultant acting under a contract required by paragraph (a) of this subsection (3) with any confidential information in the custody of the state controller, the state agency, or the contractor or vendor that is necessary for the performance of the recovery audit. A consultant acting under such a contract, or any employee or agent of the consultant, is subject to all prohibitions against the disclosure of confidential information obtained from the state or the contractor or vendor in connection with the contract that apply to the state controller, the applicable state agency, the contractor or vendor, or an employee thereof and to all civil or criminal penalties that apply to a violation of any such prohibition.

(4) (a) The state controller shall require recovery audits to be performed on the payments to vendors and other entities made by all state agencies; except that the state controller may, subject to the review provided for in paragraph (b) of this subsection (4), exempt a state agency in whole or in part from the recovery audits otherwise required by this section if the state controller determines that a recovery audit is not likely to yield significant net benefits to the state or that the exempted state agency or portion of a state agency is already subjected to recovery audits under any federal law or regulation or state law, rule, or policy.

(b) For the 2014-15 fiscal year and for any fiscal year thereafter in which the state controller proposes to change the exemptions from recovery audits, the state controller shall provide a report of the proposed changes to the state auditor and the legislative audit and joint budget committees by the March 1 that immediately precedes the execution of one or more recovery audit contracts for the applicable fiscal year. The legislative audit and joint budget committees may veto any exemption from recovery audits proposed by the state controller by majority votes of the members of each of the committees taken before June 30, 2017, and taken before June 30 of each year thereafter in which the state controller proposes a change in the exemptions from recovery audits.

(5) The state controller shall reimburse federal agencies for any amounts recovered from federal programs in accordance with federal statutes, rules, and regulations. The state controller may retain a portion of the net amount recovered due to a recovery audit in order to reimburse the actual administrative costs, including reimbursement paid to other state agencies required by this subsection (5) and additional costs incurred by the state controller in contracting for and providing oversight of the recovery audit. The state controller shall reimburse any state agency that incurs additional costs in relation to the recovery audits for such costs from the portion of any amounts recovered from recovery audits of the state agency.

(6) (a) The state controller shall provide copies, including electronic copies, of any reports received from a consultant performing recovery audits pursuant to this section to:

(I) The governor;

(II) The state auditor; and

(III) The legislative audit and joint budget committees of the general assembly.

(b) The state controller shall provide the copies of reports required by paragraph (a) of this subsection (6) not later than the seventh business day after the date the state controller receives the consultant's report.

(c) Not later than June 30, 2018, and not later than June 30 of every third year thereafter, the state controller shall issue a report to the general assembly summarizing the contents of all reports received from consultants that performed recovery audits contracted for pursuant to this section. The report shall also be posted on the web site of the state controller.

(7) Nothing in this section shall be construed to limit the authority of a governing board of a state institution of higher education to contract for a recovery audit for the institution it governs.

(8) Any moneys collected from a recovery audit pursuant to this section shall be transmitted to the state treasurer and credited to the recovery audit cash fund, which is hereby created in the state treasury. The cash fund shall consist of moneys credited to the cash fund pursuant to this subsection (8) and any other moneys appropriated or transferred to the cash fund by the general assembly. The general assembly shall annually appropriate the moneys in the cash fund to the state controller for the purpose of paying contingent contractor fees, state agency recovery audit costs, and amounts due to the federal government for moneys collected from recovery audits. All interest and income derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund. At the completion of each recovery audit cycle, the state controller shall transfer any moneys remaining in the cash fund to the general fund; except that the state controller shall instead transfer moneys remaining in the cash fund to the fund from which the improper payment was originally made if the state constitution specifies the purposes for which the moneys in that fund shall be used or if the improper payment was made with moneys originally received by the state as a fiduciary or as gifts, grants, donations, or custodial funds.

(9) The state controller shall manage all state agency recovery audits conducted pursuant to this section.

24-30-204. Fiscal year. (1) The fiscal year of the state government shall commence on July 1 and end on June 30 of each year. This fiscal year shall be followed in making appropriations and in financial reporting and shall be uniformly adopted by all departments, institutions, and agencies in the state government except the department of transportation, which shall prepare and submit its budget as required by law. Financial statements for the fiscal year shall be submitted by each department, institution, or agency to the controller no later than August 25. The controller shall prepare financial statements

in accordance with generally accepted accounting principles and submit these financial statements to the governor and the general assembly no later than September 20. The controller may grant an extension, not to exceed twenty days, to any department, institution, or agency because of administrative hardship in complying with this section.

(2) (a) For fiscal years commencing on or after July 1, 1992, in addition to the financial statements required pursuant to subsection (1) of this section, all departments, institutions, and agencies in the state government shall submit a quarterly report of financial information to the controller no later than thirty days after the last day of each fiscal year quarter. Such report shall include such financial information as deemed reasonable and necessary by the controller. Such report shall include, but shall not be limited to, sufficient financial information for the controller to determine if such department, institution, or agency is properly crediting monthly revenues and accruals and is properly billing the federal government, in a timely manner, for reimbursement of state moneys expended for federal programs. The controller shall work with all departments to develop a format for such quarterly report of each department, institution, and agency.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), a governing board that implements a capital construction or acquisition project as described in section 23-1-106 (9) or (10), C.R.S., is not required to submit for the project quarterly reports as described in paragraph (a) of this subsection (2).

(3) The official books of the state shall be closed no later than thirty-five days after the end of the fiscal year. As of this date, all adjusted revenue, expenditures, and expense accounts shall be closed into the state accounting system in order to divide the financial details of the state into comparable periods.

24-30-205. Duties of controller. The controller shall be devoted full time to the duties of the office and shall follow no other gainful employment. During the consideration of the budget and appropriation bills by the general assembly, it is the controller's duty, upon demand by either house of the general assembly or any committee thereof, to appear before the same and render any testimony, explanation, or assistance required. The controller shall have the technical and clerical assistance as, in the opinion of the governor, the execution of the controller's duties requires. The controller shall be furnished with suitable office space for the performance of the controller's duties.

24-30-206. Work program - allotments - revision. (Repealed)

24-30-207. Reports of revenue and expenditures.

(1) Repealed.

(2) On or before September 15 of each year, the controller shall prepare and transmit to the executive director of the department of revenue a graphic summary of statewide revenue and expenditures of the state as published in the controller's comprehensive annual financial report. The executive director of the department of revenue shall print such summary each year in a prominent location on the state income tax instruction booklet. The summary shall be for the last complete fiscal year.

(3) For the 1997-98 fiscal year and for each fiscal year thereafter, the controller shall prepare a report for the state ascertaining the amount of uncommitted reserves, as defined in section 24-75-402 (2), credited to each state cash fund, as defined by section 24-75-402 (2) (b). Such report shall be audited by the state auditor. Such report shall be delivered to the office of state planning and budgeting and to the joint budget committee of the general assembly on or before September 20 of each year.

24-30-208. "Information Coordination Act" - policy - functions of the division of accounts and control. (Repealed)

PART 3

DIVISION OF BUDGETING

24-30-301 to 24-30-307. (Repealed)

PART 4

MOTOR VEHICLE POOLS

24-30-401 to 24-30-403. (Repealed)

PART 5

DIVISION OF PUBLIC WORKS

24-30-501 to 24-30-509. (Repealed)

PART 6

DIVISION OF AUTOMATED DATA PROCESSING

24-30-601 to 24-30-607. (Repealed)

PART 7

CLAIMS AGAINST STATE - CLAIMS COMMISSION

24-30-701 to 24-30-711. (Repealed)

PART 8

INCENTIVE AWARD SUGGESTION SYSTEM

24-30-801 to 24-30-805. (Repealed)

PART 9

TELECOMMUNICATIONS COORDINATION WITHIN STATE GOVERNMENT

24-30-901 to 24-30-909. (Repealed)

PART 10

DIVISION OF ADMINISTRATIVE HEARINGS

24-30-1001. Office of administrative courts - administrative courts cash fund - creation. (1) Effective July 1, 2005, there is hereby created the office of administrative courts in the department of personnel, the head of which shall be the executive director of the department of personnel. The office of administrative courts shall exercise its powers, duties, and functions as a **type 2** agency.

(2) The executive director of the department of personnel shall establish and maintain administrative offices and courts for the office of administrative courts in Denver, and in the southern region and on the western slope of the state, in addition to such other offices and courts as the executive director deems necessary to carry out the powers, duties, and functions of the office of administrative courts.

(3) The executive director of the department of personnel shall establish any fees or cost allocation billing process necessary to pay for the direct and indirect costs of the office of administrative courts. The department of personnel shall not establish a fee for individuals or beneficiaries that have a right to an administrative hearing without prior approval of the associated state agency and formal rule-making related to the fee pursuant to article 4 of this title. All moneys collected shall be transmitted to the state treasurer, who shall credit the same to the administrative courts cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general

assembly for the direct and indirect costs of the office of administrative courts. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

24-30-1002. Appropriation of moneys. All moneys appropriated for expenditure by any state agency for administrative law judges appointed pursuant to this part 10 shall be appropriated to the department of personnel.

24-30-1003. Administrative law judges - appointment - qualifications - standards of conduct. (1) The executive director of the department of personnel may appoint such administrative law judges except those employed pursuant to sections 24-50-103 (7) and 40-2-104, C.R.S., as may be necessary to provide services to each state agency, except the state personnel board and the public utilities commission, entitled to use administrative law judges. Administrative law judges shall be appointed in accordance with the provisions of section 13 of article XII of the state constitution and the laws and rules governing the state personnel system.

(1.5) The director of the office of administrative courts shall appoint and assign administrative law judges to hear particular cases or classes of cases that come before the office of administrative courts in a manner that, in the discretion of such director, is necessary and appropriate to provide services to each state agency.

(2) Any administrative law judge shall meet the same qualifications as a district court judge as provided in section 11 of article VI of the state constitution.

(3) (Deleted by amendment, L. 91, p. 1340, § 57, effective July 1, 1991.)

(4) (a) Administrative law judges appointed pursuant to this section shall be subject to the standards of conduct set forth in the Colorado code of judicial conduct. The performance review plan for each administrative law judge shall include this Colorado code of judicial conduct.

(b) A complaint alleging a violation of the Colorado code of judicial conduct shall be referred to the executive director of the department of personnel who shall investigate the complaint and determine if the administrative law judge violated any canons of the code. Such administrative law judge shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board.

(c) If the decision is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(d) If the administrative law judge is found by the executive director or the board of ethics to have acted in violation of the canons of the Colorado code of judicial conduct,

then the decision shall be made a part of the personnel file of the administrative law judge against whom the complaint was filed.

(5) In addition to the authority set forth in section 24-4-105 or as otherwise provided by law, administrative law judges in the office of administrative courts shall have the power to:

(a) Issue subpoenas, administer oaths, and control the course of trials and other proceedings before them; and

(b) Engage in or encourage the use of alternative dispute resolution as appropriate.

PART 11

DIVISION OF CENTRAL SERVICES

24-30-1101. Legislative findings and declarations. (1) The general assembly hereby finds, determines, and declares that:

(a) Services such as printing, document management, mail-related services, microfilm, graphic arts, fleet management, and other similar services are being widely used by the state of Colorado as a practical and economical means of improving administrative production and efficiency;

(b) and (c) (Deleted by amendment, L. 2004, p. 305, § 1, effective August 4, 2004.)

(d) Meeting the service needs of state departments, institutions, and agencies in efficient and economical ways within the resource capabilities of the state is the prime goal of the division of central services policy;

(e) To most effectively utilize resources committed to existing services and to assure the best services at competitive costs to user agencies while preserving the managerial prerogatives and responsibilities assigned to department and agency heads by statute and otherwise, it is necessary to establish central planning, control, and coordination of service activities.

24-30-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Cost" means the direct cost of providing goods or services including, but not limited to, the total cost of labor and all related benefits, maintenance costs, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, financing, supervision, engineering, clerical and accounting services, the value of the use of equipment, including its depreciation or replacement value, and an equitable share of other administrative costs not otherwise directly attributable to a particular good or service which may be reasonably apportioned to each particular service in accordance

with generally accepted accounting principles and standards.

(2) "Director" or "executive director" means the executive director of the department of personnel.

(3) (Deleted by amendment, L. 96, p. 1497, § 8, effective June 1, 1996.)

(4) "Services" means printing, document management, mail-related services, microfilm, graphic arts, fleet management, and other similar support functions that are or may be used by the state of Colorado as a practical and economical means of improving administrative production and efficiency.

(5) "State agency" means this state or any department, board, bureau, commission, institution, or other agency of the state; except that "state agency" shall not include any state institution of higher education, the Auraria higher education center, or the state board of stock inspection commissioners, created pursuant to section 35-41-101, C.R.S.

(6) (a) "State-owned motor vehicle" means all motor vehicles owned by the state or any agency of the state that shall include all two- and four-wheel drive trucks, all passenger vehicles including cars, vans, station wagons and other similar passenger vehicles, and any other vehicle not described herein that may be designated as a state-owned motor vehicle if a state agency requests such designation; except that "state-owned motor vehicle" shall not include any vehicle rated at one ton or more that is:

(I) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1851, § 29, effective June 9, 2010.)

(II) A specialized vehicle used for the purposes of construction or maintenance, and owned, operated, or controlled by the department of transportation.

(b) "State-owned motor vehicle" shall not include any vehicle donated to a specific state agency.

24-30-1103. Central services.

(1) (Deleted by amendment, L. 96, p. 1497, § 9, effective June 1, 1996.)

(2) The powers, duties, and functions concerning central services, specified by this part 11, shall be administered as if transferred by a **type 2** transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title, to the department of personnel.

24-30-1104. Central services functions of the department - definitions. (1) Within the counties of Adams, Arapahoe, Boulder, Douglas, Pueblo, El Paso, and Jefferson, the city and county of Broomfield, and the city and county of Denver, and within any other areas in the state of Colorado where central services are offered, the department of personnel shall perform the following functions for the executive branch of the state of Colorado, its departments, institutions, and agencies,

under the direction of the executive director:

(a) Formulate, in consultation with state departments, institutions, and agencies, recommendations for a strategic plan for approval of the executive director of the department of personnel and the governor no later than January 1 of 2005 and every five years thereafter;

(b) Review all existing and future services, service applications, software related to services, planning systems, personnel, equipment, and facilities and establish priorities for those that are necessary and desirable to accomplish the purposes of this part 11;

(c) Establish procedures and standards for management of service functions set forth in this part 11 for all state departments, institutions, and agencies;

(d) Establish and maintain facilities as needed to carry out the duties set forth in this part 11, including but not limited to those listed;

(e) (Deleted by amendment, L. 2004, p. 306, § 3, effective August 4, 2004.)

(f) Advise the governor and the general assembly on central services matters;

(g) Prepare and submit such reports as are required by this part 11 or which the governor or the general assembly may request;

(h) Approve or disapprove the acquisition of services, service equipment, and software related to services by any state department, institution, or agency and approve, modify, or disapprove the staffing pattern for service operations by any state department, institution, or agency in accordance with the approved plan;

(i) Continually study and assess service operations and needs of state departments, institutions, and agencies;

(j) Provide services, equipment, and facilities as required pursuant to this part 11 for state departments, institutions, and agencies according to their needs;

(k) Establish, in consultation with other state departments, institutions, and agencies, techniques and standards for microfilm, digital imaging, and digital conversion and evidentiary certification of photographs, microphotographs, or reproductions;

(l) Notify state agencies through written statements, which may include electronic statements, prepared by central services that state agencies may obtain goods and services directly from the private sector, if the cost and quality of such goods or services offered by the private sector are competitive with those provided by central services;

(m) Offer services to any state institution of higher education that chooses to purchase such services. When an institution of higher education intends to purchase a service provided by the department, the institution shall include the department in any solicitation or vendor qualification process for the service. Whenever practicable, institutions of higher education shall seek partnerships with the department for the purpose of procuring services at a cost savings to the institution and the state.

(1.5) The department of personnel shall establish a rule providing for a waiver to a state agency of subsection (1) of this section when the state agency can procure the services described in this part 11 at a net cost savings to the state.

(2) In addition to the county-specific functions set forth in subsection (1) of this section, the department of personnel shall take such steps as are necessary to fully implement a central state motor vehicle fleet system by January 1, 1993. The provisions of the motor vehicle fleet system created pursuant to this subsection (2) shall apply to the executive branch of the state of Colorado, its departments, its institutions, and its agencies; except that the governing board of each institution of higher education, by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be exempt from the provisions of this subsection (2) and may obtain a motor vehicle fleet system independent of the state motor vehicle fleet system. Under the direction of the executive director, the department of personnel shall perform the following functions pertaining to the motor vehicle fleet system throughout the state:

(a) Establish and operate a central state motor vehicle fleet system and such subsidiary-related facilities as are necessary to provide for the efficient and economical use of state-owned motor vehicles by state officers and employees;

(b) Establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of state agencies; utilize any available state facilities for that purpose; and enter into contracts with such facilities as are necessary to carry out the provisions of this part 11;

(c) (I) Adopt uniform rules for motor vehicle acquisition, operation, maintenance, repair, and disposal standards. Uniform rules adopted by the executive director of the department of personnel pertaining to acquisition of motor vehicles by lease or purchase shall provide that low energy consumption shall be a favorable factor in determining the low responsible bidder. The size of any passenger motor vehicle shall not be greater than necessary to accomplish its purpose.

(II) By January 1, 2008, the executive director shall adopt a policy to significantly increase the utilization of alternative fuels and that establishes increasing utilization objectives for each following year. To encourage compliance with this policy, the rules promulgated pursuant to this paragraph (c) may establish progressively more stringent percentage mileposts and, for fiscal years commencing after July 1, 2004, require the collection of data concerning the annual percentage of state-owned bi-fueled vehicles that were fueled exclusively with an alternative fuel. For the years commencing on January 1, 2008, and January 1, 2009, the executive director shall purchase flexible fuel vehicles or hybrid vehicles, subject to availability, unless the increased cost of such vehicle is more than ten percent over the cost of a comparable dedicated petroleum fuel vehicle. Beginning on January 1, 2010, the executive director shall purchase motor vehicles that operate on compressed natural gas, plug-in hybrid electric vehicles, or vehicles that operate on other alternative fuels, subject to their availability and the availability of adequate fuel and fueling infrastructure, if either the increased base cost of such vehicle or the increased life-cycle cost of such vehicle is not more than ten percent over the cost

of a comparable dedicated petroleum fuel vehicle. The executive director shall adopt a policy to allow some vehicles to be exempted from this requirement. The executive director or the director's designee shall submit an annual report to the transportation committees of the senate and the house of representatives, or any successor committees, and the joint budget committee of the general assembly, detailing the items specified in subparagraph (V) of this paragraph (c). As used in this subparagraph (II):

(A) "Flexible fuel vehicle" means any dedicated flexible-fuel or dual-fuel vehicle designed to operate on at least one alternative fuel.

(B) "Hybrid vehicle" means a motor vehicle with a hybrid propulsion system that uses an alternative fuel by operating on both an alternative fuel, including electricity, and a traditional fuel.

(III) For purposes of this paragraph (c):

(A) "Alternative fuel" has the meaning established in section 25-7-106.8, C.R.S.

(B) "Bi-fueled vehicle" means a motor vehicle, which may be purchased to comply with applicable federal requirements including, but not limited to, the federal "Energy Policy Act of 1992", 42 U.S.C. sec. 13257, and 42 U.S.C. sec. 7587, that can operate on both an alternative fuel and a traditional fuel or that can operate alternately on a traditional fuel and an alternative fuel.

(C) "Biodiesel" means fuel composed of mono-alkyl esters of long chain fatty acids derived from plant or animal matter that meet ASTM specifications and that is produced in Colorado.

(D) "Life-cycle cost" means the purchase cost of a vehicle minus the resale value at the end of the vehicle's expected useful life, in addition to the fuel, operating, and maintenance costs incurred during the vehicle's expected useful life. Fuel costs per mile traveled shall be calculated based on the reference case projections published by the United States energy information administration for the expected useful life of the vehicle. The expected useful life of a vehicle shall be the standard that is set by the state fleet management program for analysis and life-cycle costing purposes.

(IV) (A) By January 1, 2007, the director shall adopt a policy that all state-owned diesel vehicles and equipment shall be fueled with a fuel blend of twenty percent biodiesel and eighty percent petroleum diesel, subject to availability and so long as the price is no greater than ten cents more per gallon than the price of diesel fuel. The director shall provide for the proper administration, implementation, and enforcement of the policy.

(B) Repealed.

(V) On or before November 1, 2013, and each November 1 thereafter, the executive director or the director's designee shall submit a report to the general assembly as specified in subparagraph (II) of this paragraph (c). The report must include, but need not be limited to, the following:

(A) The number of vehicles that the executive director or the director's designee

purchased since January 1, 2008, for the motor vehicle fleet system that operate on compressed natural gas and other alternative fuels;

(B) An estimate of the number of dedicated petroleum fuel vehicles that the executive director or the director's designee purchased for the motor vehicle fleet system since January 1, 2008, instead of a vehicle that operates on compressed natural gas or other alternative fuel because the base cost or life-cycle cost of the compressed natural gas vehicle or other alternative fuel vehicle was more than ten percent over the cost of a comparable dedicated petroleum fuel vehicle;

(C) An explanation of the availability of adequate fuel and fueling infrastructure in the state for compressed natural gas vehicles and other alternative fuel vehicles and whether limited availability of fuel or fueling infrastructure contributes to the purchase of dedicated petroleum fuel vehicles for the motor vehicle fleet system instead of vehicles that operate on compressed natural gas and other alternative fuels;

(D) A summary of the policy that allows the executive director to exempt some vehicles from the requirement to purchase vehicles that operate on compressed natural gas and the percentage of dedicated petroleum fuel vehicles that the director purchased pursuant to this exemption;

(E) A summary of the administrative procedures or policies in place within the department, if any, that are intended to facilitate the purchase of vehicles that operate on compressed natural gas and other alternative fuels;

(F) The executive director's suggested changes to the requirements and limitations of subparagraph (II) of this paragraph (c) or other state law that would facilitate the gradual conversion of the motor vehicle fleet system to vehicles that operate on compressed natural gas and other alternative fuels, allow the state to account for the benefit of reduced emissions from vehicles that operate on compressed natural gas and other alternative fuels in its analysis regarding the purchase of such vehicles, and enable the department to provide the best value to the state in the motor vehicle fleet system while purchasing vehicles that operate on compressed natural gas and other alternative fuels; and

(G) A plan for putting in place the infrastructure necessary to support vehicles in the state's motor vehicle fleet system that operate on compressed natural gas and other alternative fuels.

(d) (I) Require that all state agencies transfer custody of certificates of title to all state-owned motor vehicles that are owned by such agencies to the department of personnel for the purpose of compiling complete data on all motor vehicles owned by the state;

(II) Require that all motor vehicles presently owned by state agencies be entered into the state fleet management program. Per-mile costs for the program shall be determined by criteria established by the department of personnel.

(III) (Deleted by amendment, L. 96, p. 1498, § 10, effective June 1, 1996.)

(IV) Require that any department, institution, or agency of the executive branch of the state that owns, operates, or controls vehicles that are not part of the central state motor vehicle fleet system provide the department of personnel with information requested by the department for the purpose of compiling complete data on all motor vehicles owned by the state.

(e) Require that all vehicles purchased after July 1, 1992, shall be owned by the department of personnel and leased and permanently assigned to state agencies. Purchases shall be based on specifications as requested by the state agency in cooperation and consultation with the department of personnel and the motor vehicle advisory council.

(f) Maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the department of personnel. The department of personnel shall ensure that state-owned motor vehicles are not routinely replaced until they meet the replacement criteria relating to mileage, cost, safety, and other relevant factors established by the department.

(g) Establish and maintain a centralized record-keeping system for the acquisition, operation, maintenance, repair, and disposal of all motor vehicles in the fleet;

(h) Assign suitable transportation, either on a temporary or permanent basis to any state agency upon: Proper requisition; proper showing of need for use on authorized state business; or approved commuting as provided in section 24-30-1113;

(i) Establish and maintain a record-keeping system for the assignment and use of each vehicle in the motor fleet, which shall include:

(I) Verification from the executive director of a state agency or the executive director's designee that any employee driving a state vehicle has a valid driver's license;

(II) A statement of the authorized state business or other approved purpose for which the vehicle is assigned;

(III) Any other information which the director determines is necessary to carry out the purposes and provisions of this part 11;

(j) (Deleted by amendment, L. 2004, p. 306, § 3, effective August 4, 2004.)

(k) Allocate and charge against each state agency to which transportation is furnished, on the basis of mileage or on the basis of the period of time for which each vehicle is assigned to the agency, its proportionate part of the cost of maintenance and operation of the motor vehicle fleet;

(l) Enforce such rules and regulations as may be adopted by the director pursuant to the provisions of this part 11;

(m) Delegate or conditionally delegate to the respective heads of agencies to which state-owned motor vehicles are permanently assigned such duties as may be designated by the director for the enforcement of all or part of the rules and regulations adopted by the department of personnel;

(n) Require state agencies, officers, and employees to keep all records and make all reports regarding state-owned motor vehicle use as provided in rules and regulations

adopted by the department of personnel;

(o) (Deleted by amendment, L. 2004, p. 306, § 3, effective August 4, 2004.)

(p) Negotiate and enter into contracts for the purchase or lease of such personal property as is deemed necessary to achieve the purposes and provisions of this part 11;

(q) Adopt an annual operating budget;

(r) Supervise and be responsible for the expenditure of moneys appropriated to carry out the purposes and provisions of this part 11;

(s) Exercise any other powers or perform any other duties that are reasonably necessary for the fulfillment of the powers and duties assigned to the department of personnel pursuant to this part 11; and

(t) Require that the federal environmental protection agency mile-per-gallon rating for all motor vehicles purchased for the state-owned motor vehicle fleet on or after January 1, 2007, meet or exceed the average fuel efficiency standards as established pursuant to the federal "Energy Policy and Conservation Act", 15 U.S.C. sec. 2001, et seq., recodified as 49 U.S.C. sec. 32901 et seq.

(3) Repealed.

(4) In addition to any other duties imposed by this section, the department of personnel shall establish and maintain a program for parking permits and building and grounds maintenance for the state capitol buildings group pursuant to part 1 of article 82 of this title.

24-30-1105. Powers of the executive director - penalties. (1) In order to perform the duties and functions set forth in this part 11, the executive director of the department of personnel shall, in relation to departments, institutions, and agencies of the executive branch:

(a) Approve the equipment, software related to services, and facilities with which specific services shall be performed by or for any state department, institution, or agency in accordance with the approved plan;

(b) Prescribe standards governing the selection and operation of service equipment by or for any state department, institution, or agency;

(c) Adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this part 11;

(d) Contract for such services as the department of personnel may require for purposes of this part 11;

(e) Require such reports from other departments, institutions, and agencies as may be necessary;

(f) Recommend to the governor the transfer of funds, equipment, supplies, and personnel from existing departments, institutions, and agencies to the department of personnel or to such other agency as may be necessary to accomplish the purposes of this

part 11, such transfer to be effective upon the approval by the governor;

(g) Certify for evidentiary purposes as true copies of the originals, before the originals are destroyed or lost, photographs, microphotographs, or reproductions on film created by the department of personnel. Such certified photographs, microphotographs, or reproductions shall have the same legal force and effect as if certified by the original custodian of the records.

(h) In performance of such microfilm services as may be requested by the custodians of the types of documents referred to in this paragraph (h):

(I) Have rights of reasonable access in person or through employees to all types of nonconfidential documents in the possession of the state of Colorado, its departments, institutions, or agencies;

(II) Have rights of reasonable access in person or through specifically designated employees to all types of confidential documents in the possession of the state of Colorado, its departments, institutions, or agencies;

(III) Assist custodians of documents upon which microfilm, digital imaging, and digital conversion services have been performed in the lawful disposition of such documents pursuant to section 24-80-103;

(i) Have power to enter into contracts with other governmental entities in the state of Colorado for the purpose of furnishing services;

(j) Establish policies jointly with the supreme court of the state of Colorado for the expungement and sealing of official state records with a view to the technical and evidentiary problems attendant to expungement or sealing of photographs, microphotographs, and reproductions.

(2) (a) Except in accordance with judicial order or as otherwise provided by law, the executive director or the employees of the department of personnel shall not divulge or make known in any way any information disclosed in any confidential document to which the employees have access in performing the duties specified in this part 11.

(b) Officials or employees of the state who violate this subsection (2) are guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than six months nor more than two years, or by both such fine and imprisonment. Such persons shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of malfeasance in office.

24-30-1106. Appeal from decisions of director. If any department, institution, or agency disagrees with any decision, plan, procedure, priority, standard, rule, or regulation or other act of the department of personnel, the head thereof shall notify the executive director of the basis for such disagreement, and the executive director may, at his or her discretion, uphold, modify, or reverse such decision, plan, procedure, priority, standard,

rule, or regulation or other act; but no further action shall be taken by the department of personnel to implement any decision, plan, procedure, priority, standard, rule, or regulation or other act after such notice until the executive director has rendered his or her decision in the matter.

24-30-1107. Existing and new equipment, personnel, applications, and systems subject to approval of director. On and after June 20, 1977, no services, service equipment, or software related to services shall be purchased, leased, or otherwise acquired by any department, institution, or agency, nor shall any new service personnel be added to the state personnel system, nor shall any new applications, systems, or programs begin except upon the written approval of the executive director, nor shall any service equipment leased or operated by any department, institution, or agency on June 20, 1977, continue to be so leased or operated after July 1, 1977, unless certified by the executive director to be in accordance with the approved plan.

24-30-1108. Revolving fund - service charges - pricing policy. (1) There is hereby created a department of personnel revolving fund for use in acquiring such materials, supplies, labor, and overhead as are required. Moneys collected and deposited in the fund shall be from state and local government user fees and from rebates, including, but not limited to, rebates from car rentals, travel agencies, lodging, and travel cards. The fund shall be under the direction of the executive director.

(2) Users of department services shall be charged the full cost of the particular service, which shall include the cost of all material, labor, and overhead.

(3) The executive director shall have a pricing policy of remaining competitive with or at a lower rate than private industry in the operation of any service function which the executive director establishes.

(4) The executive director shall keep a full, true, and accurate record of the costs of providing each particular service.

(5) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall deduct two million three hundred thousand dollars from the capitol complex facilities fund, which is an account within the department of personnel revolving fund, and transfer such sum to the general fund.

24-30-1109. Reports. (Repealed)

24-30-1110. Division subject to termination. (Repealed)

24-30-1111. Postage meters - penalty for private use. (1) Each state department, agency, division, board, commission, committee, and educational institution which has installed a postage meter shall place an imprint plate on such meter and a notice attached to the meter showing that the metered mail is official state of Colorado mail and that there is a penalty for the unlawful use of such postage meter for private purposes.

(2) Any person who uses a state-installed postage meter for private purposes commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-30-1112. Permanent assignment of vehicles - verification of minimum mileage - revocation. (1) Unless an agency can justify to the division the need for permanent assignment because of the unique use of a vehicle, a state-owned passenger motor vehicle shall not be permanently assigned to:

(a) Any agency, state officer, or state employee, if the use of such vehicle is not likely to meet the minimum required mileage established by the department of personnel for the utilization classification associated with the vehicle's intended work function unless:

(I) The state officer's or employee's duties are routinely related to public safety; and

(II) The state officer's or employee's duties are likely to expose such officer or employee routinely to life-threatening situations.

(2) The division shall establish a program and adopt rules and regulations providing for annual verification that each permanently assigned motor vehicle has met the minimum required mileage based on the appropriate utilization classification. If verification establishes that a vehicle has not met the minimum annual mileage rate and if the responsible state agency cannot justify such lower mileage, permanent assignment shall be revoked immediately.

(3) The division shall adopt rules and regulations governing the procedure for revocation of assignment of state-owned motor vehicles. Revocation of assignment shall occur when it has been determined that:

(a) The vehicle has been used for other than official business, or without the state agency executive director's approval as provided in section 24-30-1113;

(b) Required reports have not been filed or reports which have been filed fail to meet the standards established in rules and regulations adopted by the division for the filing of such reports and such deficiencies are not cured within thirty days after receiving notification from the division of such deficiency;

(c) False information has knowingly and willfully been supplied on an application

for permanent assignment, commuting reimbursement form, or other required report or form;

(d) An individual required to do so fails to sign all reports or forms submitted for vehicles permanently assigned and fails to cure the deficiency within thirty days after receiving notification from the division of such deficiency;

(e) That a state-owned motor vehicle has been abused; or

(f) That a violation of other rules or regulations promulgated by the division has occurred which warrants revocation of assignment as specified in the rules and regulations adopted by the division.

(4) New requisitions for assignment of vehicle following the revocation of assignment shall not be honored until the division is assured that the violation for which a vehicle was previously revoked will not recur.

24-30-1113. Commuting - reimbursement by state officers and employees. (1) Except as provided in this section, the state agency shall not assign any state-owned motor vehicle to an officer or employee of a state agency for any reason other than as necessitated by the conduct of official state business.

(2) The use of state-owned motor vehicles for commuting purposes by officers and employees of state agencies between official work stations and residences may be authorized by the state agency's executive director where the state agency's executive director determines that such use is based on rules and regulations promulgated by the division and which includes:

(a) Promotion of a legitimate nonpartisan state interest;

(b) Promotion of the efficient operation of the state motor vehicle fleet system; and

(c) Is cost-effective to the state agency.

(3) A determination by the director that commuting purposes meet the criteria for commuting authorization shall be based on review and verification of written application forms and supporting documentation submitted in the manner provided in rules and regulations adopted by the division.

(4) (a) Any individual who has received the state agency executive director's authorization to use a state-owned motor vehicle for commuting purposes shall reimburse the state for such use at a rate computed by the division. This rate shall approximate the benefit derived from the use of the vehicle. Reimbursement shall be for twenty days per month regardless of how many days the individual uses the vehicle to commute during the month. Reimbursement shall be made as provided by rule.

(b) Unless provided by rule, no exceptions shall be made to the reimbursement provisions of this subsection (4).

24-30-1114. Restrictions on assignment of vehicles. (1) Requisitions for assignment or reassignment of state-owned motor vehicles shall not be honored when the purpose of the assignment or reassignment is to provide a newer or lower mileage vehicle to a state officer or employee on the basis of rank, position, management authority, length of service, or other nonessential purpose.

(2) Special use vehicles, including but not limited to four-wheel drive and law enforcement vehicles, shall be assigned only to those agencies and individuals authorized or otherwise designated by the division to operate such vehicles.

24-30-1115. Motor fleet management fund - creation. (1) There is hereby created a fund to be known as the motor fleet management fund, which shall be administered by the department of personnel and which shall consist of all moneys which may be transferred thereto in accordance with section 24-30-1104 (2) (k) or 24-30-1113 (4).

(2) The moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes of this part 11. Any moneys not appropriated shall remain in the fund and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. Subject to severe budget constraints and annual appropriation, a portion of the state motor fleet shall be replaced each year. The number of motor vehicles to be replaced annually shall be based on a methodology provided by the department of personnel and approved by the general assembly.

(3) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall deduct one million dollars from the motor fleet management fund and transfer such sum to the general fund.

(4) Notwithstanding any provision of this section to the contrary, on April 15, 2010, the state treasurer shall deduct three hundred ninety-seven thousand one hundred forty-three dollars from the motor fleet management fund and transfer such sum to the general fund.

24-30-1116. Vanpooling - state-owned vehicles - revolving account. (Repealed)

24-30-1117. Exclusive authority to acquire state-owned motor vehicles. The department of personnel shall have the exclusive authority to purchase, lease, and otherwise acquire motor vehicles for such use by state officers and employees as may be necessitated in the course and conduct of official state business. Except for any vehicles donated to specific state agencies, no motor vehicle shall be purchased, leased, or

otherwise acquired by any state agency unless such vehicle is obtained through the department of personnel or under an express waiver granted by the department.

24-30-1118. Statewide travel management program - creation - duties of department - mandatory use by state employees - repeal. (Repealed)

PART 12

PRODUCTS AND SERVICES OF
PERSONS WITH SEVERE DISABILITIES

24-30-1201. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Direct labor" means all work required for preparing, processing, and packing products and all work required for providing services, but the term does not include supervision, administration, inspection, or shipment.

(2) "Nonprofit agency for persons with severe disabilities" means a private nonprofit organization established under the laws of the United States or this state which is operated in the interest of individuals who are severely impaired, the net income of which does not inure in whole or in part to the benefit of any shareholder, officer, or other individual, and which, in the production of commodities and in the provision of services, employs during its fiscal year severely impaired individuals for not less than seventy-five percent of the man-hours of direct labor required for the production of commodities or for the provision of services.

(3) "Public agency" means any public office, officer, department, commission, institution, or bureau, any agency, division, or unit within a department or office, or any other public authority of this state. "Public agency" shall not include any municipality, county, school district, special district, nor any other political subdivision of the state.

(4) "Severe disability" means one or more physical or mental disabilities which constitute a substantial impairment to employment and which are of such a nature as to require multiple vocational rehabilitation services over an extended period of time.

24-30-1202. Central nonprofit agency - procurement list. (Repealed)

24-30-1203. Purchasing requirements. (1) In order to provide preferential treatment to the products and services of nonprofit agencies for persons with severe disabilities, public agencies shall purchase such products and services directly from said

agencies in accordance with applicable specifications of the department of personnel and of local purchasing officials for other public agencies. Whenever such products and services are available at a price determined to be reasonable by the appropriate purchasing official, the price shall recover for the nonprofit agency for persons with severe disabilities the cost of all materials, labor, and overhead, including delivery expenses, incurred in the production of products or the provision of services by such nonprofit agency.

(2) Notwithstanding any other provision of this part 12, no purchase shall be made of any product or service that does not conform to the standards and specifications necessary for the purpose for which the product or service is required.

24-30-1204. Cooperation between state agencies. In furtherance of the purposes of this part 12 and in order to contribute to the economy of state government, it is the intent of the general assembly that there be close cooperation among the department of personnel, the division of correctional industries in the department of corrections, and any other agency of this state from which procurement of products or services is required under any law of this state. The committee, the division of correctional industries, and any other similar agency of this state are authorized to enter into such agreements, cooperative working relationships, or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this part 12 and any other similar procurement law of this state. The department of personnel may secure, directly from any agency, division, or department of this state, any information which is necessary to enable it to carry out the provisions of this part 12.

PART 13

STATE BUILDINGS

24-30-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Capital construction" means:

(a) Purchase of land, regardless of the value thereof;

(b) Purchase, construction, or demolition of buildings or other physical facilities, including utilities, or remodeling or renovation of existing buildings or other physical facilities, including utilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to the health and safety of persons which are not covered by codes, to effect conservation of energy resources, to effect cost savings for staffing, operations, or maintenance of the facility, or to improve appearance;

(c) Site improvement or development;

(d) Purchase and installation of the fixed and movable equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities and for the conduct of programs initially housed therein upon completion of the new construction, remodeling, or renovation;

(e) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any capital construction project and to supervise the construction or execution of such capital construction projects;

(f) Any item of instructional or scientific equipment if the cost will exceed fifty thousand dollars; except that "capital construction" includes the purchase of instructional or scientific equipment by a state institution of higher education or by the Auraria higher education center created in article 70 of title 23, C.R.S., only if the institution or the center uses moneys appropriated pursuant to section 24-75-303 to purchase the instructional or scientific equipment.

(2) (a) "Controlled maintenance" means:

(I) Corrective repairs or replacement used for existing state-owned, general-funded buildings and other physical facilities, including, but not limited to, utilities and site improvements, which are suitable for retention and use for at least five years, and replacement and repair of the fixed equipment necessary for the operation of such facilities, when such work is not funded in an agency's operating budget to be accomplished by the agency's physical plant staff;

(II) That controlled maintenance funds may not be used for:

(A) Corrective repairs or replacement for buildings and other physical facilities and replacement or repair of the fixed and movable equipment necessary for the operation of physical facilities, when such work is funded in an agency's operating budget to be accomplished by the agency's physical plant staff; for the repair and replacement of fixed and movable equipment necessary for the conduct of programs (such repair and replacement is funded as capital outlay); or for rented or leased facilities or facilities constructed and maintained by self-liquidating property funds. Minor maintenance items shall not be accumulated to create a controlled maintenance project, nor shall minor maintenance work be accomplished as a part of a controlled maintenance project unless the work is directly related.

(B) Any work properly categorized as capital construction or capital outlay.

(b) "Controlled maintenance" may include the purchase of the services of architects, engineers, and other consultants to investigate conditions and prepare recommendations for the correction thereof, to prepare plans and specifications, and to supervise the execution of such controlled maintenance projects as provided by appropriation by the general assembly.

(3) "Department" means the department of personnel.

(4) "Economic life" means the projected or anticipated useful life of a facility.

(5) "Energy consumption analysis" means the evaluation of all energy-consuming systems and components by demand and type of energy, including the internal energy load imposed on a facility by its occupants, equipment, and components and the external energy load imposed on the facility by climatic conditions.

(6) "Executive director" means the executive director of the department of personnel.

(7) "Facility" means any public building or facility of the state but does not include highways. "Facility" also includes an academic or auxiliary facility that qualifies for controlled maintenance as specified in section 23-1-106 (10.2), C.R.S.

(7.5) "High performance standard certification program" means a building renovation, design, and construction standard that:

(a) Is quantifiable, measurable, and verifiable as certified by an independent third party;

(b) Reduces the operating costs of state-assisted facilities by reducing the consumption of energy, water, and other resources;

(c) Results in the recovery of the increased initial capital costs attributable to compliance with the program over a time period by reducing long-term energy, maintenance, and operating costs;

(d) Improves the indoor environmental quality of state-assisted facilities for a healthier work environment;

(e) Encourages the use of products harvested, created, or mined within Colorado, regardless of product certification status;

(f) Protects Colorado's environment; and

(g) Complies with the federal secretary of the interior's standards for the treatment of historic properties when such work will affect properties fifty years of age or older, unless the state historical society, designated in section 24-80-201, determines that such property is not of historical significance, as that term is defined in section 24-80.1-102 (6).

(8) "Initial cost" means the required cost necessary to construct a facility or construct or renovate a major facility.

(9) "Life-cycle cost" means the cost alternatives, over the economic life of a facility, including its initial cost, the cost of the energy consumed, replacement costs, and the cost of operation and maintenance of the facility.

(10) "Major facility" means any building or facility of twenty thousand or more gross square feet and wherein significant energy demands will exist.

(11) "Principal representative" means the governing board of a state department, institution, or agency or, if there is no governing board, the executive head of a state department, institution, or agency, as designated by the governor or the general assembly.

(12) "State agency" means this state or any department, institution, or other

agency of the state, including institutions of higher education.

(13) "State-assisted facility" means a facility constructed, or a major facility constructed or renovated, in whole or in part, with state funds or with funds guaranteed or insured by a state agency; except that, for purposes of section 24-30-1305 (9):

(a) "State-assisted facility" means a facility that:

(I) Is substantially renovated, designed, or constructed with state funds or with funds guaranteed or insured by a state agency and such funds constitute at least twenty-five percent of the project cost;

(II) Contains five thousand or more gross square feet;

(III) Includes a heating, ventilation, or air conditioning system; and

(IV) Has not entered the design phase prior to January 1, 2008.

(b) "State-assisted facility" does not include:

(I) A facility specified in section 23-1-106 (9), C.R.S.; or

(II) A publicly-assisted housing project, as that term is defined in section 24-32-718.

(III) (Deleted by amendment, L. 2008, p. 1307, § 1, effective August 5, 2008.)

(14) "State facility" means a facility constructed, or a major facility constructed or renovated, by a state agency.

(15) "Substantial renovation" means any renovation the cost of which exceeds twenty-five percent of the value of the property.

24-30-1302. State buildings - transfer. (1) The powers, duties, and functions of the office of state planning and budgeting relating to state buildings are transferred by a **type 2** transfer to the department of personnel.

(2) Effective July 1, 1979, the officers and employees of the office of state planning and budgeting engaged prior to such date in the performance of the powers, duties, and functions vested by this part 13 in the department shall become employees of the department and shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. Effective July 1, 1979, all of the books, records, reports, equipment, property, accounts, liabilities, and funds of the office of state planning and budgeting which pertain to the powers, duties, and functions vested by this part 13 in the department shall be transferred thereto.

(3) Whenever the powers, duties, or functions vested by this part 13 are referred to in any other statute or in any contract or other document and designate the former division of public works, or its predecessor, or the office of state planning and budgeting, such designation shall be deemed to apply solely to the department of personnel.

24-30-1303. Department of personnel - responsibilities. (1) The department shall:

(a) With the approval of the governor, negotiate and execute leases on behalf of the state government for land, buildings, and office or other space and, as provided in section 24-82-102 (2), negotiate and execute leases of state-owned property not presently needed for state use;

(b) With the approval of the governor, negotiate and approve easements and rights-of-way across nonstate land on behalf of the state government and, as provided in section 24-82-202, negotiate and approve easements and rights-of-way across land owned by or under the control of the state or its institutions, departments, or agencies;

(c) Repealed.

(d) Supervise and be responsible for the expenditure of funds appropriated by the general assembly for capital construction projects and controlled maintenance projects at the institutions and agencies of the state;

(e) Maintain a current record of balances by project in the capital construction and controlled maintenance funds;

(f) Cause to be developed and enforced methods of internal control, on standardized basis within individual state agencies, that will assure compliance with appropriations provisions and executive orders;

(g) Repealed.

(h) Develop, or cause to be developed, with the approval of the governor, specific standards relating to office space, to architectural, structural, mechanical, and electrical systems in such office space, and to energy conservation in such office space, except in higher education as provided in section 23-1-106, C.R.S., which shall be the basis for approving facilities master plans, facility program plans, schematic designs, design development phases, and construction documents relating to the lease, acquisition, or construction of office space; except that such standards shall be approved by the president of the senate and the speaker of the house of representatives when they concern space, systems, or energy conservation in that portion of the capitol buildings group which is under the jurisdiction of the general assembly;

(i) Develop a construction procedures manual for state facilities and state-assisted facilities, with the approval of the governor;

(j) Develop, or cause to be developed, standards of inspection, with the approval of the governor, which shall be the basis of all inspections and be responsible for assuring the uniform inspection of construction projects by the state agencies, utilizing such resources as may be locally available, in conjunction with the architect, engineer, or consultant;

(k) Coordinate initiation of budget requests for those capital construction projects for which the executive director shall be designated as principal representative by the governor;

(k.5) Coordinate initiation of budget requests for controlled maintenance projects and make recommendations concerning such requests to the capital development committee and to the office of state planning and budgeting. In the event that a controlled maintenance request exceeds approximately five hundred thousand dollars, the executive director may require the department making the request to prepare a feasibility study or program plan for the request. The executive director may establish guidelines or criteria for such feasibility study or program plan.

(l) Develop, or cause to be developed, after consultation with the office of state planning and budgeting pursuant to section 24-37-201, standards for the preparation of current facilities master plans coordinated with operational master plans, and facility program plans coordinated with operational program plans for each state institution and agency, except state schools, colleges, and universities as provided in section 23-1-106, C.R.S., for review and recommendation by the capital development committee;

(m) Repealed.

(n) (I) (Deleted by amendment, L. 94, p. 567, § 20, effective April 6, 1994.)

(II) Develop, or cause to be developed, methods of control on a standardized basis for all state agencies to ensure conformity of physical planning with approved building codes and of construction with approved physical planning.

(o) (Deleted by amendment, L. 94, p. 567, § 20, effective April 6, 1994.)

(p) Develop and maintain, or cause to be developed and maintained, at state agencies approved lists of qualified architects, industrial hygienists, engineers, landscape architects, land surveyors, and consultants from which the principal representative shall make a selection, including therein such information as may be required by part 14 of this article;

(q) Develop and maintain, or cause to be developed and maintained, at state agencies, approved lists of qualified contractors to bid on construction projects and promulgate rules and regulations as may be necessary for contractor prequalification processes for bidding on construction projects;

(r) Promulgate rules for independent third-party review of facility program plans, schematic design, design development, and construction documents to assure compliance with appropriate building codes, approved construction standards, and the appropriation and to assure the review of cost estimates prior to authorization of the calling of bids for compliance with the appropriation. In the event the executive director or his designee, after such review, finds that facility program plans, schematic design, design development, or construction documents do not comply with approved construction standards and the appropriation or that cost estimates do not comply with the appropriation, he shall immediately notify the principal representative in writing of his findings and make appropriate recommendations. Upon receipt of such notice, the principal representative shall take action as necessary to implement the recommendations and bring the project into compliance, continuing or modifying plans, designs,

construction documents, or cost estimates as the case may be.

(s) (I) Promulgate rules and regulations for the administration of the bid procedure and acceptable methods for determining the lowest responsible bidder;

(II) In cooperation with the project architect, engineer, or consultant, be responsible for the administration of the bid procedure for state agencies without staff capability and perform such additional functions as the department may determine;

(III) When directly responsible for the bid procedure, recommend the lowest responsible bid to the principal representative, after consultation with the project architect, engineer, or consultant;

(IV) Promulgate, with the assistance of the attorney general and the state controller, standardized contract language for agreements between architects, engineers, or consultants and state agencies and language for construction contracts between contractors or construction managers and state agencies;

(V) Review and approve modifications to such standard contract language;

(t) (I) Review and make recommendations on capital construction project requests, if requested by the office of state planning and budgeting or the capital development committee;

(II) Be responsible for the preparation of the state's controlled maintenance budget request and submit recommendations for the same to the office of state planning and budgeting and the capital development committee;

(u) and (v) Repealed.

(w) Develop and maintain, or cause to be developed and maintained, life-cycle cost analysis methods for state facilities and state-assisted facilities and, prior to beginning construction, assure that such methods are reviewed by an independent third party to ensure compliance with sections 24-30-1304 and 24-30-1305. The department shall review and approve specific exceptions to systems selected for construction, which systems are not found to be the best choice on a life-cycle basis.

(x) and (y) Repealed.

(z) Establish minimum building codes, with the approval of the governor and the general assembly after the recommendations and review of the capital development committee, for all construction by state agencies on state-owned or state lease-purchased properties or facilities. At the discretion of the department, said codes may apply to state-leased facilities where local building codes may not exist.

(aa) Repealed.

(bb) Develop and maintain a list of the information required to be included in facility management plans and updates submitted pursuant to section 24-30-1303.5 (3.5);

(cc) Develop procedures for the submission of facility management plans and updates pursuant to section 24-30-1303.5 (3.5); and

(dd) Review facility management plans and updates submitted pursuant to section 24-30-1303.5 (3.5) and submit a report regarding such plans and updates to the office of

state planning and budgeting and the capital development committee.

(ee) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1967, § 75, effective August 5, 2009.)

(2) The provisions of subsection (1) of this section shall not apply to lands under the jurisdiction of the state board of land commissioners or to leases of land held by the division of parks and wildlife.

(3) (a) All buildings and facilities, except public roads and highways and projects under the supervision of the division of parks and wildlife, erected for state purposes shall be constructed in conformity with a construction procedures manual for state facilities and state-assisted facilities prepared by the department and approved by the governor. Such construction shall be made only upon plans, designs, and construction documents that comply with approved state standards and rules promulgated pursuant to this section.

(b) Projects under the supervision of the division of parks and wildlife that are excluded from paragraph (a) of this subsection (3), shall:

(I) Maintain a current record of balances by capital project, including but not limited to:

(A) Planned budgets, actual expenditures, and additions or deletions to and components of projects; and

(B) Items categorized for professional services, construction or improvement, contingencies, and moveable equipment.

(II) Report the current record of balances by capital project on or before September 15, 2001, not less than one time annually on or before each September 15 thereafter to the office of state planning and budgeting, the joint budget committee, and the capital development committee.

(4) When the principal representative is a legislative agency, the principal representative may request, and the department shall provide to the principal representative within five working days of such request, a progress report of the department's actions undertaken as of the date of the request towards completion of any of the department's duties set forth in subsection (1) of this section.

(5) (a) The department may delegate to state agencies any or all of the responsibilities and functions outlined in this part 13 and the department's responsibilities and functions under part 14 of this article, pursuant to rules and regulations promulgated by the department, when the state agency has the professional or technical capability on staff to perform such functions competently.

(b) The department may authorize state agencies to hire private construction managers to supervise the capital construction projects. The cost of such construction manager shall be paid from moneys appropriated for the specific capital construction projects. This subsection (5) (b) shall not apply to projects under the supervision of the department of transportation.

(c) If the executive director determines that the governing board of a state

institution of higher education has adopted procedures that adequately meet the safeguards set forth in the requirements of part 14 of this article and article 92 of this title, the executive director may exempt the institution from any of the procedural requirements of part 14 of this article and article 92 of this title in regard to a capital construction project to be constructed pursuant to the provisions of section 23-1-106 (9) or (10), C.R.S.; except that the selection of any contractor to perform professional services as defined in section 24-30-1402 (6) shall be made in accordance with the criteria set forth in section 24-30-1403 (2).

(d) Upon application by any state agency that demonstrates internal expertise related to the leasing and acquisition of commercial real property, the department may delegate an individual employed by the state agency to act on behalf of the department in the performance of the responsibilities and functions described in paragraph (a) of subsection (1) of this section. The delegation authorized pursuant to this paragraph (d) may include, with the consent of the department, the authority to waive the use of the department-approved real estate lease form or real estate lease amendment form.

24-30-1303.1. Code appeals board - creation - duties. (1) There is hereby created the code appeals board. The board shall consider code variances necessary for buildings of various types and ages in the state's building inventory.

(2) (a) The board shall be composed of five members appointed by the director of the department. The director may remove any member for misconduct, incompetence, or neglect of duty. Board members shall be Colorado residents and shall be Colorado licensed architects, Colorado registered engineers, or officials certified by the international conference of building officials. The board shall have at least one architect, one engineer, and one member who is an official certified by the international conference of building officials. Three of the five board members shall not be state employees. Effective July 1, 1990, one member shall serve for a three-year term, but, of the appointments to be made effective July 1, 1990, one member who is not a state employee shall serve an initial two-year term, and one member who may be a state employee shall serve an initial two-year term, and one member who is not a state employee shall serve an initial one-year term, and one member who may be a state employee shall serve an initial one-year term. Thereafter, all appointments shall be for three-year terms. Any vacancy occurring in the membership of the board shall be filled by the director of the department for the unexpired term of such member.

(b) The department shall provide such clerical or other assistance as is necessary for the proper performance of the work of the board and shall, from funds appropriated for coordination of construction, reimburse board members for expenses as may be allowable by state fiscal rules.

(c) A majority of the members shall constitute a quorum, and no official action

shall be taken at any meeting of the board unless a quorum is present.

(d) Technical analysis and assistance which the board may require to consider a code appeal shall be provided by the appellant.

(3) Any member of the board or witnesses or consultants appearing before the board shall be immune from suit in any civil action based upon any proceeding performed in good faith.

(4) (a) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state, unless extended as provided in that section, are applicable to the state code appeals board created by this section.

(b) The board, annually in the month of July, shall elect from the membership thereof a president, vice-president, and secretary-treasurer. The board shall meet at least once a month and at such other times as it deems necessary.

(c) The board is authorized:

(I) To adopt and, from time to time, revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this article. In adopting such rules and regulations, the board shall establish procedures for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the director of the department.

(II) To consider and rule at the request of an appellant on questions of interpretation of state capital construction projects;

(III) To consider and rule, on the basis of procedures described in published national standards, on questions of life safety equivalence where the requirements of an adopted building code are judged to be impractical to implement or which are judged to present a significant hardship on state capital construction projects. The board shall require any such life safety equivalence approaches, which may be proposed in lieu of an adopted building code requirement on state capital construction projects, to be rigorously justified by the appellant on the basis of industry practice, sound life safety engineering, and existing precedent.

(5) Nothing contained in this section shall prohibit the creation, pursuant to rules promulgated by the board, of similarly constituted boards at institutions and agencies of higher education.

24-30-1303.5. Department to prepare and maintain inventory of state property - vacant facilities. (1) The department shall obtain and maintain a correct and current inventory of all real property, with improvements thereon, owned by or held in trust for the state of Colorado or any state department, agency, or institution, including state institutions of higher education, and, in cooperation with the attorney general, correct any defects in title to said real property necessary to vest marketable title in the state. For purposes of this section, "real property" does not include land or any interest

therein acquired by the department of transportation and used, or intended to be used, for right-of-way purposes, nor does "real property" include the public lands of the state which are subject to the jurisdiction of the state board of land commissioners.

(2) Such inventory shall be comprised of sufficient information to identify such property with respect to which unit of state government has control thereof, where such property is located, and when and from what source the property was acquired, including subsequent improvements. The department shall establish and maintain an accurate index system which will assure that inquiries as to the location and control of all such property will be promptly answered.

(3) The department shall establish procedures whereby each state department, agency, or institution, including each state institution of higher education, is required to report all acquisitions of real property, including improvements, and all dispositions thereof to the department to enable the inventory to be promptly and accurately maintained with respect to such changes. The report shall consist of a copy of each purchase or sale agreement pertaining to the acquisition or disposition of real property, including improvements, or, if such agreements are not available, such other documents describing the terms and conditions of the transaction as the department finds to be appropriate in order to maintain the information required by subsection (2) of this section. For each transaction involving the acquisition or disposition of real property, the state department, agency, or institution shall also provide to the department a copy of the deed pertaining to the real property after the deed has been recorded.

(3.5) (a) With respect to all real property owned by or held in trust for the state of Colorado or any state department, agency, or institution, including state institutions of higher education, each state department, agency, or institution shall identify any vacant facility under its control. As used in this section, "vacant" means:

(I) Unoccupied;

(II) Unused in whole or in part for the purposes for which the improvement was designed, intended, or remodeled; or

(III) Without current defined plans by the state department, agency, or institution for the next fiscal year.

(b) For any facility that becomes vacant after July 1, 2003, the state department, agency, or institution shall be required to submit for the approval of the department a facility management plan consistent with the procedures established by the department. The state department, agency, or institution shall submit the facility management plan to the department within thirty days after the facility becomes vacant. In addition to any other information required by the department, the facility management plan shall include the following:

(I) A financial analysis of the possible uses of the facility;

(II) Any plans for the disposal of the facility through sale, lease, demolition, or otherwise;

(III) If the state department, agency, or institution does not intend to dispose of the facility during the next fiscal year, a plan for the proposed controlled maintenance, if any, necessary to avoid the deterioration of the vacant facility; and

(IV) Whether the facility has or is eligible to receive a national, state, or local historic designation or listing.

(c) (I) For each year after the department approves a facility management plan, the state department, agency, or institution shall submit an annual facility management plan update consistent with the procedures established by the department. The update shall be submitted on or before November 1 of the year following the approval of a facility management plan and each November 1 thereafter until such time that the facility is no longer vacant. In addition to any other information required by the department, the update shall identify all actions taken by the state department, agency, or institution within the last year consistent with the facility management plan. If based on the update or on any other information known by the department, the department determines that the state department, agency, or institution has failed to comply with the provisions of an approved facility management plan, the department may revoke the approval of the facility management plan. If the department revokes approval of the facility management plan, a state department, agency, or institution shall be required to submit a new facility management plan for the vacant facility subject to the provisions of this subsection (3.5).

(II) In addition to any other requirements of subparagraph (I) of this paragraph (c), the facility management plan update shall describe any changes proposed by the state department, agency, or institution to the facility management plan. Any proposed changes to the facility management plan shall be subject to the approval of the department, and any approved changes shall become part of the facility management plan for purposes of future updates.

(d) Any facility management plan or update required to be submitted by a state institution of higher education pursuant to this subsection (3.5) shall be submitted to the Colorado commission on higher education instead of the department. The commission shall submit a copy of the facility management plan or update and the commission's recommendations regarding it to the department.

(e) Repealed.

(f) No state department, agency, or institution shall be eligible for any capital construction appropriations until the department approves a facility management plan for all vacant facilities controlled by the state department, agency, or institution; except that the capital development committee may exempt a state department, agency, or institution from the provisions of this paragraph (f).

(4) For purposes of maintaining a current inventory, no acquisition or disposition of real property may be made and no funds or other valuable consideration may be given by a state department, agency, or institution for such acquisition, nor may any final document of conveyance of state property be transmitted to a purchaser, until a complete

report on such transaction as required pursuant to subsection (3) of this section has been filed with the department and the department has issued a written acknowledgment of the receipt of such report to the agency. Such written acknowledgment shall be issued without delay, and nothing in this section shall be construed to give the department any power to approve or disapprove any acquisition or disposition of real property, improvements thereon, or other capital assets.

(5) In addition to obtaining and maintaining a correct and current inventory of all real property, with improvements thereon, the department shall also establish a separate inventory of computer equipment and all other capital assets valued in excess of one hundred thousand dollars, owned by or held in trust for the state of Colorado or any state department, agency, or institution, including state institutions of higher education. Such capital assets inventory shall be maintained and kept current in the same manner as specified by subsections (3) and (4) of this section for real property and improvements thereon.

(5.5) The department shall cause to be developed performance criteria for state real property. An analysis shall be made upon selected real property against such performance criteria to assess whether such real property should be considered for sale or other disposition, if such real property is not performing and is determined not to be of sound investment value, or should be held for an identified future state need. The department may contract to maintain such inventories, develop such performance criteria, and perform such analysis and may enter exclusive brokerage agreements on behalf of state executive agencies to the extent necessary to accomplish the maintenance of such inventory and such analysis. The department shall make recommendations to the capital development committee regarding various real property management strategies resulting from such analysis. This subsection (5.5) shall not apply to property which is subject to the provisions of section 43-1-106 (8) (n), C.R.S.

(6) The department shall prepare an annual report of the acquisitions and dispositions of property subject to this section and make the report available to the members of the capital development committee. Such report shall include a description of such property and its present use and value.

24-30-1303.7. Controlled maintenance projects - flexibility in administering appropriations. (1) When the actual cost of a controlled maintenance project exceeds the amount specifically appropriated for such project in the annual general appropriation act or when an emergency need arises for a new controlled maintenance project, the executive director may eliminate one or more projects authorized by appropriation in the general appropriation act and utilize the savings to cover such additional cost or the cost of the emergency project. When the actual cost of a controlled maintenance project is less than the amount specifically appropriated for such project in the annual general

appropriation act, the executive director may apply such savings to other appropriated controlled maintenance projects.

(2) and (3) Repealed.

24-30-1303.9. Eligibility for state controlled maintenance funding - legislative declaration. (1) The office of the state architect shall develop guidelines in order to establish when a state-owned, general-funded building or other physical facility is eligible for controlled maintenance funding. The guidelines shall address the timing of such eligibility with respect to the dates on which acquisition, construction, additions, renovations, or corrective repairs of a state-owned, general-funded building or other physical facility occurred.

(2) The guidelines shall be annually reviewed and approved by the capital development committee.

(3) The guidelines shall provide for a waiver of eligibility requirements that a state agency or state institution of higher education may request in writing. If the state architect determines that special consideration is appropriate, he or she shall seek approval from the capital development committee.

(4) The guidelines shall be posted on the web site of the office of the state architect.

(5) Notwithstanding the eligibility requirements specified in this section, if a need arises for emergency controlled maintenance funding, the state agency or state institution of higher education shall communicate such need to the state architect in writing, and the state architect, in his or her discretion, may use moneys in the emergency controlled maintenance account created in section 24-75-302 (3.2) to fund such emergency controlled maintenance need. The state architect shall annually provide an emergency controlled maintenance funding status report to the capital development committee that shows spending for emergency controlled maintenance projects from the emergency controlled maintenance account.

24-30-1304. Life-cycle cost - legislative findings and declaration. (1) The general assembly hereby finds:

(a) That state-owned and state-assisted facilities have a significant impact on the state's consumption of energy;

(b) That energy conservation practices adopted for the design, construction, and utilization of these facilities will have a beneficial effect on the state's overall supply of energy;

(c) That the cost of the energy consumed by these facilities over the life of the facilities must be considered, in addition to the initial cost of constructing such facilities; and

(d) That the cost of energy is significant, and facility designs must take into consideration the total life-cycle cost, including the initial construction cost, the cost, over the economic life of the facility, of the energy consumed, replacement costs, and the cost of operation and maintenance of the facility, including energy consumption.

(2) The general assembly declares that it is the policy of this state to insure that energy conservation practices are employed in the design of state-owned and state-assisted facilities. To this end the general assembly requires all state agencies to analyze the life-cycle cost of each facility constructed, or each major facility constructed or renovated, over its economic life, in addition to the initial construction or renovation cost.

24-30-1305. Life-cycle cost - application - high performance standards - report. (1) The general assembly authorizes and directs that state agencies shall employ design and construction methods for state facilities and design and construction methods for state-assisted facilities under their jurisdiction, in such a manner as to further the policy declared in section 24-30-1304, insuring that life-cycle cost analyses and energy conservation practices are employed in new state-owned and state-assisted facilities and in new or renovated major state-owned and state-assisted facilities.

(2) The life-cycle cost analysis shall include but not be limited to such elements as:

(a) The coordination, orientation, and positioning of the facility on its physical site;

(b) The amount and type of fenestration employed in the facility;

(c) Thermal performance and efficiency characteristics of materials incorporated into the facility design;

(d) The variable occupancy and operating conditions of the facility, including illumination levels;

(e) Architectural features which affect energy consumption; and

(f) An energy consumption analysis of a major facility's heating, ventilating, and air conditioning system, lighting system, and all other energy-consuming systems. The energy consumption analysis of the operation of energy-consuming systems in the major facility should include but not be limited to:

(I) The comparison of two or more system alternatives;

(II) The simulation or engineering evaluation of each system over the entire range of operation of the major facility for a year's operating period; and

(III) The engineering evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

(3) The life-cycle cost analysis performed for each major facility shall provide but not be limited to the following information:

(a) The initial estimated cost of each energy-consuming system being compared and evaluated;

(b) The estimated annual operating cost of all utility requirements, including consideration of possible escalating costs of energy. The department may rely on any national or locally appropriate fuel escalating methodology approved by the department in performing life-cycle cost analyses.

(c) The estimated annual cost of maintaining each energy-consuming system;

(d) The average estimated replacement cost for each system expressed in annual terms for the economic life of the major facility; and

(e) (I) The use of biofuel to provide supplemental or exclusive heating, power, or both for the major facility. For a renovation of a major facility, the cost analysis regarding the use of biofuel shall consider any stranded utility costs.

(II) As used in this paragraph (e), "biofuel" means nontoxic plant matter consisting of agricultural or silvicultural crops or their byproducts, urban wood waste, mill residue, slash, or brush.

(4) The life-cycle cost analysis shall be certified by a licensed architect or professional engineer, or by both architect and engineer, particularly qualified by training and experience for the type of work involved.

(5) In order to protect the integrity of historic buildings, no provision of section 24-30-1304 or this section shall be interpreted to require such analysis with respect to any property eligible for, nominated to, or entered in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.

(6) Selection of the optimum system or combination of systems to be incorporated into the design of state facilities and state-assisted facilities shall be based on the life-cycle cost analysis over the economic life of the facility, unless a request for an alternative system is made and approved by the department prior to beginning construction.

(7) The principal representatives of all state agencies shall be responsible for implementing the provisions of this section and the policy established in section 24-30-1304.

(8) The provisions of section 24-30-1304 and this section shall not apply to municipalities or counties nor to any agency or department of any municipality or county.

(9) (a) The office of the state architect, or an analogous successor office in the department, shall, in consultation with the Colorado commission on higher education, adopt and update from time to time a high performance standard certification program.

(b) (I) A state agency or department controlling the substantial renovation, design, or new construction of a state-assisted facility shall, pursuant to the program adopted in paragraph (a) of this subsection (9), perform the substantial renovation, design, or new construction to achieve the highest performance certification attainable as certified by an

independent third party pursuant to the high performance standard certification program. For purposes of this paragraph (b), a certification is attainable if the increased initial costs of the substantial renovation, design, or new construction, including the time value of money, to achieve the highest performance certification attainable can be recouped from decreased operational costs within fifteen years.

(II) (A) For all state-assisted facilities that started the design process on or after January 1, 2010, each state agency or department shall monitor, track, and verify utility vendor bill data pertaining to the state-assisted facility and must annually report to the office of the state architect, or an analogous successor office in the department. The annual report must also include information related to building performance based on the state-assisted facility's utility consumption.

(B) The general assembly hereby finds, determines, and declares that state-assisted facilities that have achieved the highest performance certification attainable and started the design process prior to January 1, 2010, are strongly encouraged to monitor, track, and verify utility vendor bill data pertaining to such state-assisted facility in order to ensure that the increased initial costs to achieve the highest performance certification attainable are in fact recouped. If such data is monitored, tracked, and verified, then the state agency or department must annually report to the office of the state architect, or an analogous successor office in the department. If such data is not monitored, tracked, and verified, then the state agency or department must provide the state architect, in writing, a reasonable explanation why such data is not monitored, tracked, and verified by the state agency or department. Any state agency or department that is not monitoring, tracking, and verifying such data must work with the state architect to find a way to start monitoring, tracking, verifying, and reporting such data.

(C) For purposes of this subparagraph (II), "utility vendor bill data" is limited to the usage data measured by the state agency or department or the information or data required to meet minimum program standards by an independent third party pursuant to the high performance standard certification program. The state agency or department, not a utility company, shall compile such data or information.

(c) (I) If the state agency or department estimates that such increased initial costs will exceed five percent of the total cost of the substantial renovation, design, or new construction, the general assembly's capital development committee shall specifically examine such estimate before approving any appropriation for the substantial renovation, design, or new construction.

(II) If a state-assisted facility undergoing substantial renovation cannot achieve high performance due to either the historical nature of the building or because the increased costs of renovating the state-assisted facility cannot be recouped from decreased operational costs within fifteen years, an accredited professional shall assert in writing that, as much as possible, the substantial renovation has been consistent with the high performance standard certification program.

(III) Any design or new construction of a facility of less than five thousand square feet that is, but for its size, otherwise subject to this section and minor renovation and controlled maintenance of such facilities and facilities that are subject to this section shall be executed to the high performance standards adopted in the high performance standard certification program even if high performance certification is not sought at that time.

(IV) Repealed.

(d) The department shall report annually to the general assembly's capital development committee regarding contracting documents, project guidelines, and reporting and tracking procedures related to the implementation of this subsection (9).

24-30-1306. Acceptance of gifts and grants. The department, with the approval of the governor, is specifically empowered to receive and expend all grants, gifts, and bequests, where such grants, gifts, or bequests involve no state funds for acquisition, construction, or operation, including federal funds available for the purposes for which the department exists, and to contract with the United States and all other legal entities with respect thereto. The department may provide, where such funds are specifically appropriated, matching funds wherever funds, grants, gifts, bequests, and contractual assistance are available on such basis. The department shall provide such information, reports, and services as may be necessary to secure such financial aid.

24-30-1307. Legislative declaration. The purpose of this part 13 is to allow the department of personnel to develop the policies and standards for state agencies to follow for the major renovation or new construction of state facilities and to allow the department of personnel to delegate the authority to implement such policies and standards to the individual state agencies. It is not the purpose of this part 13 to require state agencies to add FTEs or incur additional expenditures to implement the provisions of this part 13.

24-30-1308. Controlled maintenance funds - leased or rented facilities - secure facilities. Notwithstanding section 24-30-1301 (2) (a) (II) (A), controlled maintenance funds may be used for secure facilities and related auxiliary facilities leased and operated by the department of human services or the department of corrections.

24-30-1309. Eligibility of certain buildings for controlled maintenance. Notwithstanding the provisions of section 24-30-1301 (2) (a) (II) (A), on and after July 1, 2009, controlled maintenance funds may be used for facilities that are

transferred from the San Juan basin area vocational school to Pueblo community college as part of a merger transaction between the San Juan basin area vocational school and Pueblo community college.

PART 14

NEGOTIATION OF CONSULTANTS' CONTRACTS

24-30-1401. Legislative declaration. The purpose of this part 14 is to provide managerial control by the state over competitive negotiations for the acquisition of the professional services provided by architects, industrial hygienists, engineers, landscape architects, and land surveyors. It is hereby declared to be the policy of this state to publicly announce requirements for such professional services, to encourage all qualified persons to put themselves in a position to be considered for a contract, and to negotiate contracts for such professional services on the basis of demonstrated competence and qualification for the types of professional services required and on the basis of the furnishing of such professional services at fair and reasonable fees.

24-30-1402. Definitions. As used in this part 14, unless the context otherwise requires:

(1) "Certified industrial hygienist" means an individual that is certified by the American board of industrial hygiene or its successor.

(1.5) "Continuing contract" means a contract for professional services entered into pursuant to this part 14 between a state agency and a person, whereby the person provides professional services to the state agency for work of a specified nature as outlined in the contract required by the state agency with no specific time limitation. Any such contract shall provide a termination clause.

(2) "Department" means the department of personnel.

(2.2) "Industrial hygienist" means an individual who has obtained a baccalaureate or graduate degree in industrial hygiene, biology, chemistry, engineering, physics, or a closely related physical or biological science from an accredited college or university. The special studies and training of such individual shall be sufficient in the cognate sciences to provide the ability and competency to:

(a) Anticipate and recognize the environmental factors and stresses associated with work and work operations and to understand their effects on individuals and their well-being;

(b) Evaluate on the basis of training and experience and with the aid of quantitative measurement techniques the magnitude of such environmental factors and stresses in terms of their ability to impair human health and well-being;

(c) (I) Prescribe methods to prevent, eliminate, control, or reduce such factors and stresses and their effects.

(II) Any individual who has practiced within the scope of the meaning of industrial hygiene for a period of not less than five years immediately prior to July 1, 1997, is exempt from the degree requirements set forth in this subsection (2.2).

(III) Any individual who has a two-year associate of applied science degree in environmental science from an accredited college or university and in addition not less than four years practice immediately prior to July 1, 1997, within the scope of the meaning of industrial hygiene is exempt from the degree requirements set forth in this subsection (2.2).

(3) "Person" means an individual, a corporation, a limited liability company, a partnership, a business trust, an association, a firm, or any other legal entity.

(3.5) "Practice of industrial hygiene" means the performance of professional services, including but not limited to consulting, investigating, sampling, or testing in connection with the anticipation, recognition, evaluation, and control of those environmental factors or stresses arising in or from the workplace that may cause sickness, impaired health, or significant discomfort to workers or the public. "Practice of industrial hygiene" includes but is not limited to the identification, sampling, and testing of chemical, physical, biological, and ergonomic stresses and the development of physical, administrative, personal protective equipment, and training methods to prevent, eliminate, control, or reduce such factors and stresses and their effects. The term does not include the practice of architecture, as defined in section 12-25-302 (6), C.R.S., or the practice of engineering, as defined in section 12-25-102 (10), C.R.S.

(4) "Practice of landscape architecture" means the performance of professional services such as consultation, investigation, reconnaissance, research, planning, design, or responsible supervision in connection with the development of land areas or land use, where and to the extent that the dominant purpose of any such service is the preservation and development of existing and proposed land features, ground surface, planting, naturalistic features, and esthetic values. "Practice of landscape architecture" includes the design, location, and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this subsection (4), but the term does not include the making of land surveys or final engineered plats for official recording, integration of design of structures of earth, or other construction materials.

(5) "Principal representative" means the governing board of a state department, institution, or agency or, if there is no governing board, the executive head of a state department, institution, or agency, as designated by the governor or the general assembly.

(6) "Professional services" means those services within the scope of the following:

(a) The practice of architecture, as defined in section 12-25-302 (6), C.R.S.;

(b) The practice of engineering, as defined in section 12-25-102 (10), C.R.S.;

(c) The practice of professional land surveying, as defined in section 12-25-202

(6), C.R.S.;

(d) The practice of landscape architecture, as defined in subsection (4) of this section;

(e) The practice of industrial hygiene, as defined in subsection (3.5) of this section.

(7) "State agency" means this state or any department, board, bureau, commission, institution, or other agency of this state.

24-30-1403. Professional services - listings - preliminary selections. (1) Any person desiring to provide professional services to a state agency shall annually submit to the department a statement of qualifications and performance data and such other information as may be required by the department. The department may request such person to update such statement before the anniversary date in order to reflect changed conditions in the status of such person.

(2) (a) For each proposed project for which professional services are required, the principal representative of the state agency for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the department and shall conduct discussions with no less than three persons regarding their qualifications, approaches to the project, abilities to furnish the required professional services, anticipated design concepts, and use of alternative methods of approach for furnishing the required professional services. The principal representative shall then select, in order of preference, no less than three persons ranked in order and deemed to be most highly qualified to perform the required professional services after considering, and based upon, such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, current and projected work loads, the volume of work previously awarded to the person by the state agency, and the extent to which said persons have and will involve minority subcontractors, with the object of effecting an equitable distribution of contracts among qualified persons as long as such distribution does not violate the principle of selection of the most highly qualified person. In selection pursuant to this section, Colorado firms shall be given preference when qualifications appear to be equal. All selections are subject to approval by the principal representative, and all contracts between the principal representative and such selected professionals shall be consistent with appropriation and legislative intent.

(b) The requirements of paragraph (a) of this subsection (2) shall not apply to the state board of land commissioners, established in article 1 of title 36, C.R.S., in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153, C.R.S., or the commercial real property operating fund created in section 36-1-153.7, C.R.S.

24-30-1404. Contracts. (1) The principal representative shall negotiate a contract with the highest qualified person providing professional services for such services at compensation which the principal representative determines in writing to be fair and reasonable. In making such decision, the principal representative shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof. For all lump-sum or cost-plus-a-fixed-fee professional service contracts, the principal representative shall require the firm receiving the award to execute a certificate stating that wage rates and other factual unit costs supporting the compensation to be paid by the state agency for the professional services are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the principal representative determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(2) If the principal representative is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the principal representative determines to be fair and reasonable, negotiations with that person shall be formally terminated. The principal representative shall then undertake negotiations with the second most qualified person. If the principal representative fails to negotiate a contract with the second most qualified person, the principal representative shall formally terminate such negotiations. The principal representative shall then undertake negotiations with the third most qualified person.

(3) Upon completion of negotiations with the third most qualified person, the principal representative shall be allowed to enter into renegotiations with any or all of the three most qualified persons to arrive at a satisfactory contractual arrangement, if possible. The principal representative shall have the authority to reject all bids and restructure or redesign the proposed project.

(4) Each contract for professional services entered into by the principal representative shall contain a prohibition against contingent fees as follows: The architect, or professional land surveyor, or professional engineer, or landscape architect, as applicable, warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.

(5) Upon any violation of this section, the principal representative shall have the right to terminate the contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage,

or consideration.

(6) Nothing in this part 14 shall be construed to prohibit continuing contracts between persons providing professional services and state agencies. All selections, contracts, and negotiations undertaken pursuant to this part 14 and all processes and procedures in connection with such matters shall be in conformity with this part 14.

(7) (a) Except as provided in paragraphs (b), (c), (e), (f), and (g) of this subsection (7), any professional services contract entered into pursuant to the provisions of this part 14 shall be executed and encumbered within six months after the date on which the appropriation that includes the project for which the professional services are required becomes law. If no professional services contract is required for a particular project, the contract with the contractor for the project shall be entered into within six months after the appropriation. If a state agency determines that the nature of a particular project is such that the deadlines imposed by this section cannot be met, the state agency may request the capital development committee to recommend to the controller that the deadline be waived for that project. The controller, in consultation with the capital development committee, may grant a waiver from such deadlines. This subsection (7) shall not apply to projects under the supervision of the department of transportation. This subsection (7) shall not affect any priority established pursuant to section 24-35-210 (11) in the general appropriation act for expenditures for projects to be financed from net lottery proceeds appropriated for capital construction.

(b) The deadlines established in paragraph (a) of this subsection (7) shall apply to projects funded with net lottery proceeds, but the six-month period shall begin to run only when an agency receives a distribution from such proceeds for a particular project.

(c) This subsection (7) shall not apply to:

(I) Maintenance, repair, and improvement projects included in the capital construction section of the general appropriation act or in any supplemental appropriation act for the division of parks and wildlife in the department of natural resources;

(II) The acquisition of any easement by the division of parks and wildlife in the department of natural resources;

(III) Grants for off-highway vehicle trail purposes made pursuant to section 33-14.5-106, C.R.S.;

(IV) Projects included in the capital construction section of the general appropriation act for the hazardous materials and waste management division in the department of public health and environment, or in any supplemental appropriation act, which projects are listed as remediation pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 et seq., as amended, brownfields redevelopment, or natural resource damage repair, replacement, or restoration.

(d) The provisions of this subsection (7) shall not be construed to limit the authority of any state agency to amend a contract in order to provide for technical

corrections, provision of unanticipated work, extensions of performance periods, or other modifications which are necessary to secure satisfactory completion of the work and provision of goods and services within the scope of the original contract.

(e) In the event that the governor restricts or delays the expenditure of moneys for a project for which a professional services contract is required pursuant to the authority granted the governor in section 24-75-201.5, the running of the six-month deadline imposed in paragraph (a) of this subsection (7) for such projects shall be tolled until such time as the restriction or delay is no longer in effect.

(f) In the event that an appropriation is made to a state agency for allocation to other state agencies, the six-month period shall apply to the execution and encumbrance of a contract by the agency receiving the allocation and shall begin to run from the date of the allocation by the agency that received the original appropriation. Nothing in this paragraph (f) shall be construed to extend the duration of any appropriation.

(g) This subsection (7) shall not apply to:

(I) A capital construction project at an institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., that is to be constructed solely from cash funds held by the institution or federal funds made available for the project or a combination of the cash funds and the federal funds; or

(II) The state board of land commissioners, established in article 1 of title 36, C.R.S., in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153, C.R.S., or the commercial real property operating fund created in section 36-1-153.7, C.R.S.

24-30-1405. Public notice. When professional services are required to be contracted for, public notice shall be given by the state agency if the basic construction cost of the project is estimated by the state agency to be more than one million dollars or if the fee for professional services is estimated to exceed one hundred thousand dollars. The public notice shall be given at least fifteen days prior to the selection of the three or more most highly qualified persons by the principal representative pursuant to section 24-30-1403 (2), and, except for projects under the supervision of the department of transportation, the public notice shall be given no later than eight weeks after the date on which the appropriation for the project becomes law. The public notice shall be given by publication at least once in one or more daily newspapers of general circulation in this state. The public notice shall contain a general description of the proposed project and shall indicate the procedure by which interested persons may apply for consideration for the contract.

24-30-1406. Criminal liability. (1) Any person, other than a bona fide employee

working solely for a person providing professional services, who offers, agrees, or contracts to solicit or secure for any other person state agency contracts for professional services and who, in so doing, receives any fee, commission, gift, or other consideration contingent upon or resulting from the making of the contract commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person providing professional services who offers to pay or does pay any fee, commission, gift, or other consideration contingent upon or resulting from the making of a contract for professional services with a state agency commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any state agency official or employee who solicits or secures or offers to solicit or secure a contract for professional services with a state agency and who is paid any fee, commission, gift, or other consideration contingent upon the making of such contract commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-30-1407. Prior existing design plans. Notwithstanding any other provision of this part 14 or of part 13 of this article, there shall be no public notice requirement or utilization of the selection process as provided for in this part 14 or in part 13 of this article for projects in which the state agency is able to reuse existing drawings, specifications, designs, or other documents from a prior project.

24-30-1408. Emergency contracts. In a situation for which the principal representative determines it is necessary to make emergency contracts because there exists a threat to public health, welfare, or safety under emergency conditions, there is no requirement of public notice, or of compliance with the selection process pursuant to this part 14, but the principal representative shall document, in writing, the basis for the emergency and for the selection of the particular person to provide professional services.

PART 15

DIVISION OF RISK MANAGEMENT

24-30-1501. Legislative declaration. (1) The general assembly recognizes that the general liability and automobile liability insurance policies of the state of Colorado have been cancelled, that no responsive bids were received, and that, as a direct result, the governor called an extraordinary session of the general assembly to address the need for a method to protect the state and its employees against claims brought under the "Colorado Governmental Immunity Act", article 10 of this title, and arising under federal law. The

general assembly further recognizes that the consequences of uninsured liability of the state, including failure to respond to meritorious claims in a timely fashion and greater ultimate costs of settlement caused by failure to investigate claims in an orderly and timely manner, are undesirable. The general assembly hereby declares, therefore, that the appropriate remedy is to create a reserve fund for purposes of self-insurance of the state. The general assembly declares that the purpose of this part 15 is to create a self-insurance fund, provide a mechanism for claims adjustment, investigation, and defense, and authorize the settlement and payment of claims and the payment of judgments rendered against the state. The general assembly also recognizes that no responsible bids have been received for property insurance policies for the state of Colorado and that a method for covering loss or damage to state property is needed. The general assembly hereby declares that the appropriate remedy is to create a reserve for purposes of self-insurance of the state for loss or damage to state property. The general assembly declares that its intent is to explore, on an annual basis, the availability of commercial liability insurance policies and property damage insurance policies, considering the possibility that the insurance industry can provide coverage in the future that is less expensive than the costs of operating a risk management system and paying for claims out of the risk management fund and out of the self-insured property fund.

(2) The general assembly recognizes that liability claims arising prior to September 15, 1985, exist for which no commercial insurance coverage is available. The general assembly hereby finds and declares that the risk management system will provide an appropriate remedy for such claims and that the department of personnel should be authorized to administer such claims.

(3) The general assembly also recognizes that the provision of workers' compensation insurance for state employees has become expensive. The general assembly hereby finds and declares that the administration of workers' compensation for state employees out of a separate account in the risk management fund as a self-insurance measure is an appropriate response to the high cost of workers' compensation insurance.

24-30-1502. Definitions. As used in this part 15, unless the context otherwise requires:

(1) "Board" means the state claims board created in section 24-30-1508.

(2) Repealed.

(3) "Executive director" means the executive director of the department of personnel.

(4) "Final money judgment" means any judgment for monetary damages against the state after all appropriate appeals of such judgment have been exhausted.

(4.3) "Liability protection" means professional liability protection for damages from any negligent professional act, error, or omission on the part of the members of the

board of supervisors of each local conservation district.

(4.5) "Property" means both real property as defined in section 39-1-102 (14), C.R.S., and personal property as defined in section 39-1-102 (11), C.R.S. For purposes of the self-insured property fund, "personal property" means personal property owned by the state of Colorado or personal property leased by the state of Colorado for which the state is required to provide insurance under the terms of a lease or lease-purchase agreement. For purposes of the self-insured property fund, "personal property" does not include aircraft owned by the state of Colorado or vehicles licensed for use on highways or roads. For purposes of the self-insured property fund, "real property" means buildings owned by the state of Colorado or buildings leased by the state of Colorado for which the state is required to provide insurance under the terms of a lease or lease-purchase agreement.

(5) (a) "State agency" means any principal department of the state, any state agency, institution, or hospital, any board, commission, advisory board, or other entity established by law within or as an advisory to any existing state department, institution, or agency, and any state-supported institution of higher education or other instrumentality thereof, except as provided in paragraph (b) of this subsection (5) and in section 24-30-1517 (2), and the legislative and judicial departments of the state. The term also includes the Colorado state fair authority created pursuant to section 35-65-401, C.R.S., and any conservation district organized and certified pursuant to article 70 of title 35, C.R.S.; except that, in the case of conservation districts, such inclusion under the risk management fund is only for the purpose of liability protection as defined in subsection (4.3) of this section.

(b) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., by formal action of the governing board, and the Colorado commission on higher education, by formal action of the commission, may elect to be excluded from the meaning of "state agency" pursuant to this subsection (5) and may obtain a risk management program independent of the program created pursuant to this part 15. Nothing in this paragraph (b) shall be construed to affect the exempt status of any institution in the university of Colorado system, including the university of Colorado at Boulder, Denver, and Colorado Springs, and the university of Colorado health sciences center, from the state risk management system pursuant to section 24-30-1517 (2), or to require the governing board of any such institution in the university of Colorado system to take formal action in order to be exempt from the definition of "state agency".

(6) "Workers' compensation" means protection afforded to a state employee pursuant to articles 40 to 47 of title 8, C.R.S.

24-30-1503. Risk management system. (1) Pursuant to section 13 of article XII of the state constitution, the executive director of the department of personnel shall

appoint such personnel as may be necessary for the efficient operation of the risk management system.

(2) The powers, duties, and functions concerning risk management, specified by this part 15, shall be administered as if transferred to the department of personnel by a **type 2** transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title.

24-30-1503.5. Risk management system - independent program. (1) If an institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the Colorado commission on higher education elects to be excluded from the meaning of "state agency" and to obtain an independent risk management program pursuant to section 24-30-1502 (5) (b), such institution, center, or commission shall conduct an analysis of the institution's, center's, or commission's ability to provide workers' compensation and the estimated property and liability losses, insurance costs, and administrative costs of risk management that the institution, center, or commission will incur by implementing an independent program.

(2) Before any institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the Colorado commission on higher education implements an independent risk management program, the institution, center, or commission, as applicable, shall submit a written report detailing the findings of the analysis conducted pursuant to subsection (1) of this section to the president of the senate, the speaker of the house of representatives, the majority and minority leaders of the senate and the house of representatives, the members of the joint budget committee, the members of the business affairs and labor committee in the house of representatives, or any successor committee, and the members of the business, labor, and technology committee in the senate, or any successor committee.

(3) In the event that an institution of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., or the Colorado commission on higher education implements an independent risk management program, the institution, center, or commission shall conduct the analysis and submit the report required pursuant to this section within the existing resources of the institution, center, or commission, as applicable.

24-30-1504. Powers and duties of the department. (1) The department of personnel shall have the following powers and duties:

(a) To coordinate and administer a comprehensive risk management program that serves all state agencies;

(b) To administer, supervise, and manage the investigation and adjustment of

claims brought against the state;

(c) To administer, supervise, and manage the legal defense of claims brought against the state;

(d) To recommend to the executive director those persons or parties who may contract with the state to provide claims investigation, claims adjustment, support services, or legal services;

(e) To assist and supervise any parties who have contracted with the state to provide claims investigation, claims adjustment, support services, or legal services pursuant to this part 15;

(f) To develop and administer a system that identifies the property and liability losses, insurance costs, and administrative costs of risk management incurred by each state agency;

(g) To establish and administer a program to reduce property and liability losses incurred by each state agency;

(h) To establish and administer a program of inspection of state property;

(i) To investigate and to direct or deny payment for claims for loss or damage to state property;

(j) To establish and administer a program for the payment or denial of liability claims arising prior to September 15, 1985, for which no commercial liability insurance exists;

(k) To establish and administer a workers' compensation self-insurance program for state employees or to procure commercial workers' compensation insurance therefor;

(l) To establish and administer a pilot program beginning July 1, 1999, for the purpose of developing a statewide database and uniform reporting system to track employment claims brought against state agencies and the losses incurred as a result of such claims. The pilot program shall include:

(I) A minimum of three agencies selected by the department of personnel, including at least one institution of higher education and one department of the executive branch other than the department of higher education; and

(II) Repealed.

(m) On and after July 1, 2001, to establish and administer a statewide database and uniform reporting system to track employment claims brought against state agencies and the losses incurred as a result of such claims, except as excluded pursuant to sections 24-30-1502 (5) (b) and 24-30-1517 (2).

24-30-1505. Powers of the executive director. (1) In order to perform the powers and duties set forth in this part 15, the executive director shall exercise the following powers:

(a) Supervise the development and administration of the following risk

management programs:

(I) A comprehensive risk management program;

(II) A program identifying property and liability losses, insurance costs, and administrative costs of risk management incurred by each state agency;

(III) A program to reduce property and liability losses incurred by each state agency;

(IV) A program of inspection of state property;

(V) The pilot program described in section 24-30-1504 (1) (l) and the statewide database and uniform tracking system described in section 24-30-1504 (1) (m) for the purpose of tracking employment claims brought against state agencies and the losses incurred as a result of such claims, except as excluded pursuant to sections 24-30-1502 (5) (b) and 24-30-1517 (2). In developing and administering such programs, the executive director may:

(A) Adopt rules that define relevant terms including, but not limited to, "claims" and "losses"; and

(B) Require state agencies, including institutions of higher education, to submit such information as is necessary to implement the programs.

(b) Manage the investigation and adjustment of claims brought against the state;

(c) Manage the legal defense of claims brought against the state;

(d) Supervise any parties who have contracted with the state to provide claims investigation, claims adjustment, support services, or legal services pursuant to this part 15;

(e) Identify and evaluate the exposure of state agencies to claims for property and liability losses;

(f) Repealed.

(g) Assist state agencies to develop and use proper insurance and indemnity clauses in state contracts;

(h) Manage the investigation and adjustment of claims for loss or damage to state property;

(i) Investigate and direct or deny payment of liability claims arising prior to September 15, 1985, for which no commercial liability insurance exists;

(j) Manage the workers' compensation self-insurance program for state employees or the procurement of commercial workers' compensation insurance therefor.

(2) The executive director shall determine the need, if any, for procuring commercial insurance to protect the state against liability and the specifications for such insurance. The acquisition of any insurance shall be pursuant to the state "Procurement Code", articles 101 to 112 of this title. In the event that no responsible competitive sealed bids are received, the executive director may negotiate with any agent, broker, or insurance company to secure the required coverage or necessary coverage. Such negotiated policy or policies shall be subject to the approval of the board.

24-30-1506. Claims investigation, claims adjustment, and support services. The executive director shall provide services for the investigation and adjustment of claims brought against the state or of any incident or occurrence likely to result in a claim against the state or of claims of state agencies for loss or damage to state property and for support services necessary for the processing of such claims. The executive director may purchase services for the investigation of claims, incidents, or occurrences, claims adjustment, and support services from any private agency, organization, or company recommended by the division.

24-30-1507. Legal services. The executive director shall provide legal services for the defense of claims brought against the state and may in his or her discretion employ legal counsel to coordinate, direct, supervise, or otherwise aid in the investigation of any incident or occurrence likely to result in a claim against the state. The executive director may provide for those legal services through the state attorney general's office or, with the concurrence of the state attorney general, may purchase such legal services from any private law firm or attorney.

24-30-1508. State claims board - creation. (1) There is hereby created the state claims board which shall consist of the executive director, the state treasurer, and the attorney general. The board may request the assistance of the commissioner of insurance on such occasions as it deems necessary.

(2) The state claims board shall exercise its powers and perform its duties and functions as if it were transferred to the department of personnel by a **type 1** transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title.

24-30-1509. Powers and duties of the board. (1) The board shall have the following powers and duties:

(a) To oversee the management of the risk management fund created in section 24-30-1510;

(b) To compromise or settle claims on behalf of the state in the amounts authorized in section 24-30-1515 (2) (a) (V) and pursuant to the procedures set forth in section 24-30-1515;

(c) To adopt rules to govern its own organization and proceedings;

(d) To determine whether to recommend to the general assembly that the general assembly, by bill, authorize all or any portion of an additional payment to a claimant in

accordance with the provisions of section 24-10-114 (5) (b).

24-30-1510. Risk management fund - creation - authorized and unauthorized payments. (1) (a) There is hereby created in the state treasury a fund to be known as the risk management fund, which shall consist of all moneys that may be appropriated thereto by the general assembly or that may be otherwise made available to it by the general assembly. Moneys "otherwise made available" shall be deemed to include transfers of moneys to the fund authorized in the general appropriation act. All interest earned from the investment of moneys in the risk management fund shall be credited to the risk management fund and become a part thereof. The moneys in the fund are hereby continuously appropriated for the purposes of the risk management fund other than the direct and indirect administrative costs of operating the risk management system. The general assembly shall make annual appropriations from the fund for the direct and indirect administrative costs of operating the risk management system that are attributable to the operation of the risk management fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(b) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct ten million ten thousand five hundred ninety-nine dollars from the risk management fund and transfer such sum to the general fund.

(2) The risk management fund shall maintain reserves for incurred but unpaid claims, including general liability and automobile liability claims. The risk management fund shall maintain reserves to provide for the contingency that the reserves set aside in the fund to meet estimated expenses are inadequate to cover the actual expenses realized. The board after consultation with the executive director shall recommend the amount of money that is required to maintain adequate reserves. Adequate reserves shall be maintained in the risk management fund subject to available appropriations made by the general assembly in its discretion.

(3) Expenditures shall be made out of the risk management fund in accordance with subsection (1) of this section only for the following purposes:

(a) To pay liability claims and expenses related thereto, brought against the state, its officials, or its employees pursuant to the "Colorado Governmental Immunity Act", article 10 of this title; claims against the state, its officials, or its employees arising under federal law, which the state is legally obligated to pay and which are compromised or settled pursuant to section 24-30-1515 or in which a final money judgment against the state has been entered; or claims for compensatory damages against the state, its officials, or its employees pursuant to section 24-34-405;

(b) To pay the administrative costs of operating the risk management system and the costs of purchasing services pursuant to sections 24-30-1506, 24-30-1507, and 24-30-

1513;

(c) To procure and pay premiums for one or more policies of insurance purchased pursuant to this part 15 to protect against all or any portion of the potential liabilities of the state of Colorado or of any state agency or its officers and employees;

(d) To pay any deductible or self-insured retention contained in any insurance policy purchased by or at the direction of the executive director;

(e) To pay liability claims and expenses related thereto when a state agency has contracted to defend and hold harmless the owner of property leased to the state agency for a state purpose if such contract limits the state's obligation to claims arising from alleged negligent acts or omissions of the state agency and of its public employees which occurred or are alleged to have occurred during the performance of their duties and within the scope of their employment, except where such acts or omissions are willful and wanton. Such claims shall be subject to the limitations of the "Colorado Governmental Immunity Act", article 10 of this title. No such contract shall be valid unless approved in writing by the executive director and meets the requirements of this paragraph (e).

(f) To make payments in accordance with the provisions of sections 24-30-1510.6 and 24-30-1510.7;

(g) To fund an employee assistance program established and operated by the executive director pursuant to section 24-50-604 (1) (k);

(h) To pay the defense of liability claims and expenses related thereto, brought against an expert witness or consultant who has statutory immunity from civil suit and who has been retained by a board or commission within the department of regulatory agencies, to render expert testimony or expert opinion or provide consultative advice, in connection with a prospective or pending disciplinary action, and who does render expert testimony or expert opinion, or provide consultative advice, to a board or commission within the department of regulatory agencies in good faith and within the scope of his or her expertise;

(i) To pay liability claims and expenses incurred pursuant to section 24-82-1005 (2).

(4) Moneys in the risk management fund shall not be used to pay any of the following:

(a) Claims brought pursuant to the "Colorado Governmental Immunity Act", article 10 of this title, for which governmental immunity has not been waived pursuant to section 24-10-106;

(b) Claims which are actionable in contract except for claims relating to employment contracts and except for claims arising pursuant to paragraph (e) of subsection (3) of this section;

(c) Claims for liabilities or losses which are covered under commercial insurance policies purchased by the state;

(d) Expenses for complying with successful claims for injunctive relief;

(e) Any other claim or expense not set forth in subsection (3) of this section.

(5) As of July 1, 2000, Pinnacol Assurance created pursuant to section 8-45-101, C.R.S., is no longer included within, or part of, the risk management fund created pursuant to this section and the department of personnel assumes no responsibility and bears no financial obligation for the defense of, or liability for, any claims or lawsuits asserted against Pinnacol Assurance.

24-30-1510.3. Risk management fund - state employee workers' compensation account - assessment of risks to institutions of higher education. In determining the amount of risk assessed to institutions of higher education for purposes of making recommendations to the joint budget committee on the amount of appropriations necessary to reflect the risks attributable to institutions of higher education for the risk management fund and for the state employee workers' compensation account in the risk management fund, the executive director shall base such assessments and recommendations on actuarially sound analyses that appropriately and fairly reflect the accurate risks and claim experience attributable to institutions of higher education.

24-30-1510.5. Self-insured property fund - creation - authorized and unauthorized payments - executive director authorized to make payments. (1) (a) There is hereby created in the state treasury a fund to be known as the self-insured property fund, which shall consist of all moneys that may be appropriated thereto by the general assembly or which may be otherwise made available to it by the general assembly. Moneys "otherwise made available" shall be deemed to include transfers of moneys to the fund authorized in the general appropriation act. All interest earned from the investment of moneys in the self-insured property fund shall be credited to the self-insured property fund and become a part thereof. The moneys in the fund are hereby continuously appropriated for the purposes of the self-insured property fund other than the direct and indirect administrative costs of operating the risk management system. The general assembly shall make annual appropriations from the fund for the direct and indirect administrative costs of operating the risk management system that are attributable to the operation of the self-insured property fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(b) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct one million two hundred ninety-five thousand fifty-five dollars from the self-insured property fund and transfer such sum to the general fund.

(2) The self-insured property fund shall maintain reserves for incurred but unpaid loss or damage claims to state property. The self-insured property fund shall maintain

reserves to provide for the contingency that the reserves set aside in the fund to meet estimated expenses are inadequate to cover the actual expenses realized. The executive director shall recommend the amount of money that is required to maintain adequate reserves. Adequate reserves shall be maintained in the self-insured property fund subject to available appropriations made by the general assembly in its discretion.

(3) Expenditures shall be made out of the self-insured property fund in accordance with subsection (1) of this section only for the following purposes:

(a) To pay claims for loss or damage to state property subject to the following conditions:

(I) Claims for loss or damage to real property shall be based on replacement cost;

(II) Claims for loss or damage to personal property shall be based on actual cash value;

(III) The loss or damage to property on which the claim is based shall have been caused by one or more of the hazards covered under the self-insured property fund as set forth in subsection (5) of this section;

(IV) The principal state department shall pay a five-thousand-dollar deductible for each occurrence;

(b) To procure and pay premiums for one or more policies of insurance purchased pursuant to this part 15 to protect against loss or damage to state property;

(c) To pay the administrative costs of operating the risk management system.

(4) Moneys in the self-insured property fund shall not be used to pay the following:

(a) Claims for loss or damage to state property which are specifically insured by a commercial insurance policy;

(b) Claims for extra expense and normal wear and tear.

(5) The self-insured property fund shall provide self-insurance for loss or damage to state property due to the following hazards:

(a) Fire and lightning; except that coverage shall not be provided if the state agency does not report such incident or occurrence to the appropriate fire department;

(b) Windstorm and hail;

(c) Debris removal in connection with a hazard that is covered under the self-insured property fund;

(d) Explosion;

(e) Sudden and accidental damage from smoke;

(f) Vandalism and malicious mischief;

(g) Theft of state-owned property; except that coverage shall not be provided if the state agency does not report such theft to the appropriate law enforcement agency;

(h) Damage from the weight of ice or snow; except that outdoor equipment, awnings, fences, pavements, patios, swimming pools, wharves, and docks are not covered;

(i) Flood;

(j) Earthquake;

(k) Business interruption if the state is obligated under the terms of a lease or bond issue to continue making payments on the state property after the loss or damage has occurred and if the business interruption is caused by a hazard that is covered under the self-insured property fund;

(l) Any other hazard that the executive director determines pursuant to rule and regulation is appropriate for inclusion under the self-insured property fund.

(6) The executive director or a designee of the executive director is authorized to pay property claims of a state agency subject to available funds in the self-insured property fund and subject to the limitations in this section. The executive director or a designee of the executive director is authorized to provide for the repair and replacement of property consistent with the provisions of this part 15 and is authorized to provide for the payment of the costs of such repair and replacement out of the self-insured property fund. Disbursements from the self-insured property fund for claims of state agencies for loss or damage to property shall be paid by the state treasurer upon warrants drawn in accordance with the law upon vouchers issued by the department of personnel.

(7) Repealed.

24-30-1510.6. Claims arising prior to September 15, 1985. (Repealed)

24-30-1510.7. Workers' compensation for state employees. (1) (a) There is hereby created, as a separate account in the risk management fund, the state employee workers' compensation account, which shall consist of all moneys which may be appropriated thereto by the general assembly and which may be otherwise made available to it by the general assembly for the purpose of establishing a workers' compensation self-insurance program for state employees or for the procurement of commercial workers' compensation insurance therefor, in accordance with subsection (2) of this section. As of May 24, 1990, the state controller shall also transfer any moneys appropriated to pay workers' compensation premiums for the 1989-90 fiscal year to the state employee workers' compensation account. Moneys "otherwise made available" shall be deemed to include transfers of moneys to the account authorized in the general appropriation act. All interest earned from the investment of moneys in the state employee workers' compensation account pursuant to this section shall be credited to the account and become a part thereof. Moneys in the state employee workers' compensation account shall be subject to annual appropriation by the general assembly for purposes of this section.

(b) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct ten million three hundred sixteen thousand sixty dollars

from the state employee workers' compensation account in the risk management fund and transfer such sum to the general fund.

(2) Expenditures shall be made out of the state employee workers' compensation account in the risk management fund in accordance with subsection (1) of this section only for the following purposes:

(a) To pay workers' compensation benefits to state employees in accordance with articles 40 to 47 of title 8, C.R.S., and to pay the administrative costs of operating the department of personnel in relation to the workers' compensation self-insurance program for state employees;

(b) To pay the premium for commercial workers' compensation insurance, if the state elects not to be self-insured for workers' compensation purposes.

(3) Prior to July 1, 1990, nothing in this section shall apply to the department of institutions; but this section shall apply to the department of human services beginning on July 1, 1990.

(4) Amounts which are recorded in the state employee workers' compensation account as claims, including reserves, but which are not required to be paid in the current fiscal year shall not be considered as expenditures in excess of the amount authorized by an item of appropriation for purposes of section 24-75-109.

(5) (a) (I) Notwithstanding section 8-44-105, C.R.S., if the state elects to self-insure workers' compensation claims as authorized in this section or to insure for such claims through an entity other than Pinnacol Assurance, created in section 8-45-101, C.R.S., on and after the effective date of such election, the state shall be directly and primarily liable for all liabilities due on all workers' compensation claims after such election that arise on and after the beginning date of the initial policy period in the annually renewable memorandum of agreement containing a premium payment plan in effect between the state and Pinnacol Assurance.

(II) In no event shall the department of personnel elect to self-insure for workers' compensation claims prior to the beginning of a fiscal year in which the general assembly appropriates sufficient funds for such self-insurance.

(b) (I) Funding of the liability obligations assumed by the state from Pinnacol Assurance pursuant to paragraph (a) of this subsection (5) beyond a current fiscal year is contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

(II) Nothing in this paragraph (b) shall be construed to relieve the state of any liability obligation if the state elects to self-insure or insure through an entity other than Pinnacol Assurance pursuant to paragraph (a) of this subsection (5).

(c) Notwithstanding the provisions of section 8-44-201 (1), C.R.S., if the state elects to self-insure workers' compensation claims as authorized in this section, the executive director of the department of labor and employment shall not prescribe or apply security requirements in granting or continuing permission for such state self-insurance

program.

24-30-1511. State treasurer to invest funds. The state treasurer shall invest any portion of the risk management fund, including its reserves, which the executive director and the board determine is not needed for immediate use. The state treasurer shall invest any portion of the self-insured property fund, including its reserves, which the executive director determines is not needed for immediate use. The state treasurer shall invest any portion of the state employee workers' compensation account in the risk management fund, including its reserves, which the executive director determines is not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113.

24-30-1512. Risk management fund and self-insured property fund not subject to insurance laws. The setting aside of reserves for self-insurance purposes in the risk management fund created in section 24-30-1510, in the self-insured property fund created in section 24-30-1510.5, and in the state employee workers' compensation account in the risk management fund created in section 24-30-1510.7, shall not be construed to be creating an insurance company, nor shall the risk management fund or the self-insured property fund otherwise be subject to the provisions of the laws of this state regulating insurance or insurance companies. The requirements of section 10-4-624, C.R.S., concerning motor vehicle self-insurance are not applicable to this part 15.

24-30-1513. State auditor - examination. The state auditor or any person authorized by him shall conduct an examination in accordance with section 2-3-103, C.R.S., to determine that proper underwriting techniques, sound funding procedures, loss reserves, claims procedures, and accounting practices are being followed in the management and operation of the risk management fund, the self-insured property fund, and the state employee workers' compensation account in the risk management fund. The state auditor shall present a report of his findings concerning the risk management fund to the board and to the general assembly and shall present a report of his findings concerning the self-insured property fund and the state employee workers' compensation account to the general assembly.

24-30-1514. Report. (Repealed)

24-30-1515. Compromise or settlement of claims - authority. (1) A claim against the state or against a state official or employee whose defense has been assumed by the state may be compromised or settled on behalf of the state according to the requirements set forth in subsection (2) of this section. Prior to settling a claim of more than fifty thousand dollars, the board or the person authorized to settle the claim shall consult with the head of the affected state agency to assess the appropriateness of the proposed compromise or settlement amount. In settling a claim, the board or the person authorized to settle the claim may require the execution and presentation of those documents required by rule and regulation including those documents which discharge or hold harmless the state of all liability under the claim.

(2) (a) The following parties are authorized to make compromises or settlements on behalf of the state in the following amounts:

(I) A claims adjuster employed by the department of personnel or under contract with the department of personnel is authorized to settle claims for an amount not to exceed five thousand dollars;

(II) The claims manager of the department of personnel is authorized to settle and direct payment in settlement of claims for an amount not to exceed twenty-five thousand dollars;

(III) The state risk manager is authorized to settle and direct payment in settlement of claims for an amount not to exceed fifty thousand dollars;

(IV) The executive director is authorized to settle and direct payment in settlement of claims for an amount not to exceed one hundred thousand dollars;

(V) The board is authorized to settle and direct payment in settlement of claims for an amount of one hundred thousand dollars or more but not to exceed the maximum liability limits under the "Colorado Governmental Immunity Act", as set forth in section 24-10-114.

(b) The board is authorized to settle and direct payments in settlement of claims brought under federal law.

(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 department of personnel upon order of the board or person authorized in subsection (2) of this section to make such compromise or settlement.

(4) The provisions of the "State Administrative Procedure Act", article 4 of this title, shall not be applicable to the payment or settlement of claims pursuant to this part 15. Any person or party adversely affected or aggrieved in compromising or settling a claim shall pursue such remedy in a district court of this state pursuant to the Colorado rules of civil procedure.

24-30-1516. Rules and regulations. (1) In order to carry out the purposes of this part 15, the executive director may promulgate reasonable rules and regulations 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.

24-30-1517. Applicability. (1) With respect to claims covered under the risk management fund, until January 1, 1995, section 24-30-1510 shall apply to claims arising on or after September 15, 1985, and on and after January 1, 1995, section 24-30-1510 shall apply to claims whenever arising. With respect to claims for loss or damage to state property covered under the self-insured property fund, this part 15 shall apply to claims arising on or after July 1, 1986. With respect to claims for workers' compensation made by state employees, other than employees of the department of human services, this part 15 shall apply to claims arising on or after May 24, 1990. With respect to claims for workers' compensation made by employees of the department of human services, this part 15 shall apply to claims arising on or after July 1, 1990.

(2) Nothing in this part 15 shall apply to the university of Colorado system, including the university of Colorado at Boulder, Denver, and Colorado Springs and the university of Colorado health sciences center.

24-30-1518. Repeal of part. (Repealed)

24-30-1519. Insurance policies. The procurement of any property or liability insurance policy by any state agency shall be coordinated through and approved by the department of personnel. State agencies are encouraged to submit any other insurance

policy to the department of personnel for review and evaluation.

24-30-1520. Authorization by law to settle claims or to pay judgments. This part 15 is an authorization by law pursuant to section 33 of article V of the Colorado constitution to settle claims brought against the state, its officials, or its employees or to pay judgments against the state, its officials, or its employees. No moneys in the state treasury shall be disbursed therefrom for the settlement of a claim brought against the state, its officials, or its employees or for the payment of judgments against the state, its officials, or its employees except as provided in this part 15.

PART 16

GENERAL GOVERNMENT COMPUTER CENTER (GGCC)

24-30-1601 to 24-30-1608. (Repealed)

PART 17

COMMISSION ON INFORMATION MANAGEMENT

24-30-1701 to 24-30-1704. (Repealed)

PART 18

TELECOMMUNICATIONS ADVISORY COMMISSION

24-30-1801. Legislative declaration. (1) The general assembly hereby finds and declares that there is a lack of coordination among the various state agencies regarding the utilization of telecommunications facilities and services. The general assembly further finds that better coordination of such facilities and services, particularly among the governing boards of the institutions of higher education, the department of higher education, the department of education, and the school districts across the state, would result in improved education programs and a more cost-effective telecommunications system. The use of telecommunications services and facilities to expand educational opportunity, however, does not mean that the role of the teacher in the classroom should be diminished.

(2) The general assembly hereby finds that the development and use of a statewide telecommunications network will accelerate economic development within the state. The general assembly further finds that cooperation and participation by medical and health

facilities, public and private economic development organizations, the judicial system, and local governments in developing a statewide telecommunications network will facilitate expansion of such network to its full potential and encourage economic growth and development within Colorado.

24-30-1801.5. Definitions. (Deleted by amendment)

24-30-1802. Advisory commission on telecommunications. (Repealed)

24-30-1803. Telecommunications plan - staff. (Deleted by amendment)

24-30-1804. Institutions of higher education - statewide telecommunications network. All institutions of higher education in this state which utilize telecommunications programs or operations shall cooperate in the establishment of a statewide telecommunications network. The Colorado commission on higher education shall facilitate the establishment of the statewide telecommunications network and, in the event that such a network is not established by July 1, 1992, the commission shall promulgate rules and regulations requiring such a network.

24-30-1805. Demonstration project. (Deleted by amendment)

24-30-1806. Policy recommendations. (Deleted by amendment)

PART 19

STATE BUILDING ENERGY MANAGEMENT PLANS

24-30-1901 to 24-30-1907. (Repealed)

PART 20

UTILITY COST-SAVINGS MEASURES

24-30-2001. Definitions. As used in this part 20, unless the context otherwise requires:

(1) "Energy cost-savings contract" means a utility cost-savings contract or a vehicle fleet operational and fuel cost-savings contract.

(1.3) "Energy cost-savings measure" means a utility cost-savings measure or a vehicle fleet operational and fuel cost-savings measure.

(1.5) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more energy cost-savings measures designed to produce utility cost savings, operation and maintenance cost savings, or vehicle fleet operational and fuel cost savings, which contract:

(a) Sets forth savings attributable to the calculated energy cost savings or operation and maintenance cost savings for each year during the contract period;

(b) Provides that the amount of actual savings for each year during the contract period shall exceed annual contract payments, including maintenance costs, to be made during such year by the state agency contracting for the energy cost-savings measures; except that, for the purposes of this part 20 only, the term "annual contract payments" does not include moneys received by the state from rebates, gifts, grants, or donations specifically designated by the gifting, granting, or donating party for the design or implementation of an energy cost-savings measure or state moneys that have been specifically appropriated in a distinct line item, or, in the case of the department of transportation, otherwise set aside in the department's budget, for the design or implementation of an energy cost-savings measure that is wholly addressed within the scope of the energy cost-savings contract;

(c) Requires the party entering into the energy performance contract with the state agency to provide a written guarantee that the sum of energy cost savings and operation and maintenance cost savings for each year during the first three years of the contract period shall not be less than the calculated savings for that year described in paragraph (a) of this subsection (1.5); and

(d) Requires payments by a state agency to be made within twelve years after the date of the execution of the contract; except that the maximum term of the payments shall be less than the cost-weighted average useful life of energy cost-savings equipment for which the contract is made, not to exceed twenty-five years.

(2) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more utility cost-savings measures or one or more vehicle fleet operational and fuel cost-savings measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

(3) "Shared-savings contract" means a contract for one or more energy cost-savings measures that do not involve capital equipment projects, which contract:

(a) Provides that all payments to be made by the state agency contracting for the

energy cost-savings measures shall be a stated percentage of calculated savings of energy costs attributable to such measures over a defined period of time and that such payments shall be made only to the extent that such savings occur; except that this paragraph (a) shall not apply to payments for maintenance and repairs and obligations on termination of the contract prior to its expiration;

(b) Provides for an initial contract period of no longer than ten years; and

(c) Requires no additional capital investment or contribution of funds.

(4) "State agency" means a department or institution of this state, including institutions of higher education.

(5) "Utility cost savings" means:

(a) A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or utility resulting from the implementation of one or more energy conservation measures when compared with an established baseline of usage; or

(b) A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

(6) "Utility cost-savings contract" means an energy performance contract or a shared-savings contract or any other agreement in which utility cost savings are used to pay for services or equipment.

(7) "Utility cost-savings measure" means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

(a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;

(b) Heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants;

(c) Automatic energy control systems;

(d) Replacement or modification of lighting fixtures;

(e) Energy recovery systems;

(f) Renewable energy and alternate energy systems;

(g) Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;

(h) Devices that reduce water consumption or sewer charges;

(i) Changes in operation and maintenance practices;

(j) Procurement of low-cost energy supplies of all types, including electricity, natural gas, and other fuel sources, and water;

(k) Indoor air quality improvements that conform to applicable building code requirements;

(l) Daylighting systems;

(m) Building operation programs that reduce utility and operating costs including,

but not limited to, computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;

(n) Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules under which service is provided; and

(o) Any other location, orientation, or design choice related to, or installation, modification of installation, or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes.

(8) "Vehicle fleet operational and fuel cost savings" means a measurable decrease in the operation and maintenance costs of state vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

(9) "Vehicle fleet operational and fuel cost-savings contract" means an energy performance contract or shared-savings contract or any other agreement in which vehicle fleet operational and fuel cost savings are used to pay for the cost of the vehicle or associated capital investments.

(10) "Vehicle fleet operational and fuel cost-savings measure" means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

(a) Vehicle purchase or lease costs either in full or in part;

(b) Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy cost-savings contract.

24-30-2002. Contracts for energy analysis and recommendations. (1) Subject to subsection (2) of this section, and in accordance with section 24-30-1104 (2), where applicable, a state agency may contract with any entity or person experienced in the design and implementation of energy conservation for an energy analysis and recommendations pertaining to measures that would significantly increase:

(a) Utility cost savings and operation and maintenance cost savings in buildings or other facilities owned or rented by the state agency; or

(b) Vehicle fleet operational and fuel cost savings in state fleet vehicles.

(2) The state personnel director or the state personnel director's designee may authorize a state agency to enter into such a contract. The contract shall be negotiated by the state agency pursuant to the negotiation requirements described in part 14 of this article; except that direct, indirect, overhead, and other costs and rates may be solicited and considered in the evaluation of qualifications and included in any resulting contract. The contract may include provisions that define the rate, amount, and nature of costs that

may be proposed in any subsequent energy cost-savings contract, that describe the content of the analysis, and that reserve the option of the state agency to negotiate a suitable energy cost-savings contract.

(3) Such energy analysis and recommendations shall include the following, as applicable:

(a) Estimates of the amounts by which utility cost savings and operation and maintenance cost savings would increase and estimates of all costs of such utility cost-savings measures or energy-savings measures, including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service; or

(b) Estimates of the amounts by which vehicle fleet operational and fuel cost savings would increase and estimates of all costs of such vehicle fleet operational and fuel cost-savings measures.

(4) Payment by a state agency for an energy analysis and recommendations contract may be made from moneys appropriated to the state agency for operating expenses or utilities, as applicable, or payments may be deferred and incorporated into a subsequent energy cost-savings contract.

24-30-2003. Energy cost-savings contracts. (1) A state agency may enter into an energy cost-savings contract with any person or entity experienced in the design and implementation of utility cost-savings measures for buildings or other facilities, with any person or entity experienced in the calculation and analysis of vehicle fleet operational and fuel cost savings, or with the entity or person who performed the energy analysis and recommendations pursuant to section 24-30-2002 if:

(a) (I) In the case of a utility cost-savings contract, the energy analysis and recommendations made pursuant to section 24-30-2002 indicate that the expected annual contract payments required under the utility cost-savings contract and any additional maintenance costs for one or more utility cost-savings measures are expected to be equal to or less than the sum of the utility cost savings and operation and maintenance cost savings achieved by the implementation of such measures on an annual basis; or

(II) In the case of a vehicle fleet operational and fuel cost-savings contract, the energy analysis and recommendations made pursuant to section 24-30-2002 indicate that the expected annual contract payments required under the vehicle fleet operational and fuel cost-savings contract for one or more vehicle fleet operational and fuel cost-savings measures are expected to be equal to or less than the sum of the vehicle fleet cost savings achieved by the implementation of such measures on an annual basis; and

(b) The state personnel director or the director's designee, with input from the director of the state energy office, pursuant to criteria contained in procedures established by the state personnel director, approves the energy analysis and recommendations made

pursuant to section 24-30-2002.

(2) (a) Except as provided in paragraph (b) of this subsection (2), an energy cost-savings contract shall be negotiated by the state agency pursuant to the negotiation requirements described in part 14 of this article.

(b) The negotiation requirements described in part 14 of this article and any other state competitive bidding or procurement provision shall not apply to a state agency that enters into an energy cost-savings contract with the entity or person who performed the energy analysis for and made recommendations to the state agency pursuant to section 24-30-2002.

(3) An energy cost-savings contract may include appropriate lease-purchase or other authorized financing agreements.

(4) The legislative authorization required by section 24-82-801 (1) shall not apply to a lease-purchase agreement in an energy cost-savings contract and no subsequent legislative authorization shall be required for any payment made pursuant to such an agreement.

(5) Payments by a state agency required under an energy cost-savings contract may be made from moneys appropriated to the state agency for operating expenses or utilities appropriations available to the state agency at the time the contract payments are due.

(6) The provisions of articles 91 and 92 of this title shall not apply to utility cost-savings contracts.

(7) Utility cost-savings contracts shall be subject only to the supervisory provisions of part 13 of this article.

(8) All savings realized as a result of an energy cost-savings contract that are in excess of the annual calculated savings by such contract may be utilized as provided in section 24-75-108 (3).

(9) The energy cost-savings contracts authorized by this section shall provide that all of the obligations of the state under such contracts shall be subject to the action of the general assembly in annually making moneys available for all payments thereunder and that the obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the state constitution or the laws of the state concerning or limiting the creation of indebtedness by the state and shall not constitute a multiple fiscal-year direct or indirect debt or other financial obligation of the state within the meaning of section 20 (4) of article X of the constitution.

(10) The state personnel director may establish procedures containing criteria for authorization of energy cost-savings contracts.

PART 21

ADDRESS CONFIDENTIALITY PROGRAM

24-30-2101. Short title. This part 21 shall be known and may be cited as the "Address Confidentiality Program Act".

24-30-2102. Legislative declaration. (1) The general assembly hereby finds and declares that a person attempting to escape from actual or threatened domestic violence, a sexual offense, or stalking frequently moves to a new address in order to prevent an assailant or potential assailant from finding him or her. This new address, however, is only useful if an assailant or potential assailant does not discover it. Therefore, in order to help victims of domestic violence, a sexual offense, or stalking, it is the intent of the general assembly to establish an address confidentiality program, whereby the confidentiality of a victim's address may be maintained through, among other things, the use of a substitute address for purposes of public records and confidential mail forwarding.

(2) The general assembly further finds and declares that the desired result of the "Address Confidentiality Program Act" for the purpose of post-enactment review is to establish a substitute address for a program participant that is used by state and local government agencies whenever possible; to permit agencies to have access to the participant's actual address when appropriate; to establish a mail forwarding system for program participants; and to ensure that there is adequate funding to pay the program costs for all persons who apply to the program.

24-30-2103. Definitions. As used in this part 21, unless the context otherwise requires:

(1) "Actual address" means a residential, work, or school address as specified on the individual's application to be a program participant under this part 21, and includes the county and voting precinct number.

(2) "Address confidentiality program" or "program" means the program created under this part 21 in the department to protect the confidentiality of the actual address of a relocated victim of domestic violence, a sexual offense, or stalking.

(3) "Applicant" means an individual identified as such in an application received by the executive director or his or her designee pursuant to section 24-30-2105.

(4) "Application assistant" means a person designated by the executive director or his or her designee to assist an applicant in the preparation of an application to participate in the address confidentiality program.

(5) "Department" means the department of personnel created in section 24-1-128.

(6) "Domestic violence" means an act described in section 18-6-800.3 (1), C.R.S.

(7) "Executive director" means the executive director of the department.

(8) "Person" means any individual, corporation, limited liability company, partnership, trust, estate, or other association or any state, the United States, or any subdivision thereof.

(9) "Program participant" or "participant" means an individual accepted into the address confidentiality program in accordance with this part 21.

(10) "Public record" means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, digital data, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by a state or local government agency.

(11) "Sexual offense" means an act described in part 4 of article 3, or article 6 or 7 of title 18, C.R.S.

(12) "Stalking" means an act of harassment as described in section 18-9-111, C.R.S., or stalking as described in section 18-3-602, C.R.S.

(13) "State or local government agency" or "agency" means every elected or appointed state or local public office, public officer, or official; board, commission, bureau, committee, council, department, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation.

(14) "Substitute address" means an address designated by the executive director or his or her designee under the address confidentiality program that is used instead of an actual address as set forth in this part 21.

24-30-2104. Address confidentiality program - creation - substitute address - uses - service by mail - application assistance centers. (1) There is hereby created the address confidentiality program in the department to protect the confidentiality of the actual address of a relocated victim of domestic violence, a sexual offense, or stalking and to prevent the victim's assailants or potential assailants from finding the victim through public records. Under the program, the executive director or his or her designee shall:

(a) Designate a substitute address for a program participant that shall be used by state and local government agencies as set forth in this part 21; and

(b) Receive mail sent to a program participant at a substitute address and forward the mail to the participant as set forth in subsection (2) of this section.

(2) The executive director or his or her designee shall receive first-class, certified, or registered mail on behalf of a program participant and forward the mail to the participant for no charge. The executive director or his or her designee may arrange to

receive and forward other classes or kinds of mail at the participant's expense. Neither the executive director nor his or her designee shall be required to track or otherwise maintain records of any mail received on behalf of a participant unless the mail is certified or registered mail.

(3) (a) Notwithstanding any provision of law to the contrary, a program participant may be served by registered mail or by certified mail, return receipt requested, addressed to the participant at his or her substitute address with any process, notice, or demand required or permitted by law to be served on the program participant. Service is perfected under this subsection (3) at the earliest of:

(I) The date the program participant receives the process, notice, or demand; or

(II) Five days after the date shown on the return receipt if signed on behalf of the program participant.

(b) This subsection (3) does not prescribe the only means, or necessarily the required means, of serving a program participant in the state.

(c) Whenever the laws of the state provide a program participant a legal right to act within a prescribed period of ten days or less after the service of a notice or other paper upon the participant and the notice or paper is served upon the participant by mail pursuant to this subsection (3) or by first-class mail as otherwise authorized by law, five days shall be added to the prescribed period.

(4) The executive director or his or her designee may designate as an application assistant any person who:

(a) Provides counseling, referral, or other services to victims of domestic violence, a sexual offense, or stalking; and

(b) Completes any training and registration process required by the executive director or his or her designee.

(5) Any assistance and counseling rendered by the executive director or his or her designee or an application assistant to an applicant related to this part 21 shall in no way be construed as legal advice.

24-30-2105. Filing and certification of applications - authorization card. (1) On and after July 1, 2008, upon the recommendation of an application assistant, an individual may apply to the executive director or his or her designee to participate in the address confidentiality program. The following individuals may apply to the executive director or his or her designee to have an address designated by the executive director or his or her designee to serve as the substitute address of the individual and any individuals designated in paragraph (j) of subsection (3) of this section:

(a) An adult individual;

(b) A parent or guardian acting on behalf of a minor when the minor resides with the individual; or

(c) A guardian acting on behalf of an incapacitated individual.

(2) An application assistant shall assist the individual in the preparation of the application. The application shall be dated, signed, and verified by the applicant and shall be signed and dated by the application assistant who assisted in the preparation of the application. The signature of the application assistant shall serve as the recommendation by such person that the applicant have an address designated by the executive director or his or her designee to serve as the substitute address of the applicant. A minor or incapacitated individual on whose behalf a parent or guardian completes an application pursuant to the authority set forth in paragraph (b) or (c) of subsection (1) of this section shall be considered the applicant, but any statements that are required to be made by the applicant shall be made by the parent or guardian acting on behalf of the minor or incapacitated individual.

(3) The application shall be on a form prescribed by the executive director or his or her designee and shall contain all of the following:

(a) The applicant's name;

(b) A statement by the applicant that the applicant is a victim of domestic violence, a sexual offense, or stalking and that the applicant fears for his or her safety;

(c) Evidence that the applicant is a victim of domestic violence, a sexual offense, or stalking. This evidence may include any of the following:

(I) Law enforcement, court, or other state or local government agency or federal agency records or files;

(II) Documentation from a domestic violence program or facility, including but not limited to a battered women's shelter or safe house, if the applicant is alleged to be a victim of domestic violence;

(III) Documentation from a sexual assault program if the applicant is alleged to be a victim of a sexual offense; or

(IV) Documentation from a religious, medical, or other professional from whom the applicant has sought assistance in dealing with the alleged domestic violence, sexual offense, or stalking.

(d) A statement by the applicant that disclosure of the applicant's actual address would endanger the applicant's safety;

(e) A statement by the applicant that the applicant has confidentially relocated in the past ninety days or will confidentially relocate in the state;

(f) A designation of the executive director or his or her designee as an agent for the applicant for purposes of receiving certain mail;

(g) The mailing address and telephone number where the applicant can be contacted by the executive director or his or her designee;

(h) The actual address that the applicant requests not to be disclosed by the executive director or his or her designee that directly relates to the increased risk of domestic violence, a sexual offense, or stalking;

(i) A statement as to whether there is any existing court order or court action involving the applicant or an individual identified in paragraph (j) of this subsection (3) related to dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time and the court that issued the order or has jurisdiction over the action;

(j) The name of any person who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant and, if the person named in the application is eighteen years of age or older, the consent of such person to be a program participant;

(k) A statement by the applicant, under penalty of perjury, that to the best of the applicant's knowledge, the information contained in the application is true.

(4) Upon determining that an application has been properly completed, the executive director or his or her designee shall certify the applicant and any individual who is identified in paragraph (j) of subsection (3) of this section as a program participant. Upon certification, the executive director or his or her designee shall issue to the participant an address confidentiality program authorization card, which shall include the participant's substitute address. The card shall remain valid for so long as the participant remains certified under the program.

(5) Applicants and individuals identified in paragraph (j) of subsection (3) of this section shall be certified for four years following the date of filing unless the certification is withdrawn or canceled prior to the end of the four-year period. A program participant may withdraw the certification by filing a request for withdrawal acknowledged before a notary public. A certification may be renewed by filing a renewal application with the executive director or his or her designee at least thirty days prior to expiration of the current certification. The renewal application shall be dated, signed, and verified by the applicant. The renewal application shall contain:

(a) Any statement or information that is required by subsection (3) of this section that has changed from the original application or a prior renewal application; and

(b) A statement by the applicant, under penalty of perjury, that to the best of the applicant's knowledge, the information contained in the renewal application and a prior application is true.

24-30-2106. Change of name, address, or telephone number. (1) A program participant shall notify the executive director or his or her designee within thirty days after the participant has obtained a legal name change by providing the executive director or his or her designee a certified copy of any judgment or order evidencing the change or any other documentation the executive director or his or her designee deems to be sufficient evidence of the name change.

(2) A program participant shall notify the executive director or his or her designee

of a change in address or telephone number from the address or telephone number listed for the participant on the application pursuant to the requirements set forth in section 24-30-2105 (3) (g) and (3) (h) no later than seven days after the change occurs.

24-30-2107. Certification cancellation - records. (1) The certification of a program participant shall be cancelled under any of the following circumstances:

(a) The program participant files a request for withdrawal of the certification pursuant to section 24-30-2105 (5).

(b) The program participant fails to notify the executive director or his or her designee of a change in the participant's name, address, or telephone number listed on the application pursuant to section 24-30-2106.

(c) The program participant or parent or guardian who completes an application on behalf of an applicant knowingly submitted false information in the program application.

(d) Mail forwarded to the program participant by the executive director or his or her designee is returned as undeliverable.

(2) If the executive director or his or her designee determines that there is one or more grounds for cancelling certification of a program participant pursuant to subsection (1) of this section, the executive director or his or her designee shall send notice of cancellation to the program participant. Notice of cancellation shall set out the reasons for cancellation. The participant shall have thirty days to appeal the cancellation decision under procedures developed by the executive director or his or her designee.

(3) An individual who ceases to be a program participant is responsible for notifying persons who use the substitute address that the designated substitute address is no longer valid.

24-30-2108. Address use by state or local government agencies. (1) The program participant, and not the executive director or his or her designee, is responsible for requesting that a state or local government agency use the participant's substitute address as the participant's residential, work, or school address for all purposes for which the agency requires or requests such residential, work, or school address.

(2) Except as otherwise provided in this section or unless the executive director or his or her designee grants a state or local government agency's request for a disclosure pursuant to section 24-30-2110, when a program participant submits a current and valid address confidentiality program authorization card to the agency, the agency shall accept the substitute address designation by the executive director or his or her designee on the card as the participant's address to be used as the participant's residential, work, or school address when creating a new public record. The substitute address given to the agency

shall be the last known address for the participant used by the agency until such time that the agency receives notification pursuant to section 24-30-2107 (3). The agency may make a photocopy of the card for the records of the agency and thereafter shall immediately return the card to the program participant.

(3) (a) A designated election official as defined in section 1-1-104 (8), C.R.S., shall use the actual address of a program participant for precinct designation and all official election-related purposes and shall keep the participant's actual address confidential from the public. The election official shall use the substitute address for all correspondence and mailings placed in the United States mail. The substitute address shall not be used as an address for voter registration.

(b) A state or local government agency's access to a program participant's voter registration shall be governed by the disclosure process set forth in section 24-30-2110.

(c) The provisions of this subsection (3) shall apply only to a program participant who submits a current and valid address confidentiality program authorization card when registering to vote.

(d) The provisions of this subsection (3) shall not apply to a program participant who registers to vote pursuant to section 1-2-213, C.R.S.

(4) A program participant who completes an application to register to vote at a driver's license examination facility while receiving a driver's license or an identification card pursuant to section 1-2-213, C.R.S., shall be required to have the participant's actual address on the driver's license or identification card.

(5) The substitute address shall not be used for purposes of listing, appraising, or assessing property taxes and collecting property taxes under the provisions of title 39, C.R.S.

(6) Whenever a program participant is required by law to swear or affirm to the participant's address, the participant may use his or her substitute address.

(7) The substitute address shall not be used for purposes of assessing any taxes or fees on a motor vehicle or for titling or registering a motor vehicle. Notwithstanding any provision of section 24-72-204 (7) to the contrary, any record that includes a program participant's actual address pursuant to this subsection (7) shall be confidential and not available for inspection by anyone other than the program participant.

(8) The substitute address shall not be used on any document related to real property recorded with a county clerk and recorder.

(9) A school district shall accept the substitute address as the address of record and shall verify student enrollment eligibility through the executive director or his or her designee. The executive director or his or her designee shall facilitate the transfer of student records from one school to another.

(10) Except as otherwise provided in this section, a program participant's actual address and telephone number maintained by a state or local government agency or disclosed by the executive director or his or her designee is not a public record that is

subject to inspection pursuant to the provisions of part 2 of article 72 of title 24. This subsection (10) shall not apply to the following:

(a) To any public record created more than ninety days prior to the date that the program participant applied to be certified in the program; or

(b) If a program participant voluntarily requests that a state or local government agency use the participant's actual address or voluntarily gives the actual address to the state or local government agency.

(11) For any public record created within ninety days prior to the date that a program participant applied to be certified in the program, a state or local government agency shall redact the actual address from a public record or change the actual address to the substitute address in the public record, if a program participant who presents a current and valid program authorization card requests the agency that maintains the public record to use the substitute address instead of the actual address on the public record.

24-30-2109. Disclosure of actual address prohibited. (1) The executive director or his or her designee is prohibited from disclosing any address or telephone number of a program participant other than the substitute address designated by the executive director or his or her designee, except under any of the following circumstances:

(a) The information is required by direction of a court order. However, any person to whom a program participant's address or telephone number has been disclosed shall not disclose the address or telephone number to any other person unless permitted to do so by order of the court.

(b) The executive director or his or her designee grants a request by an agency pursuant to section 24-30-2110.

(c) The program participant is required to disclose the participant's actual address as part of a registration required by the "Colorado Sex Offender Registration Act", article 22 of title 16, C.R.S.

(2) The executive director or his or her designee shall provide immediate notification of disclosure to a program participant when disclosure is made pursuant to paragraph (a) or (b) of subsection (1) of this section.

(3) If, at the time of application, an applicant or an individual designated in section 24-30-2105 (3) (j) is subject to a court order related to dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the executive director or his or her designee shall notify the court that issued the order of the certification of the program participant in the address confidentiality program and the substitute address designated by the executive director or his or her designee. If, at the time of application, an applicant or an individual designated in section 24-30-2105 (3) (j) is involved in a court action related to dissolution of marriage proceedings, child support, or the allocation of parental responsibilities or parenting time, the executive director or

his or her designee shall notify the court having jurisdiction over the action of the certification of the applicant in the address confidentiality program and the substitute address designated by the executive director or his or her designee.

(4) No person shall knowingly and intentionally obtain a program participant's actual address or telephone number from the executive director or his or her designee or an agency knowing that the person is not authorized to obtain the address information.

(5) No employee of the executive director or his or her designee or of an agency shall knowingly and intentionally disclose a program participant's actual address or telephone number unless the disclosure is permissible by law. This subsection (5) only applies when an employee obtains a participant's actual address or telephone number during the course of the employee's official duties and, at the time of disclosure, the employee has specific knowledge that the actual address or telephone number disclosed belongs to a participant.

(6) Any person who knowingly and intentionally obtains or discloses information in violation of this part 21 shall be guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-30-2110. Request for disclosure. (1) A state or local government agency requesting disclosure of a program participant's actual address pursuant to this section shall make such a request in writing on agency letterhead and shall provide the executive director or his or her designee with the following information:

(a) The name of the program participant for whom the agency seeks disclosure of the actual address;

(b) A statement, with explanation, setting forth the reason or reasons that the agency needs the program participant's actual address and a statement that the agency cannot meet its statutory or administrative obligations without disclosure of the participant's actual address;

(c) A particular statement of facts showing that other methods to locate the program participant or the participant's actual address have been tried and have failed or that the methods reasonably appear to be unlikely to succeed;

(d) A statement that the agency has adopted a procedure setting forth the steps the agency will take to protect the confidentiality of the program participant's actual address; and

(e) Any other information as the executive director or his or her designee may reasonably request in order to identify the program participant in the records of the executive director or his or her designee.

(2) (a) The executive director or his or her designee shall provide the program participant with notice of a request for disclosure received pursuant to subsection (1) of this section, and, to the extent possible, the participant shall be afforded an opportunity to

be heard regarding the request.

(b) Except as otherwise provided in paragraph (c) of this subsection (2), the executive director or his or her designee shall provide the program participant with written notification whenever a request for a disclosure has been granted or denied pursuant to this section.

(c) No notice or opportunity to be heard shall be given to the program participant when the request for disclosure is made by a state or local law enforcement agency conducting a criminal investigation involving alleged criminal conduct by the participant or when providing notice to the participant would jeopardize an ongoing criminal investigation or the safety of law enforcement personnel.

(3) The executive director or his or her designee shall promptly conduct a review of all requests received pursuant to this section. In conducting a review, the executive director or his or her designee shall consider all information received pursuant to subsections (1) and (2) of this section and any other appropriate information that the executive director or his or her designee may require.

(4) The executive director or his or her designee shall grant a state or local government agency's request for disclosure and disclose a program participant's actual address pursuant to this section if:

(a) The agency has a bona fide statutory or administrative need for the actual address.

(b) The actual address will only be used for the purpose stated in the request.

(c) Other methods to locate the program participant or the participant's actual address have been tried and have failed or such methods reasonably appear to be unlikely to succeed.

(d) The agency has adopted a procedure for protecting the confidentiality of the actual address of the program participant.

(5) Upon granting a request for disclosure pursuant to this section, the executive director or his or her designee shall provide the state or local government agency with the disclosure that contains:

(a) The program participant's actual address;

(b) A statement setting forth the permitted use of the actual address and the names or classes of persons permitted to have access to and use of the actual address;

(c) A statement that the agency is required to limit access to and use of the actual address to the permitted use and persons set forth in the disclosure; and

(d) The date on which the permitted use expires, if expiration is appropriate, after which the agency may no longer maintain, use, or have access to the actual address.

(6) A state or local government agency whose request is granted by the executive director or his or her designee pursuant to this section shall:

(a) Limit the use of the program participant's actual address to the purposes set forth in the disclosure;

(b) Limit the access to the program participant's actual address to the persons or classes of persons set forth in the disclosure;

(c) Cease to use and dispose of the program participant's actual address upon the expiration of the permitted use, if applicable; and

(d) Except as otherwise set forth in the disclosure, maintain the confidentiality of a program participant's actual address.

(7) Upon denial of a state or local government agency's request for disclosure, the executive director or his or her designee shall provide prompt written notification to the agency stating that the agency's request has been denied and setting forth the specific reasons for the denial.

(8) A state or local government agency may file written exceptions with the executive director or his or her designee no more than fifteen days after written notification is provided pursuant to subsection (7) of this section. The exceptions shall restate the information contained in the request for disclosure, state the grounds upon which the agency asserts that the request for disclosure should be granted and specifically respond to the executive director's or his or her designee's specific reasons for denial.

(9) Unless the state or local government agency filing exceptions agrees otherwise, the executive director or his or her designee shall make a final determination regarding the exceptions within thirty days after the filing of exceptions pursuant to subsection (8) of this section. Prior to making a final determination regarding the exceptions, the executive director or his or her designee may request additional information from the agency or the program participant and conduct a hearing. If the final determination of the executive director or his or her designee is that the denial of the agency's request for disclosure was properly denied, the executive director or his or her designee shall provide the agency with written notification of this final determination stating that the agency's request has again been denied and setting forth the specific reasons for the denial. If the final determination of the executive director or his or her designee is that the denial of the agency's request for disclosure has been improperly denied, the executive director or his or her designee shall grant the agency's request for disclosure in accordance with this section. The final determination of the executive director or his or her designee shall constitute final agency action.

(10) The record before any judicial review of a final agency action pursuant to subsection (9) of this section shall consist of the state or local government agency's request for disclosure, the executive director's or his or her designee's written response, the agency's exceptions, the hearing transcript, if any, and the executive director's or his or her designee's final determination.

(11) During any period of review, evaluation, or appeal, the agency shall, to the extent possible, accept and use the program participant's substitute address.

(12) Notwithstanding any other provision of this section, the executive director or his or her designee shall establish an expedited process for disclosure to be used by a

criminal justice official or agency for situations where disclosure is required pursuant to a criminal justice trial, hearing, proceeding, or investigation involving a program participant. An official or agency receiving information pursuant to this subsection (12) shall certify to the executive director or his or her designee that the official or agency has a system in place to protect the confidentiality of a participant's actual address from the public and from personnel who are not involved in the trial, hearing, proceeding, or investigation.

(13) Nothing in this section shall be construed to prevent the executive director or his or her designee from granting a request for disclosure to a state or local government agency pursuant to this section upon receipt of a program participant's written consent to do so.

24-30-2111. Nondisclosure of address in criminal and civil proceedings. No person shall be compelled to disclose a program participant's actual address during the discovery phase of or during a proceeding before a court of competent jurisdiction or administrative tribunal unless the court or administrative tribunal finds, based upon a preponderance of the evidence, that the disclosure is required in the interests of justice. A court or administrative tribunal may seal the portion of any record that contains a program participant's actual address. Nothing in this section shall prevent a state or local government agency, in its discretion, from using a program participant's actual address in any document or record filed with a court or administrative tribunal if, at the time of filing, the document or record is not a public record.

24-30-2112. Participation in the program - orders relating to allocation of parental responsibilities or parenting time. (1) Nothing in this part 21, nor participation in the program, shall affect an order relating to the allocation of parental responsibilities or parenting time in effect prior to or during program participation.

(2) Program participation does not constitute evidence of domestic violence, a sexual offense, or stalking and shall not be considered for purposes of making an order allocating parental responsibilities or parenting time; except that a court may consider practical measures to keep a program participant's actual address confidential when making an order allocating parental responsibilities or parenting time.

24-30-2113. Rule-making authority. The executive director or his or her designee is authorized to adopt any rules in accordance with article 4 of this title deemed necessary to carry out the provisions of this part 21, excluding section 24-30-2114.

24-30-2114. Surcharge - collection and distribution - address confidentiality program surcharge fund - creation - definitions. (1) On and after July 1, 2007, each person who is convicted of the crimes set forth in subsection (2) of this section shall be required to pay a surcharge of twenty-eight dollars to the clerk of the court for the judicial district in which the conviction occurs.

(2) The following crimes shall be subject to the surcharge set forth in subsection (1) of this section:

(a) Stalking;

(b) A crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence; or

(c) Criminal attempt, conspiracy, or solicitation to commit the crimes set forth in paragraphs (a) and (b) of this subsection (2).

(3) The clerk of the court shall allocate the surcharge required by this section as follows:

(a) Five percent shall be retained by the clerk of the court for administrative costs incurred pursuant to this section. Such amount retained shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

(b) Ninety-five percent shall be transferred to the state treasurer, who shall credit the same to the address confidentiality program surcharge fund created pursuant to subsection (4) of this section.

(4) (a) There is hereby created in the state treasury the address confidentiality program surcharge fund, which shall consist of moneys received by the state treasurer pursuant to this section. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of paying for the costs incurred by the executive director or his or her designee in the administration of the program. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(b) (Deleted by amendment, L. 2011, (HB 11-1080), ch. 256, p. 1121, § 2, effective June 2, 2011.)

(c) Repealed.

(5) The court may waive all or any portion of the surcharge required by this section if the court finds that a person subject to the surcharge is indigent or financially unable to pay all or any portion of the surcharge. The court may waive only that portion of the surcharge that the court finds that the person is financially unable to pay.

(6) As used in this section, "convicted" and "conviction" mean a plea of guilty accepted by the court, including a plea of guilty entered pursuant to a deferred sentence under section 18-1.3-102, C.R.S., a verdict of guilty by a judge or jury, or a plea of no contest accepted by the court.

24-30-2115. Address confidentiality program grant fund - creation. (1) There is hereby created in the state treasury the address confidentiality program grant fund, referred to in this section as the "fund", which shall consist of any gifts, grants, or donations received by the department for the fund pursuant to subsection (2) of this section. The moneys in the fund shall be continuously appropriated by the general assembly to the department for the purpose of paying for the costs incurred by the executive director or his or her designee in the administration of the program. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(2) The department is authorized to seek, accept, and expend gifts, grants, and donations from private or public sources for the implementation of the program. All private and public funds received through gifts, grants, and donations shall be transmitted to the state treasurer, who shall credit the same to the fund.

PART 22

DISABILITY ASSISTANCE ACT

24-30-2201. Short title. This part 22 shall be known and may be cited as the "Laura Hershey Disability-Benefit Support Act".

24-30-2202. Definitions. As used in this part 22, unless the context otherwise requires:

(1) "Committee" means the disability-benefit support contract committee created in section 24-30-2203.

(2) "Disability benefits" means cash payments from social security disability insurance under Title II of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, cash payments made by the federal government to persons who are aged, blind, or disabled under Title XVI of the federal "Social Security Act", 42 U.S.C. sec. 401 et seq., as amended, and long-term care under the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S.

(3) "Nonprofit entity" means an entity incorporated under the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or a tax-exempt entity under 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986".

(4) "Recipient" means a person who receives disability benefits or long-term care services.

24-30-2203. Disability-benefit support contract committee. (1) The disability-benefit support contract committee is hereby created within the department of personnel. The committee consists of thirteen members appointed by the governor as follows:

(a) Five members who are persons with disabilities and currently receiving disability benefits or have received application assistance;

(b) One member of a statewide, cross-disability organization representing persons with disabilities;

(c) One member who is trained to increase access to disability benefits for persons with disabilities by an organization supported by the United States social security administration;

(d) One member who is a medical doctor;

(e) One member who is a mental health professional;

(f) One member who is an expert in nonprofit management;

(g) One member appointed by the executive director of the department of personnel;

(h) One member who has experience and expertise in business; and

(i) One member who has experience with grant programs.

(2) Members of the committee serve three-year terms; except that members appointed under paragraph (a) of subsection (1) of this section serve an initial term of one year, and members appointed under paragraphs (b), (c), and (d) of subsection (1) of this section serve an initial term of two years.

(3) An act of the committee is void unless a majority of the members has voted in favor of the act.

(4) The committee shall implement section 24-30-2204 using the disability-benefit support fund created in section 24-30-2205.

(4.5) The committee shall implement section 24-30-2204.5 using the disability investigational and pilot support fund created in section 24-30-2205.5.

(5) The committee is authorized to seek and accept grants or donations from private or public sources for the purposes of this part 22; except that the committee shall not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this part 22 or part 13 of article 75 of this title regarding the status of grants and donations made to state agencies. The committee shall transmit the moneys to the disability-benefit support fund.

(6) The committee has the following duties and powers:

(a) To sue and be sued and otherwise assert or defend the committee's legal interests;

(b) To prepare and sign contracts;

(c) To have and exercise all rights and powers necessary or incidental to, or implied from, the specific powers granted in this part 22; and

(d) To fix the time and place at which meetings may be held.

(7) The committee may hire employees or obtain the services of professional advisors.

(8) The attorney general is the legal counsel for the committee.

24-30-2204. Program to assist persons to obtain disability benefits - repeal. (1) Within six months after the first transfer to the disability-benefit support fund from the registration number fund created in section 42-1-407, C.R.S., the committee shall invite nonprofit entities to submit a proposal for a program to aid persons with disabilities in accessing disability benefits. To qualify, the nonprofit organization must be based in Colorado and governed by a board that:

(a) Is composed of persons with a demonstrated commitment to improving the lives of recipients with disabilities;

(b) Contains members who understand a range of significant disabilities, including physical and mental; and

(c) Contains a majority of either:

(I) Recipients with disabilities; or

(II) Family members of recipients with disabilities who have experience in representing the interests of a person with a disability.

(2) (a) (I) The committee shall review the proposed programs and shall award a contract to the nonprofit entity that best meets the requirements of this section in accordance with the "Procurement Code", articles 101 to 112 of this title.

(II) The term of the contract is one year. Before the contract expires, the committee shall evaluate whether the nonprofit entity and the contract are reasonably meeting the requirements of this section, including objective and quantitative evaluations, whenever possible, of the satisfaction of program participants, the program's success in obtaining disability benefits for program participants, the program's effectiveness at helping program participants obtain jobs, and improvements in the quality of life of program participants. The committee shall include the evaluation criteria in the contract.

(III) The committee may renew the contract annually for up to five years. After five years, the committee shall reopen the contract to a competitive bid process.

(b) The committee shall not award the contract unless the proposal includes:

(I) A system for evaluating whether a person with a disability is reasonably able to navigate the application process to obtain disability benefits, health care, and employment;

(II) A system for prioritizing the need of applicants based upon the evaluations;

(III) A plan for assisting persons with disabilities in navigating the processes of obtaining and retaining disability benefits, health care, and employment;

(IV) A plan for establishment of working relationships with state agencies, county

departments of human services, health care providers, the United States social security administration, and the business community;

(V) A policy of preferential hiring of persons with disabilities;

(VI) Reasonable standards for accounting control of expenditures;

(VII) Metrics to evaluate the program's quality and cost-effectiveness;

(VIII) Effective July 1, 2016, the ability to serve persons with disabilities statewide; and

(IX) A plan for serving persons with disabilities statewide within five years. This subparagraph (IX) is repealed, effective July 1, 2016.

(c) The committee shall not discriminate against a contracting entity for advocacy concerning persons with disabilities.

(3) The entity awarded a contract under this section shall make quarterly reports of expenditures to the department of personnel, which shall make the reports available to the committee. The committee shall include in the contract a method and format for making the reports.

24-30-2204.5. Program to investigate, fund, and pilot projects or programs to benefit persons with disabilities. (1) The committee shall accept and review proposals to fund projects or programs that study or pilot new and innovative ideas that will lead to an improved quality of life or increased independence for persons with disabilities. Proposals may be accepted throughout the year, and grants or loans may be made by the committee at its regular meetings. The disability investigational and pilot support fund created in section 24-30-2205.5 shall be the sole source to fund any grants or loans made pursuant to this section.

(2) To be eligible for funding pursuant to this section, a project or program must:

(a) (I) Demonstrate a capability to be self-sustaining or otherwise be able to develop long-term independent funding; and

(II) Have a governing body or board that is composed of persons with a demonstrated commitment to improving the lives of persons with disabilities and have a majority be persons with disabilities or family members of persons with disabilities; or

(b) Be the license plate auction group established in section 42-1-403, C.R.S.

24-30-2205. Disability-benefit support fund. The disability-benefit support fund is hereby created in the state treasury. The moneys in the fund consist of amounts transferred to the fund under section 42-1-407, C.R.S., or transferred to the fund under section 24-30-2203 (5). The committee shall use the moneys in the fund to implement this part 22; except that the committee may direct the state treasurer to transfer moneys in the fund to the registration number fund created in section 42-1-407, C.R.S., to fund the

implementation of part 4 of article 1 of title 42, C.R.S. The committee shall not use more than five percent of the money in the fund to administer this part 22. The state treasurer shall credit all interest earned on the investment of moneys in the fund to the fund. At the end of each fiscal year, the moneys in the fund, including income earned from investment, remain in the fund. The general assembly shall appropriate the moneys in the fund to the department of personnel or governor's office to implement this part 22.

24-30-2205.5. Disability investigational and pilot support fund. There is hereby created in the state treasury the disability investigational and pilot support fund, referred to in this section as the "fund", that shall consist of moneys transferred to the fund pursuant to section 25.5-5-308 (8), C.R.S., any moneys that may be appropriated to the fund by the general assembly, and any gifts, grants, or donations received by the department of personnel for the purpose of implementing this section. The moneys in the fund are subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the pilot program. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund must be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year must remain in the fund and shall not be credited or transferred to the general fund or another fund. If this section is repealed, prior to its repeal, all unexpended and unencumbered moneys remaining in the fund must be transferred to the general fund.

24-30-2206. Implementation. (1) Except as provided for in subsection (2) of this section, the general assembly does not intend to require the department of personnel to expend moneys to implement this part 22. Notwithstanding any other section of this part 22, the department of personnel and the committee need not implement this part 22 until the disability-benefit support fund contains enough money to implement this part 22.

(2) The department of personnel shall begin implementation of section 24-30-2204.5 at such time as the disability investigational and pilot support fund contains sufficient funds for implementation, as determined by the committee.

24-30-2207. Sunset review - repeal of part. (1) This part 22 is repealed, effective September 1, 2021.

(2) Prior to such repeal, the department of regulatory agencies shall review the assistance program for disability benefits as provided for in section 24-34-104.

ARTICLE 31

Department of Law

PART 1

ATTORNEY GENERAL

24-31-101. Powers and duties of attorney general. (1) (a) The attorney general of the state shall be the legal counsel and advisor of each department, division, board, bureau, and agency of the state government other than the legislative branch. He shall attend in person at the seat of government during the session of the general assembly and term of the supreme court and shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor, and he shall prosecute and defend for the state all causes in the appellate courts in which the state is a party or interested.

(b) It is the duty of the attorney general, at the request of the governor, the secretary of state, the state treasurer, the executive director of the department of revenue, or the commissioner of education, to prosecute and defend all suits relating to matters connected with their departments. When requested so to do, he shall give his opinion in writing upon all questions of law submitted to him by the general assembly or either house thereof or by the governor, lieutenant governor, secretary of state, executive director of the department of revenue, state treasurer, state auditor, or commissioner of education.

(c) When required, he shall prepare drafts for contracts, forms, and other writings which may be required for the use of the state. He shall keep in proper books a record of all official opinions and a register of all actions prosecuted or defended by him and of all proceedings had in relation thereto and the status of pending matters in his office, which books or registers shall be delivered to his successor. Publication of opinions or other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(d) Any moneys received by him belonging to the state or received in his official capacity shall be paid forthwith to the department of the treasury and, generally, he shall have such legal duties in regard to the activities of the state and its various departments, boards, bureaus, and agencies as are imposed by law.

(e) Whenever the attorney general is unable or has failed or refused to provide legal services to an agency of state government, as determined by the governor if the agency is in the executive branch or by the chief justice if the agency is in the judicial branch, such agency may employ counsel of its own choosing to provide such legal

services. Any expense incurred by reason of the employment of counsel pursuant to this paragraph (e) shall be a lawful charge against appropriations for this purpose made by the general assembly to the department of law.

(f) The attorney general shall have concurrent original jurisdiction with the relevant district attorney over part 3 of article 25 of title 12, C.R.S.

(2) Repealed.

(3) The attorney general may appoint such deputies and assistants as are necessary for the efficient operation of his office within the limitations of appropriations made therefor by the general assembly.

(4) Upon the request of any employee in the state personnel system, it is the duty of the attorney general to represent such employee in any civil action or administrative proceeding instituted against such employee, either in his official or individual capacity if the action or proceeding arises out of performance of such employee's official duties as determined by the attorney general and if the action or proceeding has not been brought by the state personnel director or the appointing authority of such employee seeking dismissal or other disciplinary action; except that the attorney general shall not represent any such employee in an action brought under section 24-50.5-105.

(4.5) The attorney general, pursuant to section 24-30-1507, shall have the duty to represent expert witnesses and consultants described in section 24-30-1510 (3) (h).

(5) The general assembly hereby recognizes and reaffirms that the attorney general has all powers conferred by statute, and by common law in accordance with section 2-4-211, C.R.S., regarding all trusts established for charitable, educational, religious, or benevolent purposes.

(6) The attorney general shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

24-31-102. Offices, boards, and divisions. (1) The department of law, the chief executive officer of which shall be the attorney general, includes the following:

(a) Division of legal affairs, which division shall include the office of the attorney general and which shall have and exercise the powers and duties specified and provided in section 24-31-101;

(b) The division of state solicitor general, including the office of state solicitor general;

(c) Repealed.

(d) The peace officers standards and training board created in part 3 of this article.

24-31-103. Deputy attorney general - powers. The attorney general is hereby

authorized to appoint a deputy, who shall have authority to act for the attorney general in all matters except in respect to such duties as devolve upon the attorney general by virtue of the state constitution.

24-31-104. Appointment of subordinate officers and employees. The attorney general and the heads of the divisions specified in section 24-31-102 may appoint the subordinate officers and employees of their respective divisions, but only in conformity with sections 24-2-102 and 24-2-103.

24-31-104.5. Funding for insurance fraud investigations and prosecutions - creation of fund. (1) (a) For the purpose of providing adequate funds to the Colorado department of law for the investigation and prosecution of allegations of insurance fraud, in addition to any other fee collected pursuant to section 10-3-207 (1), C.R.S., each entity regulated by the division of insurance shall pay to the division a nonrefundable annual fee. Based upon the appropriations made to the department of law from the insurance fraud cash fund and the recommendation of the attorney general, the commissioner of insurance shall set the fee so that the revenue generated from the fee approximates the direct and indirect costs of the investigation and prosecution of allegations of insurance fraud. The fee shall not exceed three thousand dollars and is payable on or before March 1 of each year.

(b) The commissioner of insurance shall establish a tiered fee schedule that sets the annual fee required by paragraph (a) of this subsection (1) based upon the prior year's direct written premiums, gross contract funds, or charges received in Colorado by each regulated entity. The regulated entities with direct written premiums, gross contract funds, or charges received in Colorado in excess of one million dollars shall pay one fee, and the regulated entities with one million dollars or less shall pay a lesser fee.

(2) The division of insurance shall transmit fees collected pursuant to subsection (1) of this section to the state treasurer for deposit in the insurance fraud cash fund, which fund is hereby created in the state treasury. The fund consists of fees collected pursuant to this section and any other moneys deposited into the fund. Interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund are subject to annual appropriation by the general assembly to the department of law for use in investigating and prosecuting allegations of insurance fraud. Any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year remain in the fund and do not revert to the general fund.

(3) The attorney general shall provide annual reports to the joint budget committee, the senate business, labor, and technology committee, and the house economic and business development committee, or any successor committees, and shall post on the

attorney general's web site a statistical report of the number of full-time employees dedicated to insurance fraud, referrals, open investigations, convictions, arrests, and actions initiated, and the number of restitutions, fines, costs, and forfeitures obtained, from the investigation and prosecution of insurance fraud as provided in this section. In the report, the attorney general shall make his or her best effort to delineate between the types of cases prosecuted by line of insurance.

24-31-105. Criminal enforcement section. There is hereby established, within the department of law and under the control of the attorney general, a criminal enforcement section. The criminal enforcement section or any attorney in the department of law authorized by the attorney general shall prosecute all criminal cases for the attorney general and shall perform other functions as may be required by the attorney general. The attorney general is hereby authorized to appoint a deputy attorney general as chief of the criminal enforcement section. The chief of said section shall be a licensed attorney with a minimum of two years of criminal experience as a trial or appellate prosecutor.

24-31-106. Rights of crime victims - victims' services coordinator. (1) To assure that the constitutional and statutory rights of victims are preserved in criminal cases being prosecuted or defended by the office of the attorney general, the attorney general may appoint, in accordance with section 13 of article XII of the state constitution, a victims' services coordinator, who shall be subject to the state personnel system pursuant to article 50 of this title.

(2) The victims' services coordinator shall perform such services as designated by the attorney general to assure that victims of crime are afforded the rights described in section 24-4.1-302.5 with regard to criminal cases being prosecuted or defended by the department of law.

(3) The attorney general may further direct the victims' services coordinator to provide appropriate services to the victims of crime, as defined by section 18-1-104 (1), C.R.S., whose cases are being handled on appeal by the department of law.

(4) The position of victims' services coordinator shall be properly classified under the state personnel director's classification system.

24-31-107. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department of law or any authorized agent of such department shall require the applicant's name, address, and social security number.

(2) The department of law or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department of law, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department of law or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department of law shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department of law and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department of law is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department of law or any authorized agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-31-108. Receipt of moneys - subject to appropriation - exception for custodial moneys - legal services cash fund - creation - definition - repeal. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) or in subsection (2) or (3) of this section, any moneys received by the attorney general and paid to the department of the treasury pursuant to section 24-31-101 (1) (d) are subject to annual appropriation by the general assembly.

(b) (I) The department of law is authorized to solicit, accept, and expend gifts, grants, and donations from public and private sources for the purposes of this article; except that the department may not accept a gift, grant, or donation that is subject to conditions inconsistent with this article or any other law of the state. All moneys collected

by the department of law pursuant to this paragraph (b) shall be transmitted to the state treasurer to be credited to the particular fund deemed most appropriate by the department of law and shall be continuously appropriated to the department of law for the purposes of this article.

(II) The department of law shall include with its annual budget request to the joint budget committee a report describing the receipt and expenditure of moneys under this paragraph (b).

(III) This paragraph (b) is repealed, effective July 1, 2015.

(2) Any moneys received by the attorney general as an award of attorney fees or costs that are not custodial moneys shall be placed in a separate attorney fees and costs account and shall be subject to annual appropriation by the general assembly for legal services provided by the department of law.

(2.5) There is hereby created in the state treasury the legal services cash fund, also referred to in this subsection (2.5) as the "fund". The department of law shall transmit all moneys received from state agencies as payment for legal services to the state treasurer, who shall credit the same to the fund. The moneys in the fund and all interest earned on such moneys are subject to annual appropriation by the general assembly to the department of law for the direct and indirect costs associated with providing legal services to state governmental entities and for any of the department's litigation expenses. Any unexpended moneys in the fund at the end of the fiscal year shall remain in the fund and shall not be credited or transferred to any other fund.

(3) If all or a portion of any moneys received by the attorney general and paid to the department of the treasury pursuant to section 24-31-101 (1) (d) are custodial moneys, the attorney general shall direct the state treasurer in writing to place such custodial moneys in a separate account. Any custodial moneys placed in a separate account pursuant to this subsection (3) shall not be subject to annual appropriation by the general assembly. A copy of the written direction to the state treasurer shall be delivered to the joint budget committee. Such written direction shall set forth the basis for the attorney general's determination that the moneys are custodial moneys and shall specify the manner in which the moneys will be expended. Such written direction shall be given to the state treasurer within thirty days after the date the moneys are paid to the department of the treasury. Any custodial moneys placed in a separate account pursuant to this subsection (3) shall be expended only for the purposes for which the moneys have been provided. The department of law shall provide with its annual budget request an accounting of how custodial moneys have been or will be expended. For informational purposes, the expenditure of such moneys may be indicated in the annual general appropriation act.

(4) (a) As used in this section, unless the context otherwise requires, "custodial moneys" means moneys received by the attorney general:

(I) That originated from a source other than the state of Colorado;

(II) That are awarded or otherwise provided to the state for a particular purpose;

(III) For which the state is acting as a custodian or trustee to carry out the particular purpose for which the moneys have been provided.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), custodial moneys shall not include the following:

(I) Moneys in the tobacco litigation settlement cash fund created in section 24-22-115;

(II) Moneys in the tobacco litigation settlement trust fund created in section 24-22-115.5; and

(III) Tobacco litigation settlement moneys subject to appropriation or expenditure pursuant to section 24-22-115.6.

24-31-109. Attorney general to provide identification cards to retired peace officers upon request - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Peace officer" means a certified peace officer described in section 16-2.5-102, C.R.S.

(b) "Photographic identification" means a photographic identification that satisfies the description at 18 U.S.C. sec. 926C (d).

(2) Except as described in subsection (3) of this section, on and after August 7, 2013, if the department of law has a policy, on August 7, 2013, of issuing photographic identification to peace officers who have retired from the department, and the department discontinues said policy after August 7, 2013, the department shall continue to provide such photographic identification to peace officers who have retired from the department if:

(a) The peace officer requests the identification;

(b) The peace officer retired from the department of law before the date upon which the department discontinued the policy; and

(c) The peace officer is a qualified retired law enforcement officer, as defined in 18 U.S.C. sec. 926C (c).

(3) Before issuing or renewing a photographic identification to a retired law enforcement officer pursuant to this section, a law enforcement agency of the state shall complete a criminal background check of the officer through a search of the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t), and a search of the state integrated criminal justice information system. If the background check indicates that the officer is prohibited from possessing a firearm by state or federal law, the law enforcement agency shall not issue the photographic identification.

(4) The department of law may charge a fee for issuing a photographic identification to a retired peace officer pursuant to subsection (2) of this section, which fee shall not exceed the direct and indirect costs assumed by the department in issuing the photographic identification.

(5) Notwithstanding any provision of this section to the contrary, the department of law shall not be required to issue a photographic identification to a particular peace officer if the attorney general elects not to do so.

(6) If the department of law denies a photographic identification to a retired peace officer who requests a photographic identification pursuant to this section, the department of law shall provide the retired peace officer a written statement setting forth the reason for the denial.

PART 2

SOLICITOR GENERAL

24-31-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Assistant" means an assistant state solicitor general.

(2) "Legal services" means any service performed by any person as an attorney for any state agency, except legal services performed by the attorney general, the deputy attorney general and assistant attorneys general, and by an attorney under section 8-45-103, C.R.S.; or as an administrative law judge, a hearing officer, hearing examiner, master, or referee for any state agency; or as an attorney under a contract with any state agency providing for temporary legal services.

(3) "State agency" means any department, division, section, unit, office, officer, commission, board, institution, institution of higher education, or other agency of the executive department of the state government.

(4) "State solicitor" means the state solicitor general.

(5) "Temporary legal services" means legal services not to exceed one year in length.

24-31-202. Division of state solicitor general - office of state solicitor general - creation. There is hereby created the division of state solicitor general, including the office of state solicitor general, in the department of law, the head of which shall be the state solicitor general.

24-31-203. State solicitor - qualifications - appointment - duties. (1) The

attorney general shall appoint the state solicitor who shall be an assistant attorney general. The person appointed state solicitor shall be an attorney-at-law in good standing and shall have been admitted to practice law in Colorado for at least five years immediately preceding the taking of office as state solicitor.

(2) The state solicitor shall be the head of the division of state solicitor general and shall provide such legal services for each state agency as may be designated by the attorney general. No state agency shall appoint or employ any person to perform legal services except in accordance with the provisions of this part 2.

(3) No assistant state solicitor may appear in any court of this state or of the United States on behalf of any state agency unless specifically authorized to so appear by the attorney general. When so authorized to appear on behalf of a state agency, any assistant shall have all the power and authority of an assistant attorney general and shall be designated as a special assistant attorney general. When acting as a special assistant attorney general, an assistant state solicitor shall not be entitled to any compensation other than compensation as an assistant state solicitor.

(4) The state solicitor may make such rules and regulations, pursuant to the provisions of section 24-4-103, as may be necessary to carry out the duties imposed upon him by law or by the attorney general.

(5) Upon request by the head of any department, division, commission, board, institution, or institution of higher education, the state solicitor shall assign assistant solicitors to perform legal services for the requesting agency. The requesting party may request, and the state solicitor may assign, assistant solicitors on a permanent or temporary basis to the requesting agency.

(6) Legal services performed by assistant solicitors shall be subject to the supervision of the state solicitor and shall be rendered in accordance with the legal policies of the state as determined by the attorney general.

24-31-204. Assistant state solicitors - appointment - qualifications. (1) The state solicitor, with the consent of the attorney general, may appoint such assistants as may be necessary to provide legal services to each state agency. Assistants shall be appointed in accordance with the provisions of section 13 of article XII of the state constitution and the laws and rules governing the state personnel system.

(2) No person shall be appointed an assistant who is not an attorney-at-law in good standing and who has not been admitted to practice law in this state.

(3) The state solicitor shall not reduce the level of existing legal services available to any state agency on July 1, 1973.

(4) Whenever the state solicitor assigns an assistant to a state agency, that state agency shall provide adequate office space, secretarial and technical assistance, and adequate funds for operating, travel, and capital expenses.

24-31-205. Transfer of personnel and appropriations. (Repealed)

24-31-206. Transfer and appropriation of funds. (Repealed)

PART 3

PEACE OFFICERS STANDARDS AND TRAINING

24-31-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Applicant" means any person seeking certification to serve as a peace officer or a reserve peace officer.

(1.5) "Basic training" means the basic law enforcement training received by a peace officer at any approved law enforcement training academy.

(2) "Certification" means the issuance to an applicant of a signed instrument evidencing that such applicant has met the requirements imposed by this part 3 and the P.O.S.T. board. Certification includes "basic certification" and "provisional certification" that shall be issued to peace officers, "reserve certification" that shall be issued to reserve peace officers, and such additional certifications as the board may approve for peace officers.

(3) (Deleted by amendment, L. 94, p. 1725, § 3, effective May 31, 1994.)

(3.5) Repealed.

(4) "Local government representative" means a member of a board of county commissioners, member of a city or town council or board of trustees, or mayor of a city or town or city and county.

(5) "Peace officer" means any person described in section 16-2.5-101, C.R.S., and who has not been convicted of a felony or convicted on or after July 1, 2001, of any misdemeanor as described in section 24-31-305 (1.5), or released or discharged from the armed forces of the United States under dishonorable conditions.

(5.5) "Reserve peace officer" means any person described in section 16-2.5-110, C.R.S., and who has not been convicted of a felony or convicted on or after July 1, 2001, of any misdemeanor as described in section 24-31-305 (1.5), or released or discharged from the armed forces of the United States under dishonorable conditions.

(6) "Training academy" means any school approved by the P.O.S.T. board where peace officers and reserve peace officers receive instruction and training.

(7) "Training program" means a course of instruction approved by the P.O.S.T. board for peace officer or reserve peace officer certification and other peace officer training programs.

24-31-302. Creation of board. (1) There is hereby created, within the department of law, the peace officers standards and training board, referred to in this part 3 as the "P.O.S.T. board".

(2) The P.O.S.T. board shall exercise its powers and perform its duties and functions under the department of law as if transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(3) The P.O.S.T. board shall consist of twenty members. The chairperson of the P.O.S.T. board shall be the attorney general, and the board shall annually elect from its members a vice-chairperson. The other members shall be the special agent in charge of the Denver division of the federal bureau of investigation, the executive director of the department of public safety, one local government representative, six active chiefs of police from municipalities of this state or state institutions of higher education, six active sheriffs from counties of this state, three active peace officers with a rank of sergeant or below, and one lay member. The governor shall appoint the chiefs of police, sheriffs, peace officers, the lay member, and the local government representative as members of the board for terms of three years per appointment. If any chief of police, sheriff, peace officer, lay member, or local government representative vacates such office during the term for which appointed to the P.O.S.T. board, a vacancy on the board shall exist. Any vacancy shall be filled by appointment by the governor for the unexpired term.

(4) The members of the P.O.S.T. board shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their official duties.

24-31-303. Duties - powers of the P.O.S.T. board. (1) The P.O.S.T. board has the following duties:

(a) To approve and to revoke the approval of training programs and training academies, and to establish reasonable standards pertaining to such approval and revocation;

(b) To conduct periodic evaluations of training programs and inspections of training academies;

(c) To establish procedures for determining whether or not an applicant has met the standards which have been set;

(d) To certify qualified applicants and withhold, suspend, or revoke certification;

(e) To certify inspectors of vehicle identification numbers and approve training courses relating thereto;

(f) To require a background investigation of each applicant by means of fingerprint checks through the Colorado bureau of investigation and the federal bureau of

investigation or such other means as the P.O.S.T. board deems necessary for such investigation;

(g) To promulgate rules and regulations deemed necessary by such board for the certification of applicants to serve as peace officers or reserve peace officers in the state pursuant to the provisions of article 4 of this title;

(h) To establish standards for training in bail recovery practices;

(i) To promulgate rules and regulations that establish the criteria that shall be applied in determining whether to recommend peace officer status for a group or specific position as provided in section 16-2.5-201 (4), C.R.S.;

(j) To establish standards for training of school resource officers, as described in section 24-31-312; and

(k) To establish training standards to prepare law enforcement officers to recognize and address incidents of abuse and exploitation of at-risk elders, as described in sections 18-6.5-102 (1) and (10), C.R.S.

(2) (a) The P.O.S.T. board may charge the following fees, the proceeds of which may be used to support the certification of applicants pursuant to this part 3:

(I) For the manuals or other materials that the board may publish in connection with its functions, an amount not to exceed twenty dollars per publication; and

(II) For the administration of certification and skills examinations, an amount not to exceed one hundred twenty-five dollars per examination per applicant.

(b) There is hereby created in the state treasury a P.O.S.T. board cash fund. The fees collected pursuant to paragraph (a) of this subsection (2) and pursuant to section 42-3-304 (24), C.R.S., shall be transmitted to the state treasurer who shall credit such revenue to the P.O.S.T. board cash fund. It is the intent of the general assembly that the fees collected shall cover all direct and indirect costs incurred pursuant to this section. In accordance with section 24-36-114, all interest derived from the deposit and investment of moneys in the P.O.S.T. board cash fund shall be credited to the general fund. All moneys in the P.O.S.T. board cash fund shall be subject to annual appropriation by the general assembly and shall be used for the purposes set forth in this subsection (2) and in section 24-31-310. At the end of any fiscal year, all unexpended and unencumbered moneys in the P.O.S.T. board cash fund shall remain in the fund and shall not revert to the general fund or any other fund.

(3) The P.O.S.T. board may make grants to local governments or to any college or university for the purpose of funding the training programs required by this section.

(4) (Deleted by amendment, L. 98, p. 749, §2, effective May 22, 1998.)

(5) It is unlawful for any person to serve as a peace officer, as described in section 16-2.5-102, C.R.S., or a reserve peace officer as defined in section 16-2.5-110, C.R.S., in this state unless such person:

(a) Is certified pursuant to this part 3; and

(b) Has undergone both a physical and a psychological evaluation to determine

such person's fitness to serve as a peace officer or a reserve peace officer. Such evaluations shall have been performed within one year prior to the date of appointment by a physician and either a psychologist or psychiatrist licensed by the state of Colorado.

(6) Repealed.

24-31-304. Applicant for training - fingerprint-based criminal history record check. (1) For purposes of this section, "training academy" means a basic or reserve peace officer training program approved by the P.O.S.T. board that is offered by a training academy, community college, college, or university.

(2) A training academy shall not enroll as a student a person who has been convicted of an offense that would result in the denial of certification pursuant to section 24-31-305 (1.5).

(3) A person seeking to enroll in a training academy shall submit a set of fingerprints to the training academy prior to enrolling in the academy. The training academy shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The P.O.S.T. board shall be the authorized agency to receive information regarding the result of a national criminal history record check. The P.O.S.T. board shall notify the training academy if the fingerprint-based criminal history record check indicates that the person is prohibited from enrolling in the training academy pursuant to subsection (2) of this section. The person seeking to enroll in the training academy shall bear only the actual costs of the state and national fingerprint-based criminal history record check.

(4) (a) Notwithstanding the provisions of subsection (2) of this section and section 24-31-305 (1.5) to the contrary, if the person anticipates that he or she will be prohibited from enrolling in the training academy on the grounds that the person has been convicted on or after July 1, 2001, of one or more of the misdemeanors described in section 24-31-305 (1.5), the person may, at the time of applying for admission to the training academy, notify the P.O.S.T. board of the conviction or convictions and request the P.O.S.T. board to grant the person permission to enroll in the training academy.

(b) The P.O.S.T. board shall promulgate rules deemed necessary by the board concerning the procedures for the granting of permission to enroll in a training academy pursuant to this subsection (4). The P.O.S.T. board, in promulgating the rules, shall take into consideration the procedures for the granting of exemptions to denials of certification and the withdrawal of denials of certification described in section 24-31-305 (1.6). The P.O.S.T. board, in promulgating the rules, may specify that an applicant for certification pursuant to section 24-31-305 need not submit a set of fingerprints at the time of applying

for the certification if the applicant has already submitted a set of fingerprints pursuant to this section.

24-31-305. Certification - issuance - renewal - revocation. (1) (a) Basic peace officer certification requirements shall include:

(I) Successful completion of a high school education or its equivalent;

(II) Successful completion of basic training approved by the P.O.S.T. board;

(III) Passage of examinations administered by the P.O.S.T. board; and

(IV) Current first aid and cardiopulmonary resuscitation certificates or their equivalents.

(b) The training required for basic certification may be obtained through a training program conducted by a training academy approved by the P.O.S.T. board or completion of requirements of another state, federal, or tribal jurisdiction having standards deemed at least equivalent to those established pursuant to this part 3.

(c) Repealed.

(1.3) Reserve peace officer certification requirements shall include:

(a) Successful completion of a high school education or its equivalent;

(b) Successful completion of reserve training approved by the P.O.S.T. board; and

(c) Current first aid and cardiopulmonary resuscitation certificates or their equivalents.

(1.5) The P.O.S.T. board shall deny certification to any person who has been convicted of:

(a) A felony;

(b) Any misdemeanor in violation of sections 18-3-204, 18-3-402, 18-3-404, 18-3-405.5, and 18-3-412.5, C.R.S.;

(c) Any misdemeanor in violation of sections 18-7-201, 18-7-202, 18-7-203, 18-7-204, 18-7-302, and 18-7-601, C.R.S.;

(d) Any misdemeanor in violation of any section of article 8 of title 18, C.R.S.;

(e) Any misdemeanor in violation of sections 18-9-111 and 18-9-121, C.R.S.;

(f) Any misdemeanor in violation of sections 18-18-404, 18-18-405, 18-18-406, and 18-18-411, C.R.S.;

(g) Any misdemeanor in violation of section 18-6-403 (3) (b.5), C.R.S., as it existed prior to July 1, 2006; or

(h) Any misdemeanor in violation of federal law or the law of any state that is the equivalent of any of the offenses specified in paragraphs (a) to (g) of this subsection (1.5).

(1.6) (a) Notwithstanding the provisions of subsection (1.5) of this section, if an applicant anticipates prior to the denial of certification that he or she will be denied certification on the ground that the applicant has been convicted on or after July 1, 2001, of any misdemeanor or misdemeanors described in subsection (1.5) of this section, the

applicant or the chief law enforcement officer of the agency, if any, employing such applicant may, at the time of the application for certification, notify the P.O.S.T. board of such conviction or convictions and request the board to grant the applicant an exemption from denial of certification.

(b) Notwithstanding the provisions of subsection (1.5) of this section, if an applicant is denied certification on the ground that the applicant has been convicted on or after July 1, 2001, of any misdemeanor or misdemeanors described in subsection (1.5) of this section, the applicant or the chief law enforcement officer of the agency, if any, employing such applicant may, within thirty days after the effective date of denial, request that the P.O.S.T. board withdraw the denial of certification.

(c) The P.O.S.T. board shall promulgate rules and regulations deemed necessary by the board concerning the procedures for the granting of exemptions to denials of certification and the withdrawal of denials of certification under this subsection (1.6).

(1.7) (a) Unless revoked, a basic certification or reserve certification issued pursuant to this part 3 is valid as long as the certificate holder is continuously serving as a peace officer or reserve peace officer.

(b) If a basic or reserve certificate holder has not served as a peace officer or reserve peace officer for a total of at least six months during any consecutive three-year period, the certification automatically expires at the end of such three-year period, unless the certificate holder is then serving as a peace officer or reserve peace officer.

(c) The P.O.S.T. board may promulgate rules for the renewal of certification that expired pursuant to paragraph (b) of this subsection (1.7).

(2) (a) A certification issued pursuant to subsection (1) or (1.3) of this section or section 24-31-308 shall be suspended or revoked by the P.O.S.T. board if the certificate holder has been convicted of a felony at any time, or has been convicted on or after July 1, 2001, of any misdemeanor or misdemeanors described in subsection (1.5) of this section, or has otherwise failed to meet the certification requirements established by the board.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (2), if the certification of a certificate holder is revoked pursuant to paragraph (a) of this subsection (2) on the ground that the certificate holder has been convicted on or after July 1, 2001, of any misdemeanor or misdemeanors described in subsection (1.5) of this section, the certificate holder or the chief law enforcement officer of the agency, if any, employing such certificate holder may, within thirty days after the effective date of the revocation, request the P.O.S.T. board to reinstate the certification.

(II) The P.O.S.T. board shall promulgate rules and regulations deemed necessary by the board concerning the procedures for the reinstatement of revocations of certification.

(3) Certification shall not vest tenure or related rights. The policies, if any, of the employing agency shall govern such rights. Additional certification reflecting higher

levels of proficiency may, at the discretion of the employing agency, be required in hiring, retaining, or promoting peace officers.

(4) The P.O.S.T. board may grant variances from the requirements of this section to any individual, including any individual called to active duty by the armed forces of the United States, if strict application thereof would result in practical difficulty or unnecessary hardship and where the variance would not conflict with the basic purposes and policies of this part 3. The P.O.S.T. board shall promulgate rules regarding the procedure for applying for and granting variances pursuant to this subsection (4).

24-31-306. Qualifications for peace officers. (Repealed)

24-31-307. Enforcement. (1) The P.O.S.T. board shall have the power to direct the attorney general to enforce the provisions of this part 3 through an action in district court for injunctive or other appropriate relief against:

(a) Any individual undertaking or attempting to undertake any duties as a peace officer or a reserve peace officer in this state in violation of this part 3; and

(b) Any agency permitting any individual to undertake or attempt to undertake any duties as a peace officer or a reserve peace officer in this state under the auspices of such agency in violation of this part 3.

(2) The attorney general shall be entitled to recover reasonable attorney fees and costs against the defendant in any enforcement action under this part 3, if the attorney general prevails.

24-31-308. Reciprocity - provisional certificate. (1) The P.O.S.T. board is authorized to grant a provisional certificate to any person who:

(a) Has been authorized to act as a peace officer in another state or federal jurisdiction, excluding the armed forces, within the preceding three years and has served as a certified law enforcement officer in good standing in such other state or federal jurisdiction for more than one year;

(b) Passes the certification examination required pursuant to this part 3; and

(c) Possesses current first aid and cardiopulmonary resuscitation certificates or their equivalent.

(2) (a) The P.O.S.T. board is authorized to grant a basic certification to a person who meets the criteria established for basic certification by rule of the P.O.S.T. board.

(b) Any rule of the P.O.S.T. board establishing the criteria for basic certification shall provide that a basic certification will be issued only after an applicant has successfully demonstrated to the P.O.S.T. board a proficiency in all skill areas as required

by section 24-31-305.

(3) (a) A provisional certificate shall be valid for six months.

(b) Upon a showing of good cause, the P.O.S.T. board may renew a provisional certificate once for a period not to exceed an additional six months.

24-31-309. Profiling - officer identification - training. (1) (a) The general assembly finds, determines, and declares that profiling is a practice that presents a great danger to the fundamental principles of our constitutional republic and is abhorrent and cannot be tolerated.

(b) The general assembly further finds and declares that motorists who have been stopped by peace officers for no reason other than the color of their skin or their apparent race, ethnicity, age, or gender are the victims of discriminatory practices.

(c) The general assembly further finds and declares that Colorado peace officers risk their lives every day. The people of Colorado greatly appreciate the hard work and dedication of peace officers in protecting public safety. The good name of these peace officers should not be tarnished by the actions of those who commit discriminatory practices.

(d) It is therefore the intent of the general assembly in adopting this section to provide a means of identification of peace officers who are engaging in profiling, to underscore the accountability of those peace officers for their actions, and to provide training to those peace officers on how to avoid profiling.

(2) For purposes of this section, "profiling" means the practice of detaining a suspect based on race, ethnicity, age, or gender without the existence of any individualized suspicion of the particular person being stopped.

(3) Any peace officer certified pursuant to this part 3 shall not engage in profiling.

(4) (a) A peace officer certified pursuant to this part 3 shall provide, without being asked, his or her business card to any person whom the peace officer has detained in a traffic stop, but has not cited or arrested. The business card shall include identifying information about the peace officer including, but not limited to, the peace officer's name, division, precinct, and badge or other identification number and a telephone number that may be used, if necessary, to report any comments, positive or negative, regarding the traffic stop. The identity of the reporting person and the report of any such comments that constitutes a complaint shall initially be kept confidential by the receiving law enforcement agency, to the extent permitted by law. The receiving law enforcement agency shall be permitted to obtain some identifying information regarding the complaint to allow initial processing of the complaint. If it becomes necessary for the further processing of the complaint for the complainant to disclose his or her identity, the complainant shall do so or, at the option of the receiving law enforcement agency, the complaint may be dismissed.

(b) The provisions of paragraph (a) of this subsection (4) shall not apply to

authorized undercover operations conducted by any law enforcement agency.

(c) Each law enforcement agency in the state shall compile on at least an annual basis any information derived from telephone calls received due to the distribution of business cards as described in paragraph (a) of this subsection (4) and that allege profiling. The agency shall make such information available to the public but shall not include the names of peace officers or the names of persons alleging profiling in such information. The agency may also include in such information the costs to the agency of complying with the provisions of this subsection (4).

(5) The training provided for peace officers shall include an examination of the patterns, practices, and protocols that result in profiling and prescribe patterns, practices, and protocols that prevent profiling. On or before August 1, 2001, the P.O.S.T. board shall certify the curriculum for such training.

(6) No later than six months after June 5, 2001, each law enforcement agency in the state shall have written policies, procedures, and training in place that are specifically designed to address profiling. Each peace officer employed by such law enforcement agency shall receive such training. The written policies and procedures shall be made available to the public for inspection during regular business hours.

24-31-310. Resources for the training of peace officers - peace officers in rural jurisdictions - legislative declaration. (1) The general assembly hereby finds and declares that Colorado peace officers risk their lives every day in the normal course of their duties. On the roads and highways and throughout the state, peace officers are expected to make quick and difficult decisions that concern both public and officer safety. The general assembly further finds and declares that good training is crucial for peace officers to make decisions that are in the best interests of the health and safety of the citizens of Colorado. The general assembly recognizes that the P.O.S.T. board oversees peace officer training programs and that in the past the state has provided funding for such training programs. The general assembly further recognizes that the state has not provided funding for peace officer training programs since 1992, and that the lack of state funding has had a significant impact on the training of peace officers in the state. Therefore, it is the intent of this section to reimplement state funding for peace officer training programs and to enable the P.O.S.T. board to provide substantial training for peace officers who serve the citizens of Colorado.

(2) The moneys collected and transferred to the P.O.S.T. board cash fund pursuant to section 42-3-304 (24), C.R.S., shall be used to provide training programs for peace officers, especially peace officers in rural and smaller jurisdictions that have limited resources due to the size or location of such jurisdictions. The moneys shall be used and distributed pursuant to subsection (3) of this section.

(3) The moneys collected and transferred to the P.O.S.T. board cash fund pursuant

to section 42-3-304 (24), C.R.S., shall be used and distributed as determined by the P.O.S.T. board. The moneys in the fund shall be used to pay the salary and benefits of any employee hired by the department of law in order to administer the peace officer training programs and to cover any other costs incurred by the P.O.S.T. board in connection with such programs. Under no circumstance shall general fund moneys be used to cover such costs incurred by the department of law or the P.O.S.T. board.

24-31-311. DNA evidence - collection - retention. (1) The training provided for peace officers shall include proper collection and retention techniques, practices, and protocols for evidence that may contain biological or DNA evidence. On or before August 1, 2009, the P.O.S.T. board shall certify the curriculum for the training. After August 1, 2009, the training shall be provided to persons who enroll in a training academy for basic peace officer training and to all peace officers described in section 16-2.5-101, C.R.S., who are certified by the P.O.S.T. board pursuant to this part 3 prior to August 1, 2009.

(2) The P.O.S.T. board may develop a specialized certification program that concentrates on the proper techniques, practices, and protocols for evidence collection with emphasis on evidence that may contain biological or DNA evidence.

24-31-312. School resource officer training. (1) On or before January 1, 2014, the P.O.S.T. board shall identify a school resource officer training curriculum to prepare peace officers.

(2) To the extent practicable, the training curriculum described in subsection (1) of this section shall incorporate the suggestions of relevant stakeholders and advocates.

(3) (a) In assigning peace officers to serve as school resource officers pursuant to section 22-32-146, C.R.S., each law enforcement agency is encouraged to ensure that such peace officers have successfully completed the school resource officer training curriculum described in subsection (1) of this section, or will complete said training within six months after beginning the assignment.

(b) On and after January 1, 2015, each county sheriff and each municipal law enforcement agency of the state shall employ at least one peace officer who has successfully completed the training curriculum described in subsection (1) of this section.

(4) For the purposes of section 22-32-146, C.R.S., the training curriculum provided pursuant to subsection (1) of this section shall include a means of recognizing and identifying peace officers who successfully complete the training curriculum.

(5) In providing the training curriculum described in subsection (1) of this section, the P.O.S.T. board may include provisions to allow for the awarding of credit to a peace officer who has successfully completed a school resource officer certification curriculum

offered by one or more public or private entities, which entities shall be identified by the P.O.S.T. board.

(6) The P.O.S.T. board may charge a fee to each peace officer who enrolls in the training curriculum described in subsection (1) of this section. The amount of the fee shall not exceed the direct and indirect costs incurred by the P.O.S.T. board in providing the curriculum.

24-31-313. Training concerning abuse and exploitation of at-risk elders. (1) On or before January 1, 2014, the P.O.S.T. board shall create and implement a training curriculum to prepare peace officers to recognize and address incidents of abuse and exploitation of at-risk elders, as described in sections 18-6.5-102 (1) and (10), C.R.S.

(2) On and after January 1, 2015, each county sheriff and each municipal law enforcement agency of the state shall employ at least one peace officer who has successfully completed the training curriculum described in subsection (1) of this section.

(3) The training curriculum provided pursuant to subsection (1) of this section shall include a means of recognizing and identifying peace officers who successfully complete the training curriculum.

(4) In providing the training curriculum described in subsection (1) of this section, the P.O.S.T. board may include provisions to allow for the awarding of credit to a peace officer who has successfully completed a similar training curriculum offered by one or more public or private entities, which entities shall be identified by the P.O.S.T. board.

(5) The P.O.S.T. board may charge a fee to each peace officer who enrolls in the training curriculum described in subsection (1) of this section. The amount of the fee shall not exceed the direct and indirect costs incurred by the P.O.S.T. board in providing the curriculum.

24-31-314. Advanced roadside impaired driving enforcement training. (1) On and after October 1, 2013, the P.O.S.T. board is encouraged to include advanced roadside impaired driving enforcement training in the curriculum for persons who enroll in a training academy for basic peace officer training.

(2) Subject to the availability of sufficient moneys, the P.O.S.T. board shall arrange to provide training in advanced roadside impaired driving enforcement to drug recognition experts who will act as trainers in advanced roadside impaired driving enforcement for all peace officers described in section 16-2.5-101, C.R.S.

PART 4

ENFORCEMENT OF TOBACCO SETTLEMENT

24-31-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Smokeless tobacco settlement" means the settlement agreement between the state of Colorado and various domestic smokeless tobacco products manufacturers, dated November 23, 1998, which was approved by the district court of the city and county of Denver as part of a consent decree dated November 25, 1998, in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.,* Case No. 97 CV 3432.

(2) "Tobacco settlement" means the settlement agreement between the state of Colorado and various domestic tobacco products manufacturers, dated November 23, 1998, which was approved by the district court of the city and county of Denver as part of a consent decree dated November 25, 1998, in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.,* Case No. 97 CV 3432.

24-31-402. Enforcement by attorney general. (1) The general assembly hereby finds that both the tobacco settlement and the smokeless tobacco settlement impose numerous duties and obligations on the parties to those settlement agreements relating to the marketing and advertising of tobacco products and the payment of damages to the state. The general assembly further finds that most of these duties and obligations continue for a minimum of twenty-five years from the dates of the settlement agreements. Therefore, the attorney general shall oversee and take the necessary actions to enforce compliance with the provisions of the tobacco settlement agreement and the smokeless tobacco settlement agreement, consistent with the duties and obligations set forth in said settlement agreements and with Colorado law.

(2) The enforcement duty specified in subsection (1) of this section is in addition to and does not limit the authority of the attorney general otherwise existing under common law or the statutes of this state.

24-31-403. Funding. The attorney general may use any custodial funds recovered as costs and attorney fees under the tobacco settlement agreement to offset any costs

incurred in overseeing and enforcing the tobacco settlement agreement and the smokeless tobacco settlement agreement.

PART 5

PAYMENTS FOR *KANSAS V. COLORADO* LITIGATION

24-31-501 to 24-31-503. (Repealed)

ARTICLE 32

Department of Local Affairs

PART 1

DIVISION OF LOCAL GOVERNMENT

24-32-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) Strong local government has been a major factor in the political and economic development of the state;

(b) The future welfare of the state depends, in large measure, on local leadership and the effectiveness of local government;

(c) Population shifts and other economic and social trends have brought new problems to local government in growing metropolitan areas and throughout the state; and

(d) The state has primary responsibility for strengthening local government, encouraging local initiative, and providing coordination of state services and information to assist local government in effectively meeting the needs of Colorado citizens.

24-32-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Local government" includes all municipal corporations, quasi municipalities, counties, and local improvement and service districts of this state.

24-32-103. Division created. There is hereby created, as a division of the department of local affairs, the division of local government. The division shall be in the

charge of a director who shall be appointed by the executive director of the department. The director, and any assistants and employees of the division, shall be appointed pursuant to section 13 of article XII of the state constitution.

24-32-104. Functions of the division. (1) The division shall perform the following functions:

(a) Assist the governor in coordinating the activities and services of those departments and agencies of the state having relationships with units of local government in order to provide more effective services to units of local government and to simplify procedures with respect thereto;

(b) Advise the governor and the general assembly of the problems of local government;

(c) Serve as a clearing house, for the benefit of local government, of information relating to the common problems of local government and of state and federal services available to assist in the solution of those problems;

(d) Refer local government to appropriate departments and agencies of the state and federal government for advice, assistance, and available services in connection with specific problems;

(e) Perform such research as is necessary to carry out the functions of the division, including the study of local government, intergovernmental relations, the structure and powers of local government units and their relationships to each other, local government finance, services, management, and functions;

(f) Encourage and when so requested assist cooperative efforts among the officials of local government units toward the solution of common problems;

(g) Encourage and cooperate in training institutes, conferences, and programs for local government officials and employees;

(h) Publish an annual compendium of local government fiscal data beginning with calendar year 1968 and publish from time to time other statistical and research reports of interest to local government, the general assembly, and the general public;

(i) Upon request by local government officials, provide technical assistance in defining their local government problems and developing solutions thereof;

(j) Provide technical assistance to district attorneys, including, but not limited to, coordinating educational grants;

(k) Repealed.

(l) Administer emergency services provided by the state.

24-32-105. Limitation of authority of division. Nothing in this part 1 shall give to the division any power of control or supervision over any unit of local government.

24-32-106. Powers of the director. (1) In order to perform the functions and duties of the division expressly set forth in this part 1, the director, acting under the authority of the executive director of the department of local affairs, has the following powers:

(a) To employ assistants and personnel as may be appropriate to the functions of the division within the appropriation given by the general assembly;

(b) To contract for services and materials required by the division;

(c) To receive and expend gifts, grants, and bequests, subject to approval of the governor, and to expend state funds which are appropriated by the general assembly;

(d) To contract with the federal government or any agency or instrumentality thereof and to receive any grants or moneys therefrom for purposes not inconsistent with the purposes set forth in this part 1;

(e) To exercise any other authority consistent with the purposes for which the division is created which is reasonably necessary for the fulfillment of assigned responsibilities;

(f) Repealed.

(g) To award grants for water and sewer emergencies of local governments. Such grants shall be made based upon financial need as determined by the director, and the director may require that such grants be contingent on repayment by the local government.

24-32-107. Payment of expenses and salaries. Vouchers covering expenses and salaries of the division shall be signed by the director, and warrants shall be drawn by the controller in payment thereof as provided by law.

24-32-108. Establishment of a file. The division of local government, with the cooperation of the secretary of state, shall promptly establish and maintain on a current basis, as a public record, a file listing by name all incorporated towns, cities, or cities and counties of the state, referred to in this part 1 as "municipalities", with the date of incorporation of each municipality, recording by legal description all changes in the boundaries of such municipalities, and accompanied by a map of the same. The division of local government shall maintain such a current and revised list for public inspection. Within thirty days after July 1, 1967, each municipality shall submit to the division of local government a description of its current legal boundaries, accompanied by a map, and the date of its municipal incorporation.

24-32-109. Notice of change - failure to file - effect. No annexation, consolidation, merger, detachment of any area, new incorporation, or dissolution of an existing municipality shall be effective until notice of the completion of such action with a legal description accompanied by a map of the area concerned is filed in duplicate by the municipality with the county clerk and recorder of the county in which the annexation, consolidation, merger, detachment, incorporation, or dissolution takes place. In case such action effects a change in county boundaries, the same shall be filed with the county clerk and recorder of each county affected. A certified duplicate copy of any annexation, consolidation, merger, detachment, incorporation, or dissolution shall be filed with the division of local government by the county clerk and recorder of the county.

24-32-110. Report of district or municipal officials. (Repealed)

24-32-111. Statewide program for identification of matters of state interest as part of local land use planning. (Repealed)

24-32-112. County powers relating to matters of local concern - report. (Repealed)

24-32-113. Transfer of functions and property - contracts - continuation of regulations. (Repealed)

24-32-114. Cleanup of illegally disposed of waste tires - waste tire cleanup fund - legislative declaration - repeal. (Repealed)

24-32-115. Economic self-sufficiency - development of standards - rules - fund - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Most state public assistance programs are calibrated to the federal poverty line, a one-size-fits-all national standard designed in the 1960s that is calculated largely on the cost of food and has only been updated for inflation;

(b) The standard is outdated and virtually irrelevant to the actual costs families face today, such as child care, health care, and transportation;

(c) A self-sufficiency standard measures how much income is needed for a family of a given composition in a given place to adequately meet its basic needs without public

or private assistance;

(d) A self-sufficiency standard provides a more accurate assessment of the economic well-being of Colorado families;

(e) A self-sufficiency standard is an excellent tool that could be used in many ways, including:

(I) Creating a benchmark for measuring the effects of programs and policies;

(II) Economic development;

(III) Targeting higher-wage jobs for Coloradans;

(IV) Enhancing education, job training, and skills development programs; and

(V) Counseling clients transitioning from welfare to workforce development programs.

(2) (a) On or before January 1, 2008, the executive director of the department of local affairs shall make available on the web site of the department of local affairs a standard to measure the self-sufficiency of Colorado families. The standard shall take into account regional and county variations in the costs of housing, child care, health care, food, and transportation and miscellaneous costs, and the effect of existing tax laws, including state sales tax, payroll taxes, federal and state income tax, child care tax credits, and the earned income tax credit.

(b) The standard required pursuant to paragraph (a) of this subsection (2) shall:

(I) Rely to the extent possible, on data reported by the United States census bureau, United States department of housing and urban development, and on other data reported to state and federal agencies using standardized methodology;

(II) Determine housing costs using fair market rents for apartments as reported by the United States department of housing and urban development;

(III) Determine child care costs using average costs for licensed child care facilities, including but not limited to family day care, as reported to the state's child care resource and referral agencies for children of different ages in different areas of the state;

(IV) Determine food costs using the United States department of agriculture low-cost food plan; and

(V) In health care costs, include insurance premium costs and out-of-pocket expenses based upon the medical expenditure panel survey and adjusted for inflation using the medical consumer price index.

(3) The department of local affairs is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the self-sufficiency standard fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be continuously appropriated for the direct and indirect costs associated with the implementation of this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and

income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-32-116. Inventory of local governmental entities - information required - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Agent" means:

(I) For a special district created pursuant to title 32, C.R.S., the special district's designated local government contact person, as reported annually by the special district and included in the database by the department; or

(II) For all other local governmental entities, a person designated by a local governmental entity to receive a filing of a notice of claim pursuant to section 24-10-109 (3).

(b) "Department" means the department of local affairs.

(c) "Inventory" means the on-line database of active local governments maintained by the department as of August 8, 2012.

(d) "Local governmental entity" means a city, county, city and county, special district, school district, or other unit of local government.

(2) (a) The department shall update and expand the inventory and any associated forms or documents as necessary to obtain and integrate, for each local governmental entity, the information described in subsection (3) of this section.

(b) Nothing in this section precludes the department from including additional information in the inventory.

(3) (a) No later than twelve months after August 8, 2012, each local governmental entity in the state shall provide the following information to the department, which shall include the same in the inventory:

(I) The official name of the local governmental entity;

(II) The principal address of the local governmental entity;

(III) If other than the principal address, the mailing address of the local governmental entity;

(IV) The name of the local governmental entity's agent; and

(V) The mailing address of the agent.

(b) A local governmental entity shall update any information provided pursuant to paragraph (a) of this subsection (3) as required by the department. Failure to update the information provided pursuant to paragraph (a) of this subsection (3) renders any notice of a claim pursuant to section 24-10-109 to the last local governmental entity's agent in the inventory valid as a matter of law.

(4) The department shall make the inventory accessible from the department's web

site.

(5) Nothing in this section precludes the filing of a notice of claim or the service of process on any person authorized by law.

PART 2

DIVISION OF PLANNING

24-32-201. Legislative declaration. (Repealed)

24-32-202. Division of planning - creation. (1) There is hereby created within the department of local affairs a division of planning, the head of which shall be the director of the division of planning, which office is hereby created. The director shall be appointed by the executive director of the department of local affairs, referred to in this part 2 as the "executive director", subject to the provisions of section 13 of article XII of the state constitution, and such director shall be qualified by training or experience in planning and capital programming. The director shall appoint the necessary staff of his division in accordance with the provisions of section 13 of article XII of the state constitution.

(2) The division of planning and the office of the director thereof shall exercise their powers and perform their duties and functions specified by this part 2 under the department of local affairs and the executive director thereof 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", being article 1 of this title.

(3) The director of the division of planning shall:

(a) Exchange reports and data which relate to local and regional planning with other departments, institutions, and agencies of the state and on a mutually agreed basis with towns, cities, cities and counties, counties, and other local agencies and instrumentalities;

(b) Attend and participate in meetings of county, municipal, or regional planning bodies, interstate agencies, and other planning conferences;

(c) Advise the governor and the general assembly on matters of local and regional planning, and consult with other offices of state government with respect to matters of local and regional planning affecting the duties of their offices; and, upon request of any town, city, city and county, county, regional area, or group of adjacent communities having common or related planning problems, recommend to the governor and the general assembly any proposals for legislation affecting local or regional planning; but nothing in this part 2 shall be construed to grant any authority to the division of planning or to the director thereof over the planning responsibilities of local government; and

(d) Exercise all other powers necessary and proper for the discharge of his duties and the carrying out of the intent of this part 2, including the coordination of the provisions of part 1 of article 28 of title 30, C.R.S.

24-32-203. Duties of the division of planning. (1) The division of planning shall:

(a) Provide planning assistance upon request to any town, city, city and county, county, regional area, or group of adjacent communities having common or related planning problems; and, whenever such assistance includes the rendering of technical services, such services may be rendered without charge or, upon advance agreement, shall be rendered with reimbursement;

(b) Provide information to and cooperate with the general assembly or its committees concerned with studies relevant to local and regional planning;

(c) Supply to the public and to officials of state departments and local agencies available information on local and regional planning problems and community development;

(d) Accept and receive grants and services relevant to local and regional planning from the federal government, other state agencies, local governments, and private and civic sources.

24-32-204. Population statistics, estimates, and projections. (1) The division of planning is hereby designated as the primary state agency of demographic information. Said office shall prepare, maintain, and interpret such population statistics, estimates, and projections as the director of the division of planning shall direct, including distributions of the state's population by significant groupings, such as school- and college-age populations, political subdivision populations, and racial and ethnic populations.

(2) Other agencies of the state government may prepare and maintain any such information but only as authorized by the director of the division of planning.

(3) The division of planning shall cooperate with and give assistance to other agencies and organizations, both public and private, in the preparation, maintenance, and interpretation of demographic information.

(4) The director of the division of planning shall annually invite other agencies and organizations, both public and private, that engage in demographic studies to review the basic demographic assumptions and premises of the division of planning to the end that its statistics, estimates, and projections will be as accurate as possible.

24-32-205. Assistance to local planning agencies. The division of planning may

upon request render financial or other planning assistance to county, municipal, or regional planning agencies or commissions in accordance with federal programs or state statutes as may from time to time be in effect.

24-32-206. Executive director - final authority. (Repealed)

24-32-207. Reference in contracts, documents. Whenever the state planning office is referred to or designated by any contract or other document in connection with the duties and functions transferred by this part 2 to the division of planning, such reference or designation shall be deemed to apply to the division of planning.

PART 3

DIVISION OF COMMERCE AND DEVELOPMENT

24-32-301. Creation of division - director - assistants. There is hereby created a division in the department of local affairs to be known as the division of commerce and development, referred to in this part 3 as the "division". The division shall be in the charge of a director, who shall be appointed by the executive director of the department. The director shall appoint such assistants and clerical employees as may be deemed necessary to effectively administer this part 3. The director and such assistants and employees shall be appointed pursuant to section 13 of article XII of the state constitution.

24-32-302. Purpose. It is the purpose of this division to plan and promote the economic development of the state and particularly those rural and lesser populated areas of the state which desire to encourage such development, as well as neighborhoods with chronic unemployment; to stimulate the growth and prosperity of commerce, agriculture, industry, labor, and the professions within such areas of the state; to advertise and publicize the state of Colorado; and to coordinate the efforts of private and governmental agencies engaged in similar activities within the state.

24-32-303. Authority and responsibility of the director. (1) In furtherance of the policy expressed in section 24-32-302, the director, acting under the authority of the governor, has the following powers:

(a) Creation, within the appropriations and allocations given by the general

assembly or the governor, of such subdivisions and positions within the division as the director may deem necessary to fulfill his responsibilities;

(b) Contracting, in accordance with existing law, for those services and materials required by the activities of the division;

(c) Promulgation of such rules and regulations as may be necessary to effectuate the purposes of the division;

(d) Expenditure of state funds, within the appropriations, allocations, and directives of the general assembly or the governor, for the encouragement and stimulation of local planning, promotion, and development activities;

(e) Any other authority, consistent with the purposes for which the division was created, which is reasonably necessary for the fulfillment of the assigned responsibilities.

(2) In furtherance of the policy expressed in section 24-32-302, the director has the following responsibilities:

(a) Development, promotion, and coordination of long-range plans for the economic development of the state;

(b) Stimulation and guidance of area redevelopment plans in those areas of the state with declining economies;

(c) Development and expansion of foreign and domestic markets for Colorado products;

(d) Conduct of a program to achieve a balance between commerce, industry, agriculture, professions, and the labor market in order to provide employment and economic well-being for all the people of Colorado, with particular emphasis on those rural and lesser populated areas of the state which desire to receive such assistance;

(e) and (f) Repealed.

(g) Conduct of a state economic research and information center for the use of state and local governmental agencies, private industry, labor, the professions, and other groups, both in and out of the state, interested in the economy of the state;

(h) Coordination and stimulation of and assistance to the efforts of governmental and private agencies engaged in the planning and development of a balanced economy for Colorado;

(i) Cooperation with the federal government and the other state governments to encourage such joint planning, agreements, and compacts as would serve the purposes of the division;

(j) Acceptance and administration of federal grant-in-aid funds and state trust funds devoted to state development and promotional activities;

(k) Representation of the governor in matters pertaining to the economic development of the state.

24-32-304. Advisory committee - responsibilities - sunset review. (Repealed)

24-32-305. Offices of division - expenses and salaries - reports and publications. (1) The division shall be provided with space in the state capitol or other state buildings suitable for the performance of its duties. The offices of the division shall be open during the hours prevailing in other offices in the state capitol.

(2) Vouchers covering salaries and expenses of the division shall be signed by the director, and warrants shall be drawn by the controller in payment thereof as provided by law.

(3) (a) The director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the division.

(b) Publications of the division circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

24-32-306. Matching funds - gifts - bequests. The director, with the approval of the governor, is empowered to receive and expend all funds, grants, gifts, and bequests, including federal and state funds and other funds available for the purposes for which the division was created, and to contract with the United States and all other legal entities with respect thereto, including legally constituted regional, county, metropolitan, and municipal planning commissions or districts. The division may provide, within the limitations of its budget, matching funds wherever funds, grants, gifts, bequests, and contractual assistance are available on such basis. The division shall provide such information, reports, and services as may be necessary to secure such financial aid.

24-32-307. Reference in contracts, documents. Whenever the state advertising and publicity committee or the division of planning is referred to or designated by any contract or other document in connection with the duties and functions transferred by this part 3 to the division, such reference or designation shall be deemed to apply to the division.

24-32-308. Motion picture and television advisory commission abolished - reestablished. (Repealed)

24-32-309. Functions of commission - legislative declaration. (Repealed)

24-32-310. Tourism information and promotion program. (Repealed)

24-32-311. Foreign trade office within division. (Repealed)

PART 4

COLORADO BUREAU OF INVESTIGATION

24-32-401 to 24-32-423. (Repealed)

PART 5

DIVISION OF CRIMINAL JUSTICE

24-32-501 to 24-32-509. (Repealed)

PART 6

LAW ENFORCEMENT TRAINING ACADEMY AND
PEACE OFFICERS' STANDARDS AND TRAINING

24-32-601 to 24-32-613. (Repealed)

PART 7

DIVISION OF HOUSING - COLORADO HOUSING ACT OF 1970

24-32-701. Short title. This part 7 shall be known and may be cited as the "Colorado Housing Act of 1970".

24-32-702. Legislative declaration. (1) It is hereby declared that there exists in this state a need for additional adequate, safe, sanitary, and energy-efficient new and rehabilitated dwelling units; that a need exists for assistance to families in securing new or rehabilitated rental housing; and that, unless the supply of housing units is increased, a large number of residents of this state will be compelled to live under unsanitary, overcrowded, and unsafe conditions to the detriment of their health, welfare, and well-being and to that of the communities of which they are a part. It is further declared that coordination and cooperation among private enterprise and state and local government are

essential to the provision of adequate housing, and to that end it is desirable to create a division of housing within the department of local affairs. The general assembly further declares that the enactment of these provisions as set forth in this part 7 are for the public and statewide interest.

(2) The general assembly further finds that, in an effort to meet the housing needs within the state, the private housing and construction industry has developed mass production techniques which can substantially reduce housing construction costs and that the mass production of housing, consisting primarily of factory manufacture of dwelling units, presents unique problems with respect to the establishment of uniform health and safety standards and inspection procedures. The general assembly further finds that by minimizing the problems of standards and inspection procedures it is demonstrating its intention to encourage the reduction of housing construction costs and to make housing and home ownership more feasible for all residents of the state.

(3) The general assembly further finds that, in an effort to meet the housing needs within the state through the use of manufactured housing units, it is necessary to require state supervision of compliance with government-approved codes of manufacture, such as the uniform building code and the federal regulations governing manufactured housing units. It is the intent of the general assembly that such supervision be accomplished primarily through the use of private inspection and certification entities to the extent allowed by the state constitution, the "State Personnel System Act", article 50 of this title, and the rules promulgated by the state personnel board.

(4) The general assembly further finds and declares that:

(a) Publicly-assisted rental housing that is affordable to low- and moderate-income persons should be preserved; and

(b) The division of housing should encourage property owners to notify the division when affordable housing units will be lost as housing for low- or moderate-income persons, so that the division may explore options for preserving the affordable housing resources.

24-32-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) Repealed.

(1.2) "Board" means the state housing board created by this part 7.

(1.4) to (1.8) Repealed.

(2) "Division" means the division of housing created by this part 7.

(3) to (4) Repealed.

(5) "Local government" means the government of a town, city, county, or city and county.

(6) to (7) Repealed.

(8) "State agency" means any board, bureau, commission, department, institution, division, section, office, or officer of the state, except those in the legislative branch or judicial branch and except state educational institutions administered pursuant to title 23, C.R.S., excluding article 8, parts 2 and 3 of article 21, and parts 2 to 4 of article 31 of title 23, C.R.S.

24-32-704. Division of housing - director. (1) There is hereby created within the department of local affairs a division of housing, referred to in this part 7 as the "division". The division shall be headed by the state director of housing appointed by the executive director of the department of local affairs in accordance with section 13 of article XII of the state constitution.

(2) The division of housing shall exercise its powers and perform its duties and functions specified in this part 7 under the department of local affairs as if it were transferred to the department by a **type 1** transfer as such transfer is defined in the "Administrative Organization Act of 1968", being article 1 of this title.

24-32-705. Functions of division - repeal. (1) The division has the following functions:

(a) To encourage private enterprise and all public and private agencies engaged in the planning, construction, and acquisition of adequate housing or the rehabilitation or weatherization of existing housing in Colorado by providing research, advisory, and liaison services and rehabilitation, construction, acquisition, and weatherization grants from appropriations made for this purpose by the general assembly. For the purposes of this paragraph (a), "weatherization" means the provision and installation of materials and devices which improve the thermal performance of a residence so as to conserve energy and reduce energy costs and includes those structural, heating, electrical, and plumbing repairs and improvements which are necessary to safely and effectively improve thermal performance. All such grants to public and private agencies shall be at least equally matched from a nonstate source and shall be for providing energy-efficient housing to low-income households. None of these grants shall be used for development, planning, or administration which shall be funded within the administrative budget of the division.

(b) To assist local communities in the development and operation of local housing authorities;

(c) To encourage and promote cooperation among counties and municipalities to jointly establish and operate housing authorities;

(d) Repealed.

(e) To conduct continuing research into new approaches to housing throughout the state including, but not limited to, the following:

(I) and (II) Repealed.

(III) Programs for low-income housing throughout the state designed to discourage concentration in urban centers and particularly in urban center ghettos;

(f) To investigate living, dwelling, and housing conditions in the state and the means and methods of correcting unsafe, unsanitary, or substandard conditions;

(g) To enter upon buildings or property in order to conduct investigations or to make surveys or soundings. In the event the division is unable to obtain permission for such entry, the director may petition the district court in which the property is located for an order authorizing such entry. Upon a finding by the court that the order requested is reasonably necessary to carry out the intent of this part 7, the order shall be granted.

(h) To make available to responsible agencies, boards, commissions, or other governmental agencies its findings and recommendations with regard to any building or property where conditions exist which are unsafe, unsanitary, or substandard;

(i) To accept and receive grants and services from the federal government and other sources and to process such grants and services for other public and private nonprofit agencies and corporations;

(j) To enforce the provisions of part 9 of this article and the rules and regulations adopted pursuant thereto;

(k) To provide training and technical assistance to counties and municipalities which have building codes in the development of energy efficiency construction and renovation performance standards by such local governments;

(l) To provide in graphic illustrations and charts the information needed by a person who applies for or obtains a homeowner's permit to build his own home to correlate the R-values to the U-values of the more energy conserving performance standards as found in section 6-7-105 (2), C.R.S. This information shall be distributed to local building departments and building material supply outlets in the state and shall be given to builders and unlicensed persons who apply for or obtain homeowners' permits to build their own homes.

(m) To provide technical assistance to building officials, who shall instruct persons who apply for or obtain homeowners' permits to build their own homes on the use of the information provided in paragraph (l) of this subsection (1);

(n) Pursuant to section 24-32-717, to administer loans to local housing authorities and public and private nonprofit corporations;

(o) Repealed.

(p) Pursuant to section 24-32-718, to maintain a database of affordable housing units to be lost as affordable housing;

(q) (I) Pursuant to section 24-32-720, to compile and report information regarding property foreclosures in the state.

(II) This paragraph (q) is repealed, effective January 1, 2015.

(r) To make available to foreclosure counselors, as defined in section 38-38-801,

C.R.S., a description of the foreclosure deferment program described in part 8 of article 38 of title 38, C.R.S.;

(s) To establish uniform standards pursuant to section 38-38-807.5, C.R.S.;

(t) To serve as the sole state agency for the purpose of administering and distributing financial housing assistance to persons in low- and moderate-income households and to persons with disabilities and assist such persons in obtaining housing, including, without limitation, rental assistance.

(2) The division, through the director thereof, shall serve in an advisory capacity to the state housing and finance authority, created by part 7 of article 4 of title 29, C.R.S., and shall provide information on the housing facility needs of low- and moderate-income families in the state of Colorado.

(3) Repealed.

24-32-706. State housing board. (1) There is hereby created, within the division of housing, the state housing board. The board shall consist of seven members who shall be appointed by the governor for terms of four years each, except as provided in subsection (2) of this section. In making appointments to the board, the governor shall include representation by at least one member who is a person with a disability, as defined in section 24-45.5-102 (2), a family member of a person with a disability, or a member of an advocacy group for persons with disabilities.

(2) Appointments made to take effect January 1, 1983, shall be made in accordance with section 24-1-135. On and after January 1, 1983, and prior to June 15, 1987, their successors shall be appointed for terms of six years each. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137. Thereafter members shall be appointed for terms of four years each. Members shall not serve more than two consecutive full terms. All members shall be appointed with the consent of the senate.

(3) At least one member shall be appointed from each congressional district and shall be a qualified elector thereof. A vacancy on the board occurs whenever any member moves out of the congressional district from which he was appointed. A member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor shall fill the vacancy as provided in subsection (5) of this section.

(4) Not more than four members shall be from any one political party.

(5) Any vacancy shall be filled by the governor pursuant to subsection (1) of this section for the unexpired term.

(6) Members of the board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(7) The board shall meet upon call of the chairman or whenever directed by the

governor.

(8) The governor may remove any appointed member of the board for malfeasance in office, for failure to regularly attend meetings, or for any cause that renders said member incapable or unfit to discharge the duties of his office, and any such removal, when made, shall not be subject to review.

24-32-707. Powers of board. (1) The board shall have the following powers:

(a) To advise the general assembly, the governor, and the division on housing matters;

(b) To establish uniform construction and maintenance standards for hotels, motels, and multiple dwellings in those areas of the state where no such standards exist; and for factory-built housing;

(c) To develop and submit to the general assembly and units of local government recommendations for uniform housing standards and building codes;

(d) To conduct examinations and investigations and to take testimony and proof under oath at hearings;

(e) Through the division of housing, to act as agent for local governmental and private nonprofit entities in connection with federal, state, and local public and private nonprofit housing programs;

(f) (Deleted by amendment, L. 99, p. 440, § 4, effective August 4, 1999.)

(g) To promulgate rules and regulations establishing income limits for the determination of what constitutes a low- or moderate-income family pursuant to section 24-32-717 (4) (b).

(h) and (i) Repealed.

(2) The board shall serve in an advisory capacity to the state housing finance authority, created by part 7 of article 4 of title 29, C.R.S., and shall provide information as to the need for development of housing facilities for low- and moderate-income families in Colorado.

(3) (Deleted by amendment, L. 2000, p. 1162, § 2, effective July 1, 2001.)

24-32-708. Annual report. (Repealed)

24-32-708.5. Compliance with national standards. (Repealed)

24-32-709. Certification of factory-built housing - factory-built nonresidential units. (Repealed)

24-32-710. Rules - enforcement - advisory committee. (Repealed)

24-32-711. Recognition of similar standards. (Repealed)

24-32-712. Noncompliance with standards. (Repealed)

24-32-713. Violation - penalty. (Repealed)

24-32-714. Local enforcement. (Repealed)

24-32-715. Inspection of mobile homes and records. (Repealed)

24-32-715.5. Inspections of electrical work - manufactured housing units. (Repealed)

24-32-716. Notification and correction of defects. (Repealed)

24-32-717. Home investment trust fund - short-term loans - definitions. (1) (a) For the purpose of meeting the federal matching fund requirements of Title II of the federal "National Housing Act", the division shall establish a home investment trust fund which shall be created and administered pursuant to the provisions of 24 CFR part 92, as may be amended from time to time. The division shall pay into such fund any moneys made available by the state or federal government for the purpose of making loans as provided in this section. Any moneys in such fund at the end of any fiscal year shall not revert to the general fund.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on June 1, 2009, the state treasurer shall deduct one million two hundred eighty-four thousand dollars from the home investment trust fund and transfer such sum to the general fund.

(2) Upon the approval of the board, the division may make a loan from moneys in the home investment trust fund to any local housing authority, public nonprofit

corporation, or private nonprofit corporation for development or redevelopment costs incurred prior to the completion or occupancy of low- or moderate-income housing or for the rehabilitation of such housing. The interest rate on such loan shall be determined by the board and set forth in the loan agreement signed by the applicant. In conjunction with the making of such loan, the division shall require the borrower to furnish collateral security in such amounts and in such form as the division shall determine to be necessary to assure the payment of such loan and the interest thereon as the same become due. The loan shall be subject to the terms and conditions imposed by the division and shall be repaid within the time and in the manner specified by the division in the loan agreement.

(3) As principal and interest payments are received by the division from the borrower, such moneys shall be deposited in the home investment trust fund.

(4) For the purposes of this section, unless the context otherwise requires, the following definitions shall apply:

(a) "Family" means two or more persons related by blood, marriage, or adoption who live or expect to live together as a single household in the same home, a single person who is either at least sixty-two years of age or has a disability, or a single person whom the board may by regulation determine to be eligible for assistance under this part 7.

(b) "Low- or moderate-income family" means a family whose income is insufficient to secure decent, safe, and sanitary housing provided by private industry without public assistance and whose income is below the respective income limits established by the board by regulation, taking into consideration such factors as the following:

(I) The amount of the total income of such family available for housing needs;

(II) The size of the family;

(III) The cost and condition of housing facilities available;

(IV) The ability of such family to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing decent, safe, and sanitary housing; and

(V) Standards established by various programs of the federal government for determining eligibility based on the income of such family.

(c) "Low- or moderate-income housing" means a residential structure or structures occupied by one or more low- or moderate-income families.

(5) Repealed.

24-32-718. Publicly assisted housing - notice of termination - database - high energy performance building standard program - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Financial assistance" means any financial assistance administered by the

division that is subject to affordability restrictions, including, but not limited to, grants and loans from the division and federally funded rental assistance contracts, loans, or insurance.

(b) "Publicly assisted housing project" means a property with five or more rental units that was developed, rehabilitated, purchased, or insured with financial assistance.

(2) (a) The division shall provide information about the database it maintains pursuant to subsection (3) of this section to owners of publicly assisted housing projects and shall encourage them to give notice to the division no less than one hundred twenty days before taking any action that will make the project no longer affordable, if the affordability restrictions on the project are still in effect at the time the notice is required.

(b) For purposes of this subsection (2), the following actions shall be considered actions that make a project no longer affordable:

(I) Converting the property to commercial use or increasing residential rent to an amount exceeding the amount permitted under the affordability restrictions in effect at the time of the notice; or

(II) Withdrawing from or electing not to renew an available federally funded project-based rental assistance contract.

(c) During the period of one hundred twenty days after notice is given to the division, the division may attempt to coordinate a purchase by a purchaser that is committed to maintaining the project as an affordable housing resource.

(3) The division shall maintain an updated database of publicly assisted housing projects on which it has received the notice required by subsection (2) of this section.

(4) The board, in consultation with the division, shall adopt and update from time to time a nationally recognized high energy performance building standard program for publicly assisted housing projects. The division shall present a report on the program annually to the general assembly for comment and review. The standard shall apply to all new applications for publicly assisted housing projects made to the division on or after January 1, 2009; except that the executive director of the department of local affairs may exempt a particular publicly assisted housing project from compliance with the standard upon a determination by the executive director that extenuating circumstances exist such as to preclude the implementation of this subsection (4).

24-32-719. Foreclosure prevention - outreach efforts - grant fund - creation - administration - repeal. (Repealed)

24-32-720. Property foreclosure reports - official state statistics - repeal. (1) The division shall collect and compile property foreclosure data from each county in the state and shall issue, at least quarterly, a report summarizing the

information. The report shall include but need not be limited to the following:

(a) Data regarding the number of notices of election and demand that were recorded in the state during the previous quarter, the same quarter of the previous year, and the previous year;

(b) Data regarding the number of properties sold at auction in the state during the previous quarter, the same quarter of the previous year, and the previous year;

(c) Data regarding the number of instances in the previous quarter, the same quarter of the previous year, and the previous year in which a property owner or other interested party cured a default on a property for which a notice of election and demand was recorded;

(d) A comparison of foreclosure data from various counties in the state in which there has been a relatively large occurrence of foreclosure activity during the previous quarter, the same quarter of the previous year, and the previous year;

(e) An analysis of the regional difference in foreclosure activity over the previous quarter, the same quarter of the previous year, and the previous year; and

(f) A forecast of how foreclosure data may change in the next quarter and over the next year.

(2) The division shall make the foreclosure report prepared pursuant to subsection (1) of this section available to the public on the division's internet web site and by any other means determined appropriate by the division.

(3) The information compiled and reported by the division shall be the official foreclosure data for the state. The state and any political subdivision of the state shall use the division's data when citing state foreclosure statistics; except that any political subdivision of the state may cite foreclosure statistics as they are reported by the public trustee of any county in the state. Whenever possible, the division and any other political subdivision of the state shall encourage private entities that cite foreclosure statistics to use the information compiled and reported by the division. For the purposes of reporting foreclosure data as allowed pursuant to this section, the term "foreclosure" shall be used only to refer to a property that has been sold at auction.

(4) The public trustee of each county in the state shall provide to the division the foreclosure data from his or her county necessary for the division to compile the report required pursuant to this section. Each public trustee shall provide the information to the division on a quarterly basis or otherwise as requested by the division.

(5) This section is repealed, effective January 1, 2015.

24-32-721. Colorado affordable housing construction grants and loans - housing development grant fund - creation - repeal. (1) There is hereby created in the state treasury the housing development grant fund, which fund shall be administered by the division and is referred to in this section as the "fund". The fund shall consist of moneys appropriated to the Colorado affordable housing construction grants and loan

fund by the general assembly, all moneys collected by the division for purposes of this section from federal grants, and other contributions, grants, gifts, bequests, and donations received from other governmental entities, individuals, private organizations, or foundations and any interest earnings on such moneys, which moneys the division is hereby authorized and directed to solicit, accept, expend, and disburse for the purpose of making grants or loans as provided in this section. All such moneys shall be transmitted to the state treasurer to be credited to the fund. The moneys in the fund are hereby continuously appropriated to the division for the purposes of this section. The moneys in the fund may be expended for the purpose of funding activities initiated during the 2008-09 state fiscal year that are to be completed in subsequent state fiscal years.

(2) (a) Upon the approval of the board, the division may make a grant or loan from moneys in the fund to improve, preserve, or expand the supply of affordable housing and to finance foreclosure prevention activities in Colorado as well as to fund the acquisition of housing and economic data necessary to advise the board on local housing conditions.

(b) In the case of any loan made from moneys in the fund for which the division is the primary lender, the borrower shall be required to seek replacement loans or funding no later than one hundred eighty days from the date of the loan.

(c) The authorization granted to the division in paragraph (a) of this subsection (2) to make a grant or loan from moneys in the fund to finance foreclosure prevention activities in the state is repealed, effective June 30, 2011.

(3) (a) Any moneys in the fund not expended or encumbered from any appropriation at the end of any fiscal year, including interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund or any other fund and shall remain available for expenditure by the division in the next fiscal year for the purposes specified in subsection (2) of this section without further appropriation.

(b) Notwithstanding any other provision of this section, not more than two hundred fifty thousand dollars may be appropriated from the general fund pursuant to this section in any one state fiscal year for any uses not related to construction grants or loans.

24-32-722. Consolidation of public housing agencies for low- and moderate-income households and persons with disabilities into the division - legislative declaration - repeal. (Repealed)

24-32-723. Office of homeless youth services - creation - function - duties - definitions. (1) This section shall be known and may be cited as the "Colorado Homeless Youth Services Act".

(2) As used in this section, unless the context otherwise requires:

(a) "Entity" means any state agency, any state-operated program, or any private nonprofit or not-for-profit community-based organization.

(b) "Homeless youth" means a child or youth who is at least eleven years of age but is less than twenty-one years of age who:

(I) Lacks a fixed, regular, and adequate nighttime residence; or

(II) Has a primary nighttime residence that is:

(A) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations; or

(B) A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

(III) "Homeless youth" shall not include any individual imprisoned or otherwise detained pursuant to an act of congress or a state law.

(3) There is hereby created the office of homeless youth services in the department of local affairs for the purpose of providing information, coordination, and support services to public and private entities serving the homeless youth of Colorado. The office of homeless youth services shall seek to:

(a) Identify and remove obstacles to the provision of services;

(b) Improve the quality of services provided to homeless youth;

(c) Reduce needless expenditures caused by the provision of overlapping services; and

(d) Identify housing and supportive services funding resources available to entities serving homeless youth.

(4) (a) In providing the services described in this section, the office of homeless youth services is strongly encouraged to work with the executive directors, or their designees, of the Colorado department of public health and environment, the judicial department, private nonprofit and not-for-profit organizations, appropriate federal departments, and other key stakeholders in the community.

(b) At a minimum, the office of homeless youth services shall have the following duties:

(I) To provide information, coordination, and technical assistance as may be necessary to reduce needless expenditures associated with the provision of overlapping services and to improve the quality of services provided to homeless youth;

(II) To identify both procedural and substantive obstacles to the provision of services and to make recommendations to the entities specified in this section concerning procedural, regulatory, or statutory changes necessary to remove such obstacles;

(III) To obtain information from service providers concerning known services available for the homeless youth population in the state of Colorado and to post such information on a web site on the internet;

(IV) To develop, maintain, and make available a listing of all rights and

organizations that may be relevant to the homeless youth population in the state of Colorado, including but not limited to a listing of legal, educational, and victims' rights and organizations related thereto;

(V) To obtain information concerning known funding sources available for the homeless youth population in the state of Colorado; and

(VI) To work with entities to identify issues concerning sharing of information in providing services to homeless youth and to facilitate resolution of such information-sharing issues.

(c) On or before January 15, 2012, and on or before each January 15 thereafter, the office of homeless youth services, in conjunction with the prevention services division in the department of public health and environment and the department of education, shall submit a consolidated report to the general assembly of existing reports relating to prevention, intervention, and treatment services provided to homeless youth eighteen years of age to twenty-one years of age by the department of human services, county departments of social services, and other state departments that operate prevention, intervention, and treatment programs serving youth eighteen years of age to twenty-one years of age. The report shall also include the data that the department of education annually compiles on the number of homeless youth enrolled in public schools in the state, the type of homelessness, and the list of services that are provided to such homeless youth. The consolidated report shall include the number of youth served, the types of services provided, and the outcomes derived from such services.

24-32-724. Fort Lyon property - supportive residential community-definitions. (1) As used in this section, "Fort Lyon property" means the real property described in the quitclaim deed of September 12, 2002, that the federal secretary of veterans affairs conveyed to the state of Colorado for the purpose of operating a correctional facility.

(2) (a) A portion of the Fort Lyon property is designated as a supportive residential community for the homeless for the purpose of providing substance abuse supportive services, medical care, job training, and skill development for the residents.

(b) (I) The division of housing shall enter into a contract with a private contractor to establish the residential community. The contractor selected by the division must be experienced in providing statewide integrated housing, health care, and supportive service programs for homeless individuals.

(II) The division shall subtract an amount equal to three percent of the bid price from the bid of each contractor that certifies through employment records that at least fifteen percent of employees who will perform the requirements of the contract were employed as correctional officers or as other employees at the Fort Lyon correctional facility within the last five years.

PART 8

OFFICE OF RURAL DEVELOPMENT

24-32-801. Legislative declaration. (1) Rapid growth experienced by many communities in this state has caused many problems for local government and its citizens in providing necessary public services and desirable living areas.

(2) Lack of growth and development, however, in the less densely populated and rural areas of this state has caused another problem which adds to that of the urban areas.

(3) Migration of people, and youth in particular, to the urban areas because of lack of opportunity for employment and development of careers compounds the problems of governments already pressed to meet the demands of current growth.

(4) It is the responsibility of the state to assist rural areas with financial and technical assistance to provide economic opportunity and community amenities and to promote the general welfare of the people of this state.

24-32-802. Office of rural development created. (1) There is created in the department of local affairs the office of rural development, referred to in this part 8 as the "office". The executive director of the department of local affairs, subject to the provisions of section 13 of article XII of the state constitution, shall appoint the coordinator of rural development, which position is hereby created, who shall be the head of the office.

(2) The office and the coordinator of rural development shall exercise their powers and perform their duties and functions specified in this part 8 under the department of local affairs 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 this title.

24-32-803. Duties of the office. (1) The office shall coordinate the activities of the various divisions within the department of local affairs for the purpose of:

(a) Cooperating with and providing technical assistance to local officials for the orderly development of rural Colorado;

(b) Encouraging and, when requested, assisting local governments to develop mutual and cooperative solutions to rural community development;

(c) Studying the legal provisions that affect rural development and recommending to the governor and the general assembly such changes and provisions as may be necessary to encourage rural development;

(d) Serving as a clearinghouse for rural development information, including state

and federal programs designed for rural development;

(e) Carrying out studies and continuous analyses of rural development in the state with particular emphasis on its effect on population dispersion and economic opportunity;

(f) Encouraging and assisting, when requested, local governments to develop mutual and cooperative solutions to rural community development;

(g) Contracting with the federal government or any agency or instrumentality thereof and receiving any grants or moneys therefrom for purposes of rural development in Colorado.

24-32-804. Transfer of property and records. (Repealed)

PART 9

STANDARDS FOR CAMPER TRAILERS AND CAMPER COACHES

24-32-901. Legislative declaration. The general assembly hereby declares that recreational park trailers and recreational vehicles sold in Colorado should comply with national industry standards to ensure the safety of occupants using them for temporary living and sleeping accommodations.

24-32-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) to (4) (Deleted by amendment, L. 99, p. 443, § 12, effective August 4, 1999.)

(5) "Camping trailer" means a vehicle that meets the definition of "camping trailer" set forth in the American national standards institute's (ANSI's) standard A119.2 or any amendment thereto.

(6) "Fifth wheel trailer" means a vehicle that meets the definition of "fifth wheel trailer" set forth in the American national standards institute's (ANSI's) standard A119.2 or any amendment thereto.

(7) "Motor home" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(8) "Recreational park trailer" means a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that is built on a single chassis mounted on wheels, and that has a gross trailer area of not more than four hundred square feet or thirty-seven and fifteen one-hundredths square meters in the set-up mode.

(9) "Recreational vehicle" means a vehicle designed to be used primarily as

temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motor power or is mounted on or towed by another vehicle. "Recreational vehicle" includes camping trailers, fifth wheel trailers, motor homes, travel trailers, multipurpose trailers, and truck campers.

(10) "Travel trailer" means a vehicle that meets the definition of "travel trailer" set forth in the American national standards institute's (ANSI's) standard A119.2 or any amendment thereto.

(11) "Truck camper" means a vehicle that meets the definition of "truck camper" set forth in the American national standards institute's (ANSI's) standard A119.2 or any amendment thereto.

24-32-903. Rules - advisory committee - sunset review - enforcement. (Repealed)

24-32-904. Certification of camper trailers and camper coaches. (Repealed)

24-32-904.5. Compliance with national standards - recreational park trailers - recreational vehicles. (1) No person, partnership, firm, corporation, or any other entity may manufacture, sell, or offer for sale within this state:

(a) Any new recreational vehicle that is not manufactured in compliance with the American national standards institute's (ANSI's) standard A 119.2 for recreational vehicles or any amendment thereto; or

(b) Any new recreational park trailer that is not manufactured in compliance with the American national standards institute's (ANSI's) standard A 119.5 for recreational park trailers.

24-32-905. Fees. (Repealed)

24-32-906. Recognition of similar standards. (Repealed)

24-32-907. Injunctive relief. The state director of housing may request the appropriate court to enjoin the sale or delivery of any camper trailer or camper coach upon an affidavit, specifying the manner in which the camper trailer or camper coach does not conform to the requirements of this part 9 or the rules and regulations promulgated pursuant to this part 9. The director may suspend the authority of a

manufacturer to affix insignias while injunctive relief is being sought.

24-32-908. Cooperation with department of revenue. (Repealed)

24-32-909. Violation - penalty. Any person violating any provision of this part 9 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

PART 10

COLORADO LITTER CONTROL ACT - DIVISION OF LOCAL GOVERNMENT

24-32-1001 to 24-32-1015. (Repealed)

PART 11

VOLUNTARY CERTIFICATION PROGRAM FOR FIREFIGHTERS

24-32-1101 to 24-32-1106. (Repealed)

PART 12

STATE CLEARINGHOUSE

24-32-1201. Legislative declaration. The provisions of this part 12 are enacted to establish a state clearinghouse in accordance with circular number A-95 of the United States office of management and budget. In order to avoid duplication with existing duties and functions of state and local governmental agencies and in order to preserve the policy of this state that the decision-making authority as to the character and use of land shall be at the lowest possible level of government, it is the intent of the general assembly that the state clearinghouse shall be primarily a state central information center for the receipt and dissemination of federal assistance information and shall not be a policy-making or planning agency.

24-32-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Circular number A-95" means circular number A-95 of the United States

office of management and budget, as published in the Federal Register of January 13, 1976, and as amended from time to time.

24-32-1203. State clearinghouse designated - duties - limitations. (1) The department of local affairs is hereby designated as the state clearinghouse for the state in accordance with circular number A-95. The executive director of the department of local affairs shall employ, within the appropriation as set forth by the general assembly, pursuant to the provisions of section 13 of article XII of the state constitution, such officers and employees as he deems necessary to carry out the provisions of this part 12.

(2) (a) The state clearinghouse shall perform the functions described for state clearinghouses in circular number A-95. The state clearinghouse is a central information center and shall not be a policy-making or planning agency.

(b) Every state agency whose area of responsibility may be affected by a proposed project involving federal assistance shall cooperate with the state clearinghouse in the project notification and review system as provided in circular number A-95.

(c) Comments made by the state clearinghouse and affected state agencies on applications for federal assistance under the project notification and review system described in circular number A-95 shall be limited to the subject matter items listed in section 5 of part I of attachment A of circular number A-95.

(d) In the absence of any provision of law authorizing centralized state-wide comprehensive planning, including land use or growth policies, any reference in circular number A-95 to state comprehensive plans or planning, state priorities or objectives, or the equivalent shall be construed by the state clearinghouse and affected state agencies to refer to the aggregate of local and regional plans and policies established pursuant to statute and the policies, purposes, and objectives expressed in the laws of the state.

PART 13

COLORADO TOURISM BOARD

24-32-1301 to 24-32-1308. (Repealed)

PART 14

PRIVATE ACTIVITY BONDS

24-32-1401 to 24-32-1412. (Repealed)

PART 15

COLORADO OFFICE OF VOLUNTEERISM

24-32-1501 to 24-32-1508. (Repealed)

PART 16

UNIFIED BOND CEILING ALLOCATION

24-32-1601. Short title. (Repealed)

24-32-1602. Legislative declaration. (Repealed)

24-32-1603. Definitions. (Repealed)

24-32-1604. Allocation of unified volume ceiling. (Repealed)

24-32-1605. Allocations to state issuing authorities. (Repealed)

24-32-1606. Allocations to local issuing authorities. (Repealed)

24-32-1607. Statewide balance. (Repealed)

24-32-1608. Reporting requirements. (Repealed)

24-32-1609. Application for allocation from statewide balance. (Repealed)

24-32-1610. Notification and validity of allocations from the statewide balance. (Repealed)

24-32-1611. Thirty-day extension. (Repealed)

24-32-1612. Statewide balance carryforward allocations. (Repealed)

24-32-1613. Time period must end on business day. (Repealed)

24-32-1614. Effect of issuance of bonds without allocations. (Repealed)

24-32-1615. Operative dates - provisional repeal. (Repealed)

24-32-1616. Conformity with federal legislation. (Repealed)

24-32-1617. Severability. (Repealed)

24-32-1618. Agreement with bond owners. (Repealed)

24-32-1619. Repeal of sections. (Repealed)

24-32-1620. Effect of repeal of sections. The repeal of sections 24-32-1601 to 24-32-1619 shall not invalidate any allocations for carryforward projects made under this part 16.

PART 17

PRIVATE ACTIVITY BOND CEILING ALLOCATION

24-32-1701. Short title. This part 17 shall be known and may be cited as the "Colorado Private Activity Bond Ceiling Allocation Act".

24-32-1702. Legislative declaration. The "Internal Revenue Code of 1986", as

amended, limits the total amount of tax-exempt private activity bonds which may be issued by any state and its political subdivisions in each year by imposing volume caps. Said code allows each state to provide by law a formula for allocating the state volume cap among the issuing authorities of the state. This part 17 is enacted to establish an allocation formula for the state of Colorado which maximizes the state's total tax-exempt private activity bond issuance authority and which provides an orderly and equitable process of allocating such authority among issuing authorities of this state.

24-32-1703. Definitions. As used in this part 17, unless the context otherwise requires:

(1) "Application" means the application submitted by an issuing authority to request from the department an allocation from the statewide balance, including any amendments to said application.

(2) "Bond" means any bond or other obligation which may be issued by any issuing authority which constitutes a private activity bond, as defined in section 141 of the code but only to the extent that such bond or other obligation is subject to the state ceiling limitations of section 146 of the code.

(3) "Business day" means any normal day of business excluding Saturdays, Sundays, and legal holidays. Each business day begins at 8 a.m. and closes at 5 p.m.

(4) "Carryforward purpose" has the meaning ascribed to such term in section 146 (f) (5) of the code.

(5) "Code" means the "Internal Revenue Code of 1986", as amended.

(6) "Committee" means the bond allocations committee created pursuant to section 24-32-1707 (3).

(7) "Department" means the department of local affairs.

(8) "Designated local issuing authority" means any city, town, county, or city and county which has a population in any year which would result in the local issuing authority having any allocation of the state ceiling in excess of one million dollars as calculated pursuant to section 24-32-1706 (1).

(8.5) "Direct allocation" means an allocation of the state ceiling made to state issuing authorities as specified in section 24-32-1705 (1) (a) or designated local issuing authorities as specified in section 24-32-1706 (1).

(9) "Executive director" means the executive director of the department.

(10) "Form 8038" means the federal department of the treasury tax form 8038 or any other federal tax form or other method of reporting required by the federal department of the treasury under section 149 of the code.

(11) "Inducement resolution" means a resolution, ordinance, or similar action adopted by an issuing authority for the purpose of taking official action regarding the issuance of, or otherwise stating the intent of the issuing authority to issue, bonds to

finance a project.

(12) "Issuing authority" means any entity or person which has the authority to issue bonds or other obligations the interest on which is exempt from federal income taxation pursuant to section 103 (a) of the code. Such term includes any designated local issuing authority or any local or state issuing authority.

(13) "Local issuing authority" means any city, town, county, or city and county.

(14) "Mortgage credit certificate election" means an election pursuant to section 25 (a) (2) (ii) of the code, by any issuing authority, not to issue qualified mortgage bonds which the issuing authority is otherwise authorized to issue, including the receipt of allocations made pursuant to this part 17, in exchange for the authority under section 25 of the code to issue mortgage credit certificates in connection with a qualified mortgage credit certificate program within the meaning of section 25 (a) (2) of the code, so long as the implementation of the program is evidenced by the issuing authority to the satisfaction of the executive director, which satisfaction shall be evidenced by a certificate from the executive director certifying his determination that a qualified mortgage credit certificate program has been implemented, together with a certification of the issuing authority providing that such election shall not be revoked.

(15) "Population" means the population of the state of Colorado as determined by the most recent census estimate of the resident population of the state of Colorado published by the United States bureau of the census before the beginning of each year. "Population" also means the population of a local issuing authority as determined by the most recent census estimate of the resident population of the local issuing authority published by the state demographer before the beginning of each year. The department shall specify population data in the report issued pursuant to section 24-32-1706 (1).

(16) "Project" means the facility, facilities, or program to be financed in whole or in part with the proceeds of the bonds.

(17) "Qualified mortgage bond" means any bond or obligation which constitutes a qualified mortgage bond as defined in section 143 of the code.

(18) "State ceiling" means the bond ceiling for the state and its issuing authorities as computed under section 146 (d) of the code.

(19) "State issuing authority" means any of the entities listed in section 24-32-1705 (1).

(20) "Statewide balance" means the portion of the state ceiling that remains after the allocations made to the state issuing authorities and the local issuing authorities in sections 24-32-1705 and 24-32-1706, plus or minus any allocation from or relinquishment to the statewide balance pursuant to this part 17.

(21) "Statewide balance award period" means a period commencing on the date on which notification of an allocation from the statewide balance is mailed to an issuing authority and ending on a date to be determined by the executive director, which date is no later than December 23 each year.

(22) "Year" means each calendar year, beginning with the calendar year 1987.

24-32-1704. Allocation of state ceiling. The state ceiling shall be allocated among issuing authorities in accordance with the formulas and the procedures for assignment established in this part 17.

24-32-1705. Allocations to state issuing authorities. (1) (a) Within thirty days after May 20, 1987, and by January 15 of each year thereafter, fifty percent of the state ceiling shall be initially allocated among the following state issuing authorities in amounts established by the department:

(I) The Colorado agricultural development authority, created by section 35-75-104, C.R.S.;

(II) The Colorado health facilities authority, created by section 25-25-104, C.R.S.;

(III) The Colorado housing and finance authority, created by section 29-4-704, C.R.S.;

(IV) The Colorado educational and cultural facilities authority, created by section 23-15-104, C.R.S.; and

(V) Collegeinvest, created by section 23-3.1-203, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the department is not required to allocate any specific amount to any specific state issuing authority.

(2) State issuing authorities may assign amounts of their allocations to any issuing authority, and any assignment shall be effective upon receipt by the department of written notification of the assignment. The notification shall include the amounts assigned, the names of the assignor and the assignee, a representation by the assignor that the assignment was made by the assignor without receipt of monetary consideration, the date of the assignment, and a copy of the executed assignment. No assignee may elect to treat all or any portion of an assignment of an allocation from a state issuing authority as an allocation for a project with a carryforward purpose or make a mortgage credit certificate election with respect to all or any portion of such an assignment without the prior written consent of the assignor to the election. A record of each assignment shall be maintained by the assignee for each bond issued by the assignee for which the assignment applies.

(3) Any allocation of the state ceiling made or assigned pursuant to this section shall automatically be relinquished to the statewide balance on September 15 of each year, except to the extent that:

(a) Bonds are issued by the state issuing authority or its assigns prior to September 15 of each year; or

(b) A mortgage credit certificate election is made by the state issuing authority or

its assignee prior to September 15 of each year; or

(c) The state issuing authority or its assignee notifies the department, by written notice which contains the information and attachments set forth in section 24-32-1709, prior to September 15 of each year, that the allocation has been made by the state issuing authority or its assignee to a project which has a carryforward purpose as such project is described in the inducement resolution attached and that the state issuing authority or its assignee desires to treat all or a portion of its initial allocation as an allocation to such project for such carryforward purpose.

(4) If the amount of an allocation of the state ceiling made to a state issuing authority pursuant to this section is in excess of the amount of bonds that the state issuing authority or its assignee issued or used for a carryforward purpose or the amount of qualified mortgage bonds that the state issuing authority or its assignee elected not to issue pursuant to a mortgage credit certificate election, the excess shall be relinquished to the statewide balance on September 15 each year. Any state issuing authority may voluntarily relinquish all or any part of its allocation to the statewide balance at any time by so notifying the department in writing.

24-32-1706. Allocations to designated local issuing authorities. (1) Within twenty days after May 20, 1987, and by January 15 of each year thereafter, that portion of the state ceiling that bears the same ratio to fifty percent of the state ceiling for such calendar year as the population of the designated local issuing authority bears to the population of the entire state shall be initially allocated to each designated local issuing authority. For the purposes of such allocation, the department shall provide a report within ten days after May 20, 1987, and by each January 15 thereafter, which report shall contain a statement of the population for the entire state and each designated local issuing authority.

(2) Designated local issuing authorities may assign the amounts of their allocations pursuant to this section to any issuing authority, and any assignment shall be effective upon receipt by the department of written notification of the assignment. The notification shall include the amounts assigned, the names of the assignor and assignee, a representation by the assignor that the assignment was made by the assignor without receipt of monetary consideration, the date of the assignment, and a copy of the executed assignment. No assignee may elect to treat all or any portion of an assignment of an allocation from a designated local issuing authority as an allocation for a project with a carryforward purpose or make a mortgage credit certificate election with respect to all or any portion of such an assignment without the prior written consent of the assignor to such election. A record of each assignment shall be maintained by the assignee for each bond issued by the assignee for which the assignment applies.

(3) Any allocation of the state ceiling made or assigned pursuant to this section

shall automatically be relinquished to the statewide balance on September 15 of each year, except to the extent that:

(a) Bonds are issued by the designated local issuing authority or its assigns prior to September 15 of each year; or

(b) A mortgage credit certificate election is made by the designated local issuing authority or its assignee prior to September 15 of each year; or

(c) The designated local issuing authority or its assignee notifies the department, by written notice which contains the information and attachments set forth in section 24-32-1709, prior to September 15 of each year, that the allocation has been made by the designated local issuing authority or its assignee to a project which has a carryforward purpose as such project is described in the inducement resolution attached and that the designated local issuing authority or its assignee desires to treat all or a portion of its initial allocation as an allocation to such project for such carryforward purpose.

(4) If the amount of an allocation of the state ceiling made to a designated local issuing authority pursuant to this section is in excess of the amount of bonds that the designated local issuing authority or its assignee issued or used for a carryforward purpose or the amount of qualified mortgage bonds that the designated local issuing authority or its assignee elected not to issue pursuant to a mortgage credit certificate election, the excess shall be relinquished to the statewide balance on September 15 each year. Any designated local issuing authority may voluntarily relinquish all or any part of its allocation to the statewide balance at any time by so notifying the department in writing.

24-32-1707. Statewide balance. (1) Fifty percent of the state ceiling less any amount allocated to designated local issuing authorities pursuant to section 24-32-1706 shall be allocated within twenty days after May 20, 1987, and as of January 15 of each year thereafter, to the statewide balance. In addition, the statewide balance shall include any amounts relinquished thereto pursuant to section 24-32-1705 (3) or (4), section 24-32-1706 (3) or (4), subsection (8) of this section, section 24-32-1708, or section 24-32-1710 (3).

(2) (a) Until September 15 of each year, the statewide balance may be allocated only among:

(I) Issuing authorities that are not designated local issuing authorities;

(II) State issuing authorities that did not receive a direct allocation pursuant to section 24-32-1705; or

(III) Any designated local or state issuing authorities that have, prior to the date of receipt of an allocation from the statewide balance, relinquished to the statewide balance pursuant to section 24-32-1705 or 24-32-1706 any of their initial allocation remaining after any or all of their initial allocation has been used for the issuance of bonds in respect

of which a form 8038 has been filed pursuant to section 24-32-1708.

(b) On and after September 15 each year, the statewide balance may be allocated among all issuing authorities. The executive director shall make all of the allocations from the statewide balance in his or her sole discretion with the advice of the committee and in accordance with the priorities pursuant to this section.

(3) There is hereby created, within the department, a bond allocations committee, composed of nine members, as follows: The executive director, who shall act as chairman of the committee; four municipal or county officials, one of whom shall represent a municipality or county west of the continental divide; three citizens at large, one of whom shall reside west of the continental divide; and one representative of the state issuing authorities who shall be appointed annually and serve at the pleasure of the governor. The four municipal or county officials and the three citizens at large shall be appointed by the governor for terms not to exceed three years, and such members shall serve at the pleasure of the governor. Any vacancy occurring in the membership of the committee shall be filled by the governor by appointment for the unexpired term of such member. The members of the committee shall serve without compensation; except that members shall be entitled to reimbursement for actual and necessary expenses. The executive director may convene the committee from time to time as he deems necessary.

(4) The committee shall review and recommend to the executive director statewide priorities for the allocation of the statewide balance. Prior to the making of such recommendations, the department shall hold one or more public meetings to obtain input from the public regarding statewide priorities for the current year, information regarding the use of all bond allocations in the prior year, and other appropriate matters.

(5) An issuing authority shall apply for an allocation from the statewide balance by submitting a completed application for an allocation which contains the information and attachments required by section 24-32-1709.

(6) (a) (Deleted by amendment, L. 2009, (SB 09-041), ch. 56, p. 199, § 4, effective March 25, 2009.)

(b) (I) (Deleted by amendment, L. 2009, (SB 09-041), ch. 56, p. 199, § 4, effective March 25, 2009.)

(II) Repealed.

(7) Allocations from the statewide balance shall be effective for a statewide balance award period which shall be determined and may be extended by the executive director for each allocation. Allocations from the statewide balance shall not be assignable.

(8) Any issuing authority may relinquish all or any part of its allocation to the statewide balance at any time by so notifying the department in writing.

(9) The executive director shall file with the general assembly before February 1 of each year a detailed accounting of the distribution and use of bond allocations for the prior year.

(10) Until October 31 of each year, no allocation of the statewide balance shall be made for carryforward purposes.

(11) The executive director is authorized to contract with a private person, corporation, or entity for the review of applications for bonding authority from the statewide balance for industrial development bonds.

24-32-1708. Bond issuance and mortgage credit certificate election - reporting requirement. (1) Each issuing authority shall, within five days after the issuance and delivery of any bonds or within five days after it has made a mortgage credit certificate election and in no case later than 5 p.m. on December 23 of each year, file a copy of form 8038 or a copy of the mortgage credit certificate election form with the department showing that the bonds have been sold and delivered or showing the amount of qualified mortgage bonds which the issuing authority has elected not to issue. Any allocation for which form 8038 or a copy of the mortgage credit certificate election form had not been received within the times stated in this section, other than an allocation relating to a carryforward purpose, shall expire and be relinquished to the statewide balance as of December 24 of each year.

(2) The executive director, for good cause, may extend the time for filing by no more than three days.

24-32-1709. Application for allocation from statewide balance. (1) An issuing authority may request an allocation from the statewide balance by filing with the department a separate application regarding each project for which an allocation is requested, signed by an officer of the issuing authority. Each application shall be filed on a form provided by the department, which shall contain the following information and attachments:

(a) The name of the issuing authority;

(b) The mailing address of the issuing authority;

(c) The name and title of the official of the issuing authority and the name and address of the legal counsel of said authority to whom notices should be sent and from whom information may be obtained;

(d) The principal amount of the bonds proposed to be issued;

(e) The nature and the location or purpose of the project;

(f) The initial owner, user, or beneficiary of the project;

(g) A written, preliminary opinion of bond counsel, addressed to the department, that the bonds proposed to receive the allocation constitute private activity bonds as defined in section 141 of the code and stating the amount of such bonds requiring an allocation under the state ceiling and that the issuing authority is authorized under the

laws and constitution of the state to issue such bonds. The written opinion required by this paragraph (g) may be based on the assumption that an allocation will be made and the opinion shall cite the authority upon which it is based.

(h) A copy of the fully executed inducement resolution of the issuing authority relating to the project that is the subject of the application, certified as a true and correct copy by an authorized officer of the issuing authority; and

(i) Any information regarding the project to be financed with the proceeds of the bonds which are the subject of the requested allocation or regarding the financing which the issuing authority may want to provide to the department or which the department may request.

(2) To the extent that an issuing authority requests an allocation from the statewide balance in respect of which it expects to make an election for a carryforward purpose, such application, in addition to the application information and attachments set forth in subsection (1) of this section, shall be accompanied by the following:

(a) The classification of the carryforward purpose under section 146 (f) (5) of the code;

(b) Any information required by section 146 (f) (2) of the code;

(c) A certification signed by both an official of the issuing authority responsible for the supervision of the issuance of the bonds and, if applicable, a representative of the person or entity constructing, acquiring, or rehabilitating the project stating that they will proceed with diligence to insure the issuance of the bonds within the carryforward period provided by section 146 (f) of the code; and

(d) A written, preliminary opinion from bond counsel that the carryforward purpose qualifies for carryforward treatment under section 146 (f) of the code.

24-32-1709.5. Administrative costs of the department - private activity bond allocation fund - creation - rules. (1) The department may charge and collect the following administrative fees for the costs associated with the administration of this part 17:

(a) **The direct allocation fee.** The department may charge an administrative fee for direct allocations. The executive director shall annually determine the amount of the fee. In no event shall the amount of the fee specified in this paragraph (a) be set so as to reimburse the department for more than thirty percent of the direct and indirect costs of administering this part 17. The fee charged shall only be borne by entities that use the direct allocation to issue private activity bonds or make a mortgage credit certificate election.

(b) **The statewide balance application fee.** No application for an allocation required by section 24-32-1707 shall be complete unless it is accompanied by an application fee. The executive director shall determine the amount of the fee.

(c) **The statewide balance issuance fee.** The department may charge an administrative fee to entities that receive bonding authority from the statewide balance as specified in section 24-32-1707. The executive director shall annually determine the amount of the fee based on the costs associated with the administration of this part 17.

(2) (a) The fees collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the fees to the private activity bond allocations fund, which fund is hereby created in the state treasury and referred to in this subsection (2) as the "fund". The moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs associated with the administration of this part 17. All interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(b) The fund is excluded from the limitations specified in section 24-75-402. The fund's target reserve shall be three times the level of the prior year's spending authority from the fund. The uncommitted reserves of the fund shall not exceed the target reserve. If the amount of uncommitted reserves of the fund at the conclusion of any given fiscal year exceeds the target reserve, the executive director shall reduce the amount of one or more of the fees specified in subsection (1) of this section to an amount calculated to result in an amount of uncommitted reserves of the fund for the current fiscal year that does not exceed the target reserve. In calculating the reduction in fees, the executive director may take into account any increases in spending authority from the fund. If the executive director reduces the amount of a fee pursuant to this paragraph (b), the executive director may subsequently raise the amount of the fee so long as the projected amount of uncommitted reserves of the fund does not exceed the target reserve. The executive director shall not increase the fee beyond any limits specified in subsection (1) of this section.

(3) The executive director may promulgate rules in accordance with article 4 of this title to the extent necessary for the administration of this part 17.

24-32-1710. Notifications and validity of allocations from the statewide balance. (1) The department shall notify the issuing authority in writing of the amount allocated or not allocated from the statewide balance to the proposed project.

(2) The notification shall:

(a) Be of such format as determined by the department and as conforms to the code;

(b) Specify the amount of bonds that the issuing authority may issue based upon an allocation from the statewide balance;

(c) Specify the commencement date and the expiration date of the statewide

balance award period; and

(d) Be mailed to the issuing authority and the legal counsel specified in the application at the address specified in the application.

(3) Any allocation of the statewide balance shall be valid only until the expiration of the statewide balance award period unless the bonds are issued and delivered or a mortgage credit certificate election is made within the statewide balance award period, in which event, the allocation shall be subtracted from the statewide balance on the date of the issuance and delivery of the bonds or the date of the mortgage credit certificate election. If no bonds are issued or if no mortgage credit certificate election is made before the expiration of the statewide balance award period, the allocation from the statewide balance shall be relinquished to the statewide balance.

24-32-1711. Statewide balance carryforward allocations. (1) Any portion of the statewide balance that has not been allocated to bonds that were issued on or before December 23 or that the issuing authority elected not to issue pursuant to a mortgage credit certificate election made on or before December 23 or that are not the subject of a proper carryforward election under section 24-32-1705 (3) (b) or 24-32-1706 (3) (b) shall be available for allocations to carryforward purposes on and after December 26.

(2) Any issuing authority may apply to the department for allocations from the statewide balance for carryforward purposes by delivering to the department the information and attachments required under section 24-32-1709.

(3) On or before December 29, the executive director of the department shall determine the allocations from the statewide balance to carryforward purposes. The executive director shall make such determinations in his sole discretion, taking into account the likelihood that the bonds will in fact be issued during the carryforward period and such other factors as the executive director deems relevant. The department shall notify the issuing authority of any such allocation to a carryforward purpose to be received by it by no later than 5 p.m. on December 29, which notice may be written, oral, or telephonic. Any such oral or telephonic notice shall be confirmed by a writing mailed no later than December 29.

24-32-1712. Time period must end on business day. If the last day of any period described in this part 17 is not a business day, then the last day of such period shall be the next business day thereafter; except that, if the last day of any period is December 23 or December 29, and December 23 or December 29 is not a business day, then the last day of such period shall be the next preceding business day.

24-32-1713. Effect of mortgage credit certificate election or issuance of bonds without allocation. Any issuing authority which issues bonds or makes a mortgage credit certificate election prior to the receipt by the issuing authority of a related allocation, or in excess of the allocation, or after the relinquishment of the allocation, or in respect of which a form 8038 or a mortgage credit certificate election form is not filed within the prescribed time period shall not have an allocation of the state ceiling pursuant to this part 17.

24-32-1714. Severability. This part 17 is subject to the severability provisions of section 2-4-204, C.R.S. To the extent this part 17 is unconstitutional, all allocations of the state ceiling previously made under this part 17 shall be treated as allocations made by the general assembly of the state of Colorado.

24-32-1715. Agreement with bond owners. The state of Colorado pledges and agrees with the owners of any bonds to which an allocation of the state ceiling has been granted under this part 17 that the state will not retroactively alter the allocation of the state ceiling to the qualified issuing authority for such bonds.

PART 18

SITE ACQUISITION FOR SUPERCONDUCTING SUPER COLLIDER PROJECT

24-32-1801 to 24-32-1811. (Repealed)

PART 19

REGULATION OF FACTORY-BUILT
NONRESIDENTIAL STRUCTURES

24-32-1901 to 24-32-1912. (Repealed)

PART 20

COLORADO YOUTH CONSERVATION AND SERVICE CORPS

24-32-2001. Legislative declaration. (1) The general assembly finds and declares that:

(a) Central elements in the development of the state's youth should be the

provision of meaningful work experience to teach the value of labor and membership in a productive society and the provision of basic education to address unemployment, undereducation, and lack of life-coping skills among young adults;

(b) It is the policy of this state to conserve and protect its natural resources, scenic beauty, historical and cultural sites, and other community facilities;

(c) An ever-growing number of this state's youth are dropping out of school before obtaining a high school diploma at a time when education is absolutely essential to the future employability, opportunities, and well-being of an individual;

(d) There are many unemployed young adults without hope or opportunities for entrance into the labor force who are unable to afford higher education and who create a serious strain on tax revenues in community services;

(e) The young men and women of the state should be given an opportunity to develop meaningful public service work and educational experience through programs that protect and conserve the valuable resources of the state and promote participation in other community enhancement projects;

(f) There exists a continuing need for the development and expansion of youth conservation and service programs and for involvement by young persons in public works and services, the provision of human services, and the enhancement of our natural resources;

(g) It is in the public interest to target employment projects to those activities which have the greatest benefit to the local economy;

(h) Severe cutbacks in the funding for community and human services leave many local community service agencies without the resources to provide necessary services to those in need; and

(i) The talent and energy of the state's unemployed young adults are an untapped resource which should be challenged to meet the serious shortage in community services and to promote and conserve the valuable resources of the state.

24-32-2002. Definitions. As used in this part 20, unless the context otherwise requires:

(1) "Colorado youth conservation corps" means the youth conservation corps program established by the governor's job training office.

(2) "Community-based agency" means a private nonprofit organization that is representative of a community or a significant segment of a community and that is engaged in meeting human, social, educational, or environmental needs, including churches and other religious entities and community action agencies.

(3) "Corps" means the Colorado youth service corps, the Colorado youth conservation corps, a local youth service corps, or a local youth conservation corps.

(4) "Corps member" means an individual enrolled in the Colorado youth service

corps, the Colorado youth conservation corps, a local youth service corps, or a local youth conservation corps.

(5) "Council" means the Colorado youth conservation and service corps council.

(6) "Department" means the department of local affairs.

(7) "Director" means the director of the Colorado youth service corps.

(8) "Financial support" means any thing of value contributed by agencies, businesses, nonprofit organizations, or individuals to the corps for a project which is reasonably calculated to support directly the development and expansion of a particular project. "Financial support" includes, but is not limited to, funds, equipment, facilities, and training.

(9) "Local government agency" means a public agency that is engaged in meeting human, social, educational, or environmental needs.

(10) "Matching funds" means funding that is provided to the corps by agencies or individuals as financial support for a portion of the compensation paid to the corps members.

(11) "Program agency" means a federal or state agency designated to manage a youth corps program, the governing body of an Indian tribe that administers a youth corps program, or a community-based agency.

(12) "Project" means an activity that results in a specific identifiable service or product which otherwise would not be accomplished with existing funds and that does not duplicate the routine services or functions of the employer to which corps members are assigned.

(13) "Volunteer" means a person who gives services without any express or implied promise of remuneration.

(14) "Work agreement" means the written agreement between the youth service corps, the youth service corps member, and the local government agency or community-based agency.

(15) "Youth service corps" means the Colorado youth service corps established in section 24-32-2004.

(16) "Youth service corps member" means an individual enrolled in the Colorado youth service corps.

24-32-2003. Colorado youth conservation and service corps council - creation - membership - duties. (1) There is hereby established the Colorado youth conservation and service corps council, referred to in this part 20 as the "council".

(2) The council shall consist of the following fourteen members:

(a) The executive director of the department of local affairs or the executive director's designee;

(b) The executive director of the department of natural resources or the executive

director's designee;

(c) The director of the governor's job training office or the director's designee;

(d) The director of the department of education's dropout prevention program or the director's designee;

(e) The director of the state board for community colleges and occupational education or the director's designee;

(f) The director, manager, or head of the Colorado youth conservation corps or such person's designee;

(g) The director of the Colorado youth service corps or such person's designee;

(h) One member appointed by the governor who is the director, manager, or head of a local agency administering a youth conservation corps or a youth service corps;

(i) One member appointed by the governor representing nonprofit organizations;

(j) One member appointed by the governor who is a current or former youth service or conservation corps member;

(k) Two members appointed by the governor from the private sector recognized for expertise in youth employment and development programs, environmental and resource conservation projects, job and basic skills training programs, youth conservation corps programs, and youth service corps programs; and

(l) One member from the house of representatives, appointed by the speaker of the house of representatives, and one member from the senate, appointed by the president of the senate.

(3) The term of each member appointed by the governor shall be four years; except that, of such members first appointed, two shall be appointed for terms of two years, and the youth services or conservation corps member appointed pursuant to paragraph (j) of subsection (2) of this section shall be appointed for a term of one year. A member appointed by the governor to fill the vacancy of another member arising other than by expiration of such other member's term shall be appointed for the unexpired term of such other member whom such appointee is to succeed. Any member appointed by the governor shall be eligible for reappointment for one four-year term.

(4) Members of the council shall serve without compensation.

(5) The council shall have the following powers, duties, and functions:

(a) To assist program agencies with the development of youth conservation corps programs or youth service corps programs, or any combination thereof;

(b) To assist program agencies with the preparation of proposals for grants to the commission on national and community service at such time, in such manner, and containing such information as the commission on national and community service may reasonably require, including, but not limited to:

(I) That enrollment in such program be limited to individuals who, at the time of enrollment, are not less than sixteen years of age nor more than twenty-five years of age; except that a summer program may include individuals who are not less than fifteen years

of age nor more than twenty-one years of age at the time of enrollment of such individuals and who are citizens or nationals of the United States or lawful permanent resident aliens of the United States;

(II) That such program ensure that educationally and economically disadvantaged youth, including youth who are dropouts, youth who are in foster care but who are becoming too old for foster care, youth who have limited English proficiency, limited basic skills, or learning disabilities, and youth who are homeless, be offered opportunities to enroll;

(III) A comprehensive description of the objectives and performance goals for any such program to be conducted, a plan for managing and funding any such program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided by any such program;

(c) To advise and consult with program agencies regarding certain training and education services required by the commission on national and community service in applying for grant moneys from the commission; and

(d) To appoint a technical advisory committee, if needed, to assist the council with specific issues and problems that may arise in connection with the council's duties.

(6) The council shall assist with the coordination and collaboration of program agencies with the executive and legislative branches of state government, the business community, school districts, state institutions of higher education, and local government and community-based agencies in the development of youth conservation corps and youth service corps programs.

24-32-2004. Colorado youth service corps established - director's duties. (1) There is hereby created in the department of local affairs, the office of the Colorado youth service corps. The youth service corps shall be a volunteer-based program in the charge of a director, who shall be a volunteer approved by the executive director of the department and who shall serve without compensation. The director shall appoint such assistants and clerical staff, to be chosen from volunteers and retirees, as may be deemed necessary to effectively administer this part 20. The provisions of Colorado law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivors' insurance, state retirement, and vacation leave shall not apply to corps members. Such assistants and clerical staff shall serve without compensation.

(2) The youth service corps shall exercise its powers and perform its duties and functions specified in this part 20 under the department 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 this title.

24-32-2005. Duties and functions of the youth service corps. (1) The youth service corps, through the director, and with the advice of the Colorado youth conservation and service corps council established in section 24-32-2003, shall:

(a) Recruit individuals for the youth service corps who are residents of the state unemployed at the time of application and who are at least sixteen years of age but who have not reached their twenty-fifth birthday;

(b) Match youth service corps members with appropriate local government agencies and community-based agencies and available projects;

(c) Develop general employment guidelines for placement of youth service corps members in local government agencies and community-based agencies which establish appropriate authority for hiring, firing, grievance procedures, and employment standards consistent with state and federal law;

(d) Monitor youth service corps members' activities for compliance with this part 20 and compliance with work agreements;

(e) Establish a program for providing incentives to encourage successful completion of the terms of enrollment in the youth service corps and the continuation of educational pursuits by awarding a youth service corps member a scholarship to a state institution of higher education, private college or university, private occupational school, or vocational school, in an amount not to exceed five thousand dollars, upon such successful completion;

(f) Enter into agreements with the state's institutions of higher education, community college system, vocational schools, and private occupational schools and with other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics, for those youth service corps members who may benefit by participation in such classes;

(g) Assist youth service corps members in transition to employment, higher education, or vocational school upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(h) Coordinate youth employment and training efforts under its jurisdiction and cooperate with other state agencies or departments and program agencies providing youth services to ensure that funds appropriated for the purposes of this part 20 will not be expended to duplicate existing services but will increase the services of youth to the state;

(i) Recruit local government agencies and community-based agencies to employ the youth service corps members in service activities;

(j) Assist local government agencies and community-based agencies in the development of scholarships and matching funds from private and public sources, individuals, and foundations in order to support a portion of the youth service corps member's compensation; and

(k) Determine appropriate financial support levels by private businesses,

community-based agencies, foundations, local government agencies, and individuals which will provide matching funds for youth service corps members in projects under work agreements.

24-32-2006. Colorado youth service corps - criteria for enrollment. (1) The director may select and enroll in the youth service corps any person who is at least sixteen years of age but not yet twenty-five years of age, who is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service.

(2) In the selection of youth service corps members, preference shall be given to youths residing in areas, both urban and rural, in which there exists substantial unemployment above the state unemployment rate. Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged.

(3) The director may prescribe such additional standards and procedures in consultation with supervising agencies as may be necessary in conformance with this part 20.

24-32-2007. Local youth employment opportunities. The director shall use existing local offices of the department or contract with local government agencies or community-based agencies to establish the youth service corps program and to ensure coverage of the youth service corps program statewide. Each local office, local government agency, or community-based agency shall maintain a list of available youth employment opportunities and the appropriate forms or work agreements therefor in the jurisdiction covered by the local office, local government agency, or community-based agency.

24-32-2008. Placement under work agreements. (1) Placement of youth service corps members shall be made in local government agencies and community-based agencies, under work agreements, and shall include those assignments which provide for addressing unmet community needs and assisting the community in economic development efforts. Each work agreement shall:

(a) Demonstrate that the project is appropriate for the youth service corps members' interests, skills, and abilities and that the project is designed to meet unmet community needs;

(b) Include a requirement of regular performance evaluation, such evaluation to include clear work performance standards set by the local government agency or community-based agency and procedures for identifying strengths, recommended improvement areas, and conditions for probation or dismissal of any youth service corps

member; and

(c) Include a commitment for partial financial support of each youth service corps member from a private business, a local government agency, a community-based agency, an individual, or a foundation. The director may establish additional standards for the development of placements for youth service corps members with local government agencies or community-based agencies and assure that the work agreements comply with those standards.

(2) State agencies may use the youth service corps for the purpose of employing youth qualifying under section 24-32-2007.

24-32-2009. Youth service corps members - compensation - scholarship. (1) The compensation received by the youth service corps members shall be considered a training and subsistence allowance.

(2) The provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivors' insurance, state retirement plans, and vacation leave shall not apply to the youth service corps members. The youth service corps member shall be awarded a scholarship, in an amount not to exceed five thousand dollars, to a state institution of higher education, private college or university, private occupational school, or vocational school, of such youth service corps member's choice upon successful completion of the terms of enrollment in the youth service corps.

24-32-2010. Youth service corps members not to displace current workers. The assignment of youth service corps members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Participating local government agencies or community-based agencies may not terminate, lay off, or reduce the working hours of any employee for the purpose of utilizing a youth service corps member with funds available.

24-32-2011. Acceptance and utilization of funds. (1) The department is authorized, on behalf of the youth service corps, to accept, receive, and expend all donations, grants, contributions, gifts, bequests, federal funds, and funds from any source to be used by the youth service corps in performing its duties and functions under sections 24-32-2005 and 24-32-2009. The youth service corps shall make every effort to become self-supporting by accepting, receiving, and expending grants, gifts, and moneys from any other source.

(2) The youth service corps may accept, or provide, within the limitations of the budget of the youth service corps, matching funds whenever any grant, gift, bequest, or contractual assistance is available on such a matching-fund basis.

(3) The youth service corps may also accept contributions in the form of equipment or in-kind services.

24-32-2012. Colorado youth service corps fund - created. (1) There is hereby created in the state treasury a fund to be known as the Colorado youth service corps fund, which shall be administered by the executive director of the department of local affairs.

(2) All moneys received pursuant to section 24-32-2011 and any other moneys received by the youth service corps shall be placed in said fund.

(3) The general assembly shall make annual appropriations of the moneys in the fund to the department for allocation to the youth service corps for administering the provisions of this part 20. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(4) Any moneys in the fund not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(5) The general assembly shall make no general fund appropriation to either the fund or the department of local affairs for payment of any deficiency in the fund in the event that moneys in the fund are not sufficient for the costs of administering the provisions of this part 20.

24-32-2013. Conflict with federal requirements. If any provision of this part 20 is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this part 20 is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this part 20.

PART 21

OFFICE OF DISASTER EMERGENCY SERVICES

24-32-2101 to 24-32-2116. (Repealed)

PART 22

COMPENSATION BENEFITS TO VOLUNTEER CIVIL DEFENSE WORKERS

24-32-2201 to 24-32-2228. (Repealed)

PART 23

CIVIL DEFENSE LIABILITY - PUBLIC OR PRIVATE

24-32-2301 to 24-32-2304. (Repealed)

PART 24

EVACUATION OF SCHOOL BUILDINGS FOR CIVIL DEFENSE

24-32-2401 to 24-32-2405. (Repealed)

PART 25

DISASTER RELIEF

24-32-2501 to 24-32-2509. (Repealed)

PART 26

COLORADO EMERGENCY PLANNING COMMISSION

24-32-2601 to 24-32-2607. (Repealed)

PART 27

COOPERATIVE HEALTH CARE AGREEMENTS
INVOLVING HOSPITALS

24-32-2701 to 24-32-2715. (Repealed)

PART 28

COMMUNITY-BASED YOUTH CRIME
PREVENTION AND INTERVENTION

24-32-2801 to 24-32-2806. (Repealed)

PART 29

MOFFAT TUNNEL

24-32-2901 to 24-32-2906. (Repealed)

PART 30

COMMUNITY-BASED ACCESS GRANT PROGRAM

24-32-3001. Community-based access grant program - powers and duties of department of local affairs - definitions - legislative declaration. (1) As used in this section:

(a) "Aggregate" means to aggregate or consolidate the telecommunications service requirements of all or a substantial portion of the public offices within a community into a coordinated and rational network plan for the provision and procurement of telecommunications services so as to maximize economies of scale and combine the buying power of the entities operating such offices.

(b) "Community" means a geographically contiguous and distinct population, self-defined for the purposes of applying for the grant resources described in this section, and having a sponsoring fiscal agent that is a political subdivision of the state.

(c) "Connect" and "connection" refer to the establishment of a full-time, dedicated, digital network connection between a public office and the state network.

(d) "Department" means the department of local affairs, created in section 24-1-125.

(e) "Director" means the executive director of the department.

(f) "End-user equipment" means hardware and software that are identified with a specific public office or other physical location and that can operate independently of the state network. The term includes, without limitation, personal computers, network servers, local area networks, and video conferencing equipment.

(g) "Private-sector telecommunications provider" means a private corporation, whether or not operated for profit, that offers telephone, cable, wireless, or other telecommunications services to the public.

(h) "Public office" means any building, office, or facility that is physically located within the geographic boundaries of a community and is owned or operated by:

(I) An agency or political subdivision of the state or of any local government, including, but not limited to, a state administrative agency, a public school or college, a library, a county or municipal government, and a public hospital or health care facility; or

(II) A nonprofit hospital.

(2) The department shall establish a community-based access grant program under

which the department shall allocate capital construction funds appropriated to the department for this purpose to communities seeking to aggregate the telecommunications services required by the public offices within the community to connect to the digital network operated by the department of personnel pursuant to article 30 of this title. Said telecommunications services shall be procured by the communities from private-sector telecommunications providers.

(3) The use of moneys allocated under this section shall be limited as follows:

(a) Expenditures shall be made only in accordance with proposals that result in material improvements in the availability and competitive cost of advanced, digital telecommunications services to the community as compared to other communities of comparable size and characteristics.

(b) Expenditures shall be made only for services procured by the community from private-sector telecommunications service providers.

(c) Expenditures shall be made only for costs associated with:

(I) Terminating communications equipment at a public office;

(II) Leased digital telecommunications services associated with connecting a public office to the state's digital network; and

(III) Appropriate cost-recovery charges for the use of the state's digital network.

(d) No expenditures shall be made for costs associated with connecting public offices that already have connections; except that such public offices may be reimbursed for their net, new incremental costs incurred as a result of their inclusion in the community's plan for the aggregation of telecommunications services.

(e) No expenditures shall be made for end-user equipment, applications development, maintenance, training, or other similar costs incurred by a public office or organization.

(f) Moneys shall be disbursed only to the fiscal agent acting on behalf of a community.

(4) The department shall receive and evaluate proposals for funding under this section, subject to the following policy directives:

(a) The proposal process shall be conducted with the overall goal of providing funding to every community whose proposal is of high quality and competitive with those of communities of comparable size and characteristics.

(b) Priority shall be given to those communities proposing to aggregate the traffic of, and obtain participation from, the greatest proportion of the public offices within the community. To qualify for consideration, proposals shall list all public offices in the community and, as to each such public office, shall specify whether or not the public office is to be connected under the proposal. In addition, increased priority shall be given to those communities that show participation of private- and nonprofit-sector telecommunications consumers in the total aggregated demand.

(c) In accordance with measurable criteria established in advance by the

department, the department shall consider the degree of cash and in-kind matching funds to be provided by the community, consistent with the community's resources.

(5) Notwithstanding the provisions of subsection (3) of this section, the department may allocate up to ten percent of the capital construction appropriation for technical assistance, training, engineering, and consulting to prepare plans, program documents, life-cycle cost studies, requests for proposals and other studies, and documents associated with and necessary for the development of proposals under this section.

(6) The department shall coordinate the allocation of the capital construction funds appropriated to it for the purposes of this section with the schedule of deployment for the state's digital networks.

(7) In the funding of aggregated access for communities, the department shall require that public entities participating in the aggregation of traffic locally demonstrate the ability to divert or separate local traffic, including but not limited to internet and voice traffic, from the point of aggregation to a local destination.

(8) The department shall allocate the capital construction funds appropriated to it for the purposes of this section in such a manner as to reduce geographic disparity throughout the state in the availability and cost of advanced communications services.

(9) The department shall report to and make an appearance before the capital development committee at the conclusion of each fiscal year of operation of this program.

(10) The general assembly hereby finds and declares that the aggregation of local public telecommunications services is a new state program and that administration of the program requires services of a specialized, technical nature that are not available within the state personnel system. The director is therefore authorized to contract with a private person, corporation, or entity for the administration of the community-based access grant program described in subsection (2) of this section if the contract otherwise complies with part 5 of article 50 of this title, concerning contracts for personal services.

(11) During the initial year of funding, the department of local affairs shall allocate the moneys made available for the purposes of this section in a manner that:

(a) Provides technical assistance for strategic telecommunications planning to communities that require help in preparing competitive proposals for future funding;

(b) Evaluates the relationship between the size of a community and the ability to successfully attract investment through aggregation; and

(c) Gives priority to proposals that demonstrate a high probability of success through sufficient prior strategic telecommunications planning, local managerial expertise, and technical feasibility of the chosen bid from the private vendor.

PART 31

MANUFACTURED HOME INSTALLATION

24-32-3101 to 24-32-3110. (Repealed)

PART 32

OFFICE OF SMART GROWTH

24-32-3201. Legislative declaration. The general assembly hereby finds and declares that the purpose of this part 32 is to recognize and reward communities that cooperatively plan for and manage growth. By enacting this part 32, the general assembly intends that the state will be able to provide financial and other services to local governments to assist such governments in anticipating and responsibly addressing the unique public impacts caused by growth.

24-32-3202. Definitions. As used in this part 32, unless the context otherwise requires:

(1) "Colorado heritage planning grant" means a grant awarded by the office of smart growth pursuant to section 24-32-3203 (3) (c).

(2) "Department" means the Colorado department of local affairs.

(3) "Eligible participant" means one or more local governments that satisfy the requirements for grant eligibility pursuant to section 24-32-3203 (3).

(4) "Executive director" means the executive director of the department of local affairs.

(5) "Fund" means the Colorado heritage communities fund created in section 24-32-3207.

(6) "Growth" means changes in population that impact land use, infrastructure development, and the surrounding environment.

(7) "Local government" means any county, city and county, city, town, or special district created pursuant to article 1 of title 32, C.R.S.; except that, for purposes of this part 32 in connection with section 24-32-3203 (3) (c) (I), "local government" shall be deemed to include an irrigation district, ditch company, or conservancy district.

(8) "Office" means the office of smart growth created by this part 32.

24-32-3203. Office of smart growth - creation - powers and duties of executive director. (1) (a) There is hereby created within the department of local affairs the office of smart growth. The office shall be established within an existing division of

the department in the discretion of the executive director.

(b) The office shall be in the charge of a director who shall be appointed by the executive director. The director and any assistants and employees of the office shall be appointed in accordance with the provisions of section 13 of article XII of the state constitution.

(2) The office shall exercise its powers and perform its duties and functions specified by this part 32 under the department of local affairs and the executive director thereof 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 this title.

(3) The executive director shall have the following powers and duties in administering this part 32:

(a) To designate areas within Colorado as Colorado heritage communities. Areas designated as Colorado heritage communities shall be eligible for a Colorado heritage planning grant by the office out of moneys in the fund created by section 24-32-3207 in accordance with the provisions of this part 32.

(b) To adopt and publicize criteria regarding grants made available by the office out of moneys in the fund pursuant to paragraphs (c) and (d) of this subsection (3);

(c) To review and approve applications for Colorado heritage planning grants awarded by the office out of moneys in the fund in accordance with the requirements of this part 32, and to determine the amount of money to be awarded under each such grant. An application for such a grant shall:

(I) Be submitted jointly by the governing bodies of at least two local governments; except that applications regarding water banking pursuant to subparagraph (II) of this paragraph (c) may also be submitted singly or in combination by the governing body of a local government or by an irrigation district, ditch company, or conservancy district; and

(II) Address critical planning issues, including, without limitation, land use and development patterns, transportation planning, mitigation of environmental hazards, water banking pursuant to article 80.5 of title 37, C.R.S., and energy use.

(d) To review and approve applications for grants awarded by the office out of moneys in the fund to assist a local government, as applicable, in developing a master plan in conformity with section 30-28-106 or 31-23-206, C.R.S., and to determine the amount of money to be awarded under each such grant pursuant to section 24-32-3207 (2);

(e) To attend and participate in meetings of county, municipal, or regional planning bodies, interstate agencies, and other conferences of such bodies, agencies, or related entities;

(f) To advise the governor and the general assembly on matters involving growth, consult with other offices of state government with respect to growth issues affecting the duties of their offices, and, upon request of any local government, regional area, or group of adjacent communities having common or related problems arising from growth,

recommend to the governor and the general assembly any proposals for legislation that would address the impact of growth; but nothing in this part 32 shall be construed to grant to the office or the executive director any authority over the land use or planning responsibilities of local governments; and

(g) To exercise all other powers necessary and proper for the discharge of the executive director's duties and the carrying out of the intent of this part 32, including the coordination of the provisions of article 28 of title 30 and article 23 of title 31, C.R.S.

(4) The director of the office of smart growth created by this section shall advise the executive director in connection with the exercise of the executive director's powers and duties in administering this part 32.

24-32-3204. Powers and duties of the office of smart growth. (1) The office shall have the following powers and duties:

(a) To serve as a clearing house, for the benefit of local governments, of information relating to the common problems faced by local governments in connection with growth and of state and federal resources available to assist in the resolution of problems caused by growth;

(b) To refer local governments to appropriate departments or agencies of the state or federal government for advice, assistance, or available services in connection with specific problems relating to growth;

(c) To perform such research as is necessary to carry out the functions of the office;

(d) To encourage and, when so requested, assist cooperative efforts among local governments toward the solution of common problems relating to growth;

(e) Upon request by local governments, to provide technical assistance to such governments in addressing problems caused by the impacts of growth in such areas as, without limitation, completion of comprehensive or master plans and the resolution of land use disputes involving other governmental entities; and

(f) To accept and receive grants and services relevant to the fulfillment of this part 32 from the federal government, other state agencies, local governments, or private and civic sources.

24-32-3205. Qualifications. (1) Subject to the requirements of this part 32, the governing body or bodies of any eligible participant or participants, as applicable, may submit an application to the executive director requesting a grant pursuant to this part 32. Any grant approved by the executive director in accordance with the requirements of this part 32 shall be awarded to the governing body or bodies that submitted the application.

(2) In order to obtain grant moneys under this part 32 and as a condition of the

receipt of moneys under said part, each eligible participant shall agree to:

(a) Use any grant moneys in accordance with the criteria publicized by the executive director pursuant to section 24-32-3203 (3) (b); and

(b) Perform such other requirements as the executive director deems appropriate in the exercise of his or her discretion to further the purposes of this part 32.

(3) Eligible participants shall apply for grants made available pursuant to this part 32 on official application forms provided by the office. Eligible participants shall provide such information on the forms as the executive director may require in furtherance of the purposes of this part 32.

24-32-3206. Reporting. All eligible participants receiving funds under this part 32 shall submit to the executive director by January 1 of each year following the year in which a grant was made a report containing a statement of all moneys received under this part 32, the purposes for which the moneys were used, the participant's compliance with this article, and such other information that the executive director may require. An eligible participant may submit the information required to be submitted to the executive director pursuant to this section as part of the reporting of any other information required to be submitted to the department under any other applicable law by the date specified in this section.

24-32-3207. Colorado heritage communities fund - creation - source of funds. (1) There is hereby created in the state treasury the Colorado heritage communities fund, which fund shall be administered by the director and which shall consist of all moneys appropriated to said fund by the general assembly and all other moneys collected by the office for the fund from federal grants or other contributions, grants, gifts, bequests, or donations received from other agencies of state government, individuals, private organizations, or foundations. Such moneys shall be transmitted to the state treasurer to be credited to the fund.

(2) Not more than an amount equal to thirty percent of any moneys in the fund as of the beginning of any given fiscal year shall be made available before the end of that same fiscal year to local governments in grant moneys for the development of master plans pursuant to section 24-32-3203 (3) (d).

(3) Any moneys in the fund not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

(4) All moneys, including interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year.

(5) Repealed.

24-32-3208. Additional sources of funding. (1) Notwithstanding any other provision of this part 32, grants to be made to eligible participants in accordance with this part 32 may be made from any combination of moneys in the Colorado heritage communities fund created in section 24-32-3207 and any other moneys collected by the executive director for such purposes consistent with the intent of this part 32.

(2) Any eligible participant may pursue additional sources of funding for purposes consistent with the intent of this part 32, including, without limitation, grants, donations, or contributions from any other public or private sources.

24-32-3209. Comprehensive planning disputes - development plan disputes - mediation - list of qualified professionals to assist in mediating land use disputes - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Comprehensive plan" means the master plan of a local government adopted pursuant to section 30-28-106 or 31-23-206, C.R.S., or an amendment to such plan.

(b) "Comprehensive planning dispute" means a dispute between two or more local governments regarding a comprehensive plan.

(c) "County" means a home rule or statutory county.

(c.5) "Development plan" means a mutually binding and enforceable development plan established pursuant to section 29-20-105 (2), C.R.S., by intergovernmental agreement between the county or counties in which land to be annexed is located and a municipality or between any two or more municipalities located within such county or counties.

(d) "Landowner" means any owner of record of state, municipal, or private land and includes an owner of any easement, right-of-way, or estate in the land.

(e) "Local government" means a municipality or a county.

(f) "Mediation" means an intervention in comprehensive planning dispute negotiations by a trained neutral third party with the purpose of assisting the local governments in reaching their own solution to the dispute.

(g) "Municipality" means a home rule or statutory city, town, territorial charter city, or city and county.

(h) "Neighboring jurisdiction" means the following:

(I) For a county, any adjacent county and any municipality that is wholly or partially located within the boundaries of the county or within three miles of any boundary of the county; and

(II) For a municipality, each county within which the municipality is wholly or partially located and any county or municipality that is located within three miles of any

boundary of the municipality.

(2) (a) Each local government shall provide to each neighboring jurisdiction written notice of the public hearings at which the comprehensive plan of the local government is to be considered and a copy of the proposed comprehensive plan. Such neighboring jurisdiction may review the comprehensive plan and submit comments to the local government prior to the first hearing on such plan by the local government.

(b) A neighboring jurisdiction may file a written objection to a comprehensive plan with a local government at any time up to and including thirty days after the adoption of such plan. Such objection may include a request for the local government to participate in a mediation of the comprehensive planning dispute with the neighboring jurisdiction coordinated by the department through the office using a mediator from the list maintained pursuant to subsection (6) of this section. Such local government shall participate in the mediation upon the request of the neighboring jurisdiction.

(c) If a neighboring jurisdiction has more than one objection to a comprehensive plan, all such objections shall be considered together in the mediation conducted pursuant to this subsection (2). A neighboring jurisdiction requesting such dispute resolution or mediation process shall pay for the costs of the mediator's services.

(2.3) (a) The parties to an intergovernmental agreement establishing a development plan shall provide notice and a copy of the agreement, together with a map demonstrating the territory covered by the agreement, to each neighboring jurisdiction.

(b) Each municipality that has received a petition for annexation filed pursuant to section 31-12-107, C.R.S., which annexation covers territory included within the boundaries encompassed within a development plan to which the municipality is not a party, and that has received notice and a copy of the plan in accordance with the requirements of paragraph (a) of this subsection (2.3) shall provide to the parties to the development plan written notice of the petition for annexation, as well as a copy of the petition, prior to the referral of the petition by the municipal clerk to the governing body of the municipality pursuant to section 31-12-107 (1) (f), C.R.S. Where any portion of the area to be annexed under the petition is located within the boundaries of a development plan, each neighboring jurisdiction that is a party to such plan may file with the governing body of the annexing municipality a written objection to the petition no later than thirty days after receipt of the petition in accordance with the requirements of this paragraph (b). In the written objection filed, the neighboring jurisdiction may additionally request that the annexing municipality participate in a mediation of the dispute arising out of the petition with the assistance of a qualified professional from the list of such professionals maintained by the department pursuant to subsection (6) of this section. Upon the request of any neighboring jurisdiction that is a party to the development plan, the annexing municipality shall participate in the mediation required by this paragraph (b).

(c) No petition for annexation shall be referred by a municipal clerk to the governing body of the municipality for any action pursuant to section 31-12-107 (1) (f),

C.R.S., until:

(I) The mediation required by paragraph (b) of this subsection (2.3) is completed; or

(II) Not less than ninety days have passed from the date on which the municipality in receipt of the petition for annexation was notified of a request to mediate by a neighboring jurisdiction pursuant to paragraph (b) of this subsection (2.3).

(d) Notwithstanding any other provision of law, the costs of obtaining the assistance of a qualified professional in accordance with the requirements of paragraph (b) of this subsection (2.3) shall be assumed by the neighboring jurisdiction requesting the mediation. Where more than one neighboring jurisdiction requests the mediation, the costs of obtaining the assistance of a qualified professional shall be allocated pro rata between or among all such jurisdictions.

(3) In the alternative to a mediation conducted pursuant to this section, the parties to the dispute may use an existing intergovernmental agreement or a new agreement to resolve the disputes in whatever manner the local governments determine.

(4) In conducting a mediation pursuant to this section, the mediator shall consider information provided by any landowner in the land area that is subject to the dispute and may consider such other information as is presented by other interested persons.

(5) Any agreement or understanding reached between two or more local governments in the course of conducting a mediation in accordance with subsection (2) of this section shall not be binding in the event that such governments are ultimately unsuccessful in resolving their comprehensive planning or development plan dispute.

(6) To fulfill its role in coordinating a mediated solution to disputes between and among local governments, the department shall maintain a list of qualified professionals that are available to assist in resolving land use disputes arising between local governments. Such list shall include only those persons and organizations the department determines have professional expertise and skills in land use, planning, zoning, subdivision, annexation, real estate, public administration, mediation, arbitration, or related disciplines. Such list shall be made available to governmental entities and the public through the office created by this part 32 for the purpose of facilitating the resolution of disputes between or among local governments arising out of land use matters.

PART 33

REGULATION OF FACTORY-BUILT STRUCTURES, MULTI-FAMILY STRUCTURES WHERE NO STANDARDS EXIST, MANUFACTURED HOME INSTALLATIONS, AND SELLERS OF MANUFACTURED HOMES

24-32-3301. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The comprehensive regulation of the manufacture of factory-built structures to ensure safety is a matter of statewide concern.

(b) The comprehensive regulation of the installation of manufactured homes to ensure safety, affordability, and performance is a matter of statewide and local concern.

(c) The protection of Colorado consumers who purchase manufactured homes from fraud and other unfair business practices is a matter of statewide concern and consumers can best be protected by:

(I) Requiring registration of persons engaged in the business of selling manufactured homes;

(II) Imposing uniform escrow and bonding requirements upon persons engaged in the business of selling manufactured homes; and

(III) Requiring persons engaged in the business of selling manufactured homes to include specified disclosures and provisions in any contract for the sale of a manufactured home.

(d) The imposition of registration requirements upon sellers of manufactured homes by both the state and political subdivisions of the state would impose an undue burden upon sellers of manufactured homes and discourage the sale of manufactured homes.

(e) The uniform registration, escrow and bonding, and contract requirements imposed on sellers of manufactured homes by this part 33 are exclusive and no political subdivision of the state shall impose any additional registration, escrow and bonding, or contract requirements on the sellers.

(2) The general assembly further declares that in enacting this part 33, it is the intent of the general assembly that the division establish through the board rules as it deems necessary to ensure:

(a) The safety of factory-built structures;

(b) Consumer safety in the purchase of manufactured homes;

(c) The registration of manufactured home installers and the creation of uniform standards for the installation of manufactured homes on a statewide basis; and

(d) The safety of hotels, motels, and multi-family structures in areas of the state where no construction standards for hotels, motels, and multi-family structures exist.

(3) The general assembly further declares that the factory-built structure programs administered and rules adopted pursuant to this part 33 shall apply only to work performed in a factory or completed at a site using components shipped with the factory-built structure as reflected in the approved plans for the factory-built structure.

24-32-3302. Definitions. As used in this part 33, unless the context otherwise

requires:

(1) "Authorized quality assurance representative" means any quality assurance representative approved by the division pursuant to section 24-32-3303 (1) (c).

(2) "Board" means the state housing board created in section 24-32-706.

(3) "Certificate of installation" means a certificate issued by the division for an installation of a manufactured home that meets the requirements of this part 33.

(4) "Certified installer" means an installer of manufactured homes who is registered with the division and who has installed at least five manufactured homes in compliance with the manufacturer's instructions or standards created by the division pursuant to this part 33.

(5) "Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(6) "Defect" means any deviation in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

(7) "Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

(8) "Division" means the division of housing created in section 24-32-704.

(9) "Factory-built nonresidential structure" means any structure or component thereof designed primarily for commercial, industrial, or other nonresidential use, either permanent or temporary, including a manufactured unit that is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a permanent or temporary foundation at the building site.

(10) "Factory-built residential structure" means a manufactured home constructed to the building codes adopted by the board and designed to be installed on a permanent foundation, except for homes constructed to a federal manufactured home construction and safety standard and any home designated as a mobile home.

(11) "Factory-built structure" means factory-built nonresidential and factory-built residential buildings.

(12) "Federal act" means the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq.

(13) "Federal manufactured home construction and safety standard" means any standard promulgated by the secretary of the United States department of housing and urban development pursuant to the federal act.

(14) "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

(15) "Independent contractor" means a local jurisdiction, individual, private firm, housing inspector, or engineer who has been approved by the division to perform or enforce installation inspections.

(16) "Installation" means the placement of a manufactured home on a permanent or temporary foundation system. "Installation" includes without limitation supporting, blocking, leveling, securing, or anchoring the home and connecting multiple or expandable sections of the home.

(17) "Installer" means any person who performs the installation of a manufactured home.

(18) "Local government" means the government of a town, city, county, or city and county.

(19) "Manufacture" means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semi-finished materials.

(20) "Manufactured home" means any preconstructed building unit or combination of preconstructed building units that:

(a) Include electrical, mechanical, or plumbing services that are fabricated, formed, or assembled at a location other than the site of the completed home;

(b) Is designed for residential occupancy in either temporary or permanent locations;

(c) Is constructed in compliance with the federal act, factory-built residential requirements, or mobile home standards;

(d) Does not have motor power; and

(e) Is not licensed as a recreational vehicle.

(21) "Manufactured home construction" means all activities relating to the assembly, manufacture, major repair, or alteration of a manufactured home, including but not limited to activities relating to durability, quality, and safety.

(22) "Manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of occurrence of accidents due to the design or construction of the manufactured home or any unreasonable risk of death or injury to the user or to the public if accidents do occur.

(23) "Manufacturer" means any person who constructs or assembles a manufactured residential or nonresidential structure in a factory or other off-site location.

(24) "Mobile home" means a manufactured home built prior to the adoption of the federal act.

(25) "Modular home" means a factory-built residential structure.

(26) "Owner" means the owner of a manufactured home.

(27) "Principal" means an officer of a corporation, a member of a limited liability company, a general partner of a partnership, the sole proprietor of a sole proprietorship, or any other person who has a financial interest of ten percent or more in any legal or commercial entity.

(28) "Production review" means an evaluation of a manufacturer and a facility's ability to follow approved plans, standards, codes, and quality control procedures during manufacture.

(29) "Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

(30) "Quality assurance representative" means any state, firm, corporation, or other entity that proposes to conduct production reviews, evaluate a manufacturer's quality control procedures, and perform design evaluations for manufactured housing units.

(31) "Registered installer" means an installer who has registered with the division, but who has not yet installed five manufactured homes that have been inspected by the division for compliance with the manufacturer's instructions or standards created by the division pursuant to this part 33.

(32) "Secretary" means the secretary of the United States department of housing and urban development.

(33) "Site" means the entire tract, subdivision, or parcel of land on which manufactured homes are installed.

24-32-3303. Division of housing - powers and duties - rules. (1) The division shall have the following powers and duties pursuant to this part 33:

(a) To administer and enforce uniform construction and maintenance standards adopted by the board pursuant to this part 33;

(b) To conduct continuing research into new approaches to housing throughout the state, including but not limited to the following:

(I) The development of housing standards and construction codes based on performance; and

(II) Modular housing;

(c) To review and approve quality assurance representatives that intend to perform inspections and issue insignia of approval pursuant to this part 33; and

(d) To promulgate rules in accordance with article 4 of this title to implement and specify the installer and inspector education and testing requirements set forth in this part 33 and to oversee such education and testing.

24-32-3304. State housing board - powers and duties. (1) The board shall have the following powers and duties pursuant to this part 33:

(a) To promulgate uniform construction and maintenance standards for hotels, motels, and multiple-family dwellings in those areas of the state where no standards exist;

(b) To promulgate uniform construction standards for factory-built residential and nonresidential structures;

(c) To develop and submit to the general assembly and local government units recommendations for uniform housing standards and building codes;

(d) To promulgate rules establishing standards for the installation and setup of manufactured housing units; and

(e) To promulgate rules establishing specific standards for the use of private inspection and certification entities to perform the division's certification and inspection functions with respect to in-state and out-of-state inspections of manufactured housing units. The standards shall allow, consistent with section 13 of article XII of the state constitution, the provisions of part 5 of article 50 of this title, and the rules of the state personnel board, for the use of private inspection and certification entities when the entities are available at a reasonable cost. The standards shall not prohibit a manufacturer from having the option to contract with the division or an authorized quality assurance representative to perform inspection and certification functions.

24-32-3305. Rules - advisory committee - enforcement. (1) The board shall promulgate rules as it deems necessary to ensure:

(a) The safety of factory-built structures;

(b) The safety of consumers purchasing manufactured homes;

(c) The safety of manufactured home installations; and

(d) The safety of hotels, motels, and multi-family structures in areas of the state where no construction standards for hotels, motels, and multi-family structures exist.

(2) Rules promulgated by the board shall include provisions imposing requirements reasonably consistent with recognized and accepted standards adopted by the international conference of building officials, the international code council, the international association of plumbing and mechanical officials, the national fire protection association, the Colorado state plumbing and electrical codes, and the structural engineers association of Colorado, or a combination thereof, except to the extent that the board finds that the standards and codes are inconsistent with this part 33. All rules promulgated by the board shall be adopted pursuant to article 4 of this title.

(3) The board shall consult with and obtain the advice of an advisory committee on residential and nonresidential structures in the drafting and promulgation of rules. The committee shall consist of twelve members appointed by the state director of housing from the following professional and technical disciplines: One from architecture, one from structural engineering, three from building code enforcement, one from mechanical engineering or contracting, one from electrical engineering or contracting, one from the plumbing industry, one from the mobile home industry, one from the construction design or producer industry, one from manufactured housing, and one from organized labor. Committee members shall be reimbursed for actual and necessary expenses incurred while engaged in official duties.

(4) The division shall enforce the provisions of this part 33 and the rules adopted pursuant thereto.

(5) The division may act as agent for the federal government for the enforcement of mobile home safety and construction standards relating to any issue with respect to which a federal standard has been established under the federal act.

24-32-3306. Recognition of similar standards - compliance with standards. (1) If the board determines that standards for factory-built housing prescribed by statute or rule of another state or by the United States department of housing and urban development are reasonably consistent with, or equal to, standards required by this part 33, it may provide by rule that factory-built housing approved by the other state or by the department meets the standards required by this part 33.

(2) No person, partnership, firm, corporation, or other entity may manufacture, sell, or offer for sale within this state any new factory-built structure that is not manufactured in compliance with the applicable provisions of the construction standards adopted by the board.

24-32-3307. Noncompliance with standards. (1) The state director of housing may obtain injunctive relief from the appropriate court to enjoin the manufacture, substantial repair or alteration, sale, delivery, or installation of factory-built housing by filing an affidavit specifying the manner in which the housing does not conform to the requirements of this part 33 or to rules promulgated pursuant to section 24-32-3305. The director or the director's designee may suspend the issuance of insignias of approval while injunctive relief is being sought.

(2) If the division, acting as agent for the federal government, determines that any manufactured home does not conform to applicable state or federal manufactured home construction and safety standards or that it contains a defect that constitutes an imminent safety hazard after the sale of the manufactured home by a manufacturer to a distributor or dealer and prior to the sale of the manufactured home by the distributor or dealer to a purchaser, the manufacturer shall provide for parts replacement and installation reimbursement as required under the federal act or rules adopted pursuant thereto.

24-32-3308. Violation - penalty. (1) A person who violates any of the provisions of this part 33 or any rule promulgated pursuant to section 24-32-3305 shall be subject to a civil penalty of up to one thousand dollars as determined by the board. A separate violation shall be deemed to have occurred with respect to each housing unit involved. A civil penalty collected pursuant to this section shall be transmitted to the state treasurer who shall credit the same to the building regulation fund created in section 24-32-3309.

(2) In the case of any unit certified under the federal act, civil and criminal

penalties provided for in the federal act shall be imposed. Any civil penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the building regulation fund.

24-32-3309. Fees - building regulation fund. (1) (a) The board, by rule, shall establish a schedule of fees designed to pay all direct and indirect costs incurred by the division in carrying out and enforcing the provisions of this part 33; except that the amount of the registration fee for installers of manufactured homes is the amount specified in section 24-32-3315 (5) and the amount of the registration fee for sellers of manufactured homes is the amount specified in section 24-32-3323 (3). Before establishing the schedule of fees, the board shall gather information regarding the fees charged by Colorado local governments for the inspection and certification of improvements to residential real property that are not manufactured homes and the fees charged by governmental entities outside of Colorado for the inspection and certification of manufactured homes. The fees shall be paid to the division and transmitted to the state treasurer, who shall credit the fees to the building regulation fund, which fund is hereby created in the state treasury and referred to in this section as the "fund". All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Except as otherwise provided in subsection (2) of this section, at the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund or used for any other purpose other than to offset the costs of implementing and administering and enforcing the provisions of this part 33.

(b) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct one million one hundred one thousand three hundred forty-nine dollars from the fund and transfer such sum to the general fund.

(2) In addition to being used to offset the costs of implementing and administering the provisions of this part 33 as specified in subsection (1) of this section, moneys in the fund may be expended:

(a) To provide education and training to manufacturers, dealers, installers, building department employees, elected officials, and, as appropriate, other persons affected by the mobile, manufactured, and factory-built structures industry regarding the building codes and state program requirements applicable to mobile, manufactured, and factory-built structures within the state;

(b) To provide consumer training throughout the state that will help a consumer to make informed decisions when purchasing or considering the purchase of a mobile home, manufactured home, or factory-built structure; and

(c) To provide education and grants that will help manufacturers, dealers, installers, owners, and, as appropriate, other parties affected by the mobile, manufactured,

and factory-built structures industry address safety issues that affect mobile, manufactured, and factory-built structures.

24-32-3310. Local enforcement. Nothing in this part 33 shall interfere with the right of local governments to enforce local rules governing the installation of factory-built housing approved pursuant to this part 33 if the local rules are not inconsistent with state rules adopted pursuant to section 24-32-3305.

24-32-3311. Certification of factory-built residential and nonresidential structures. (1) (a) Factory-built structures manufactured, substantially altered or repaired, sold, or offered for sale within this state after the effective date of the rules promulgated pursuant to this part 33 shall bear an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative.

(b) Rented or leased factory-built structures that are occupied on or after March 1, 2009, shall bear an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative.

(2) Factory-built residential structures manufactured prior to March 31, 1971, shall be subject to any existing state or local government rules relating to the manufacture of the structures.

(3) Factory-built nonresidential structures manufactured prior to June 31, 1991, shall be subject to any existing state or local government rules relating to the manufacture of the structures.

(4) A factory-built structure bearing an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative pursuant to this part 33 shall be deemed to be designed and constructed in compliance with the requirements of all ordinances or rules, including those for electrical and plumbing, enacted or adopted by the state or by any local government that are applicable to the manufacture of factory-built structures to the extent that the design and construction relates to work performed in a factory or work that is completed at a site using components shipped with the factory-built structure as reflected in the approved plans for the factory-built structure. The determination by the board of the scope of such approval is final.

(5) No factory-built structures bearing an insignia of approval issued by the division and affixed by the division or an authorized quality assurance representative pursuant to this part 33 shall be in any way modified contrary to the rules promulgated pursuant to section 24-32-3305 prior to or during installation unless approval is first obtained from the division.

(6) All work at a site that is unrelated to the installation of a factory-built structure

or components shipped with the factory-built structure, including additions, modifications, and repairs to a factory-built structure, shall be subject to applicable local government rules.

24-32-3312. Notification and correction of defects. A manufacturer to be certified as meeting federal standards shall furnish notification of any defect in a manufactured home produced by the manufacturer that the manufacturer determines, in good faith, relates to a manufactured home construction or safety standard or constitutes an imminent safety hazard to the purchaser of the manufactured home within a reasonable time after the manufacturer has discovered the defect in accordance with the provisions under the federal act or any board rule.

24-32-3313. Injunctive relief. The state director of housing may request the appropriate court to enjoin the sale or delivery of any factory-built structure upon an affidavit, specifying the manner in which the factory-built structure does not conform to the requirements of this part 33 or the rules promulgated pursuant to this part 33. The director may suspend the authority of a manufacturer to affix insignias while injunctive relief is being sought.

24-32-3314. Cooperation with department of revenue. The division shall cooperate with the department of revenue in any manner feasible to ensure that the provisions of this part 33 are carried out.

24-32-3315. Installers of manufactured homes - registration - educational requirements. (1) (a) Any installer in this state shall first register with the division. A registered installer shall be responsible for supervising all employees and for the proper and competent performance of all employees working under his or her supervision.

(b) Persons who shall not be required to register as an installer with the division include:

(I) A person employed by a registered or certified installer, as well as a person employed by a legal or commercial entity employing a registered or certified installer when performing installation functions under the direct on-site supervision of the registered or certified installer; and

(II) A person who installs one manufactured home in a twelve-month period on real property owned by the person.

(c) A homeowner who installs the owner's own manufactured home is not

required to register as an installer with the division but shall comply with all provisions of this part 33 other than registration provisions.

(2) Each registered installer shall file with the division a letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of ten thousand dollars for the performance of an installation pursuant to the manufacturer's instructions or standards promulgated by the division. The letter of credit, certificate of deposit, or surety bond shall be filed with the division at the same time the initial application for registration is filed.

(3) An application for registration or certification as a manufactured home installer, whether initial or renewal, shall be submitted on a form provided by the division and shall be notarized and verified by a declaration signed under penalty of perjury by the applicant. The application shall contain, in addition to any other information the division may reasonably require, the name, address, and telephone number of the applicant. The division shall make the application and declaration available for public inspection.

(4) On and after July 1, 2008, in order to be registered initially as a manufactured home installer, an applicant shall:

(a) Be at least eighteen years of age;

(b) Furnish written evidence of twelve months of installation experience under direct supervision of a registered or certified installer or equivalent training or experience as determined by the division;

(b.5) Furnish written evidence of completion of eight hours of division-approved installation education;

(b.7) Pass a division-approved installation test; and

(c) Carry and provide proof of liability insurance in an amount set by the division but not less than one million dollars.

(5) A registration issued pursuant to this section shall be valid for one year from the date of issuance and shall not be transferred or assigned to another person. The amount of the registration fee shall be no more than two hundred fifty dollars. If any of the application information for the registered installer changes after the issuance of a registration, the registered installer shall notify the division in writing within thirty days from the date of the change. The division may suspend, revoke, or deny renewal of a registration if the registered installer fails to notify the division of any change in the application.

(6) Any registered installer seeking to renew registration shall, at the time of applying for renewal, provide proof of liability insurance, proof of completion of eight hours of division-approved installation education within the past twelve months, and a letter of credit, certificate of deposit, or surety bond for the registration term in compliance with subsections (2) and (4) of this section.

(7) (a) Any registered installer who has performed five installations that have passed inspection by the division may apply to the division for certification. The division

shall issue certification to qualified registered installers. The division shall not charge a fee for certification of installers.

(b) Installations performed by certified installers shall only be inspected by the division or an independent contractor upon the written request of the owner, installer, manufacturer, or retailer. The owner, installer, manufacturer, or retailer shall have the right to be present at any inspection.

24-32-3316. Compliance with manufacturer's installation instructions. Any installation of a manufactured home in this state shall be performed in strict accordance with the applicable manufacturer's installation instructions. Where the manufacturer's instructions are not applicable, installation shall be in accordance with standards promulgated by the division. A copy of the manufacturer's instructions or the standards promulgated by the division shall be available at the time of installation and inspection.

24-32-3317. Installation of manufactured homes - certificates - inspections - inspector qualification and education requirements - rules. (1) Before beginning the installation of a manufactured home, the owner or registered installer of a manufactured home shall make an application for an installer's certificate from the division.

(2) The division may certify any installer who provides evidence of five or more installations of manufactured homes performed by the installer for which certificates have previously been issued pursuant to this section when, in the judgment of the division, the installer has demonstrated the ability to successfully complete installations of manufactured homes in accordance with the requirements of this part 33. An installer certified by the division may, at the time of obtaining an installation certificate required by subsection (1) of this section, obtain a standard form of certificate of installation to be completed by the certified installer upon completion of the installation of the manufactured home in accordance with the requirements of this part 33. The certified installer shall, upon attachment of the certificate of installation to the manufactured home, transmit a report of the certificate to the division. The division or independent contractor at the request of the division may, at the division's sole discretion, inspect the installation of any manufactured home performed by a certified installer pursuant to this subsection (2) and may require the certified installer to correct, within a period established by rule promulgated by the board, any defects or deficiencies in the installation. The division may revoke the certification of any installer certified pursuant to this subsection (2) when, in the judgment of the division, the installer has performed installations of a manufactured home in violation of the requirements of this part 33. Any installer whose certification has been so revoked may apply for recertification in accordance with rules promulgated by the division.

(3) (a) The division may suspend or revoke the registration of a registered installer if the installer fails to:

(I) Comply with the registration requirements of section 24-32-3315; or

(II) Otherwise pay to the owner or occupant of a manufactured home:

(A) The cost of an inspection that fails to meet the requirements of the manufacturer's instructions or the standards promulgated by the division;

(B) The cost of any subsequent repairs that are necessary to bring the installation into compliance with the manufacturer's instructions or the standards promulgated by the division; or

(C) The cost of subsequent required inspections.

(b) The division may execute a performance bond on behalf of an owner.

(4) An owner and a registered installer shall display an installer's certificate at the site of a manufactured home to be installed until a certificate of installation is issued by the division.

(5) (a) The division shall adopt rules that specify a standard form to be used statewide by the division or an independent contractor as a certificate of installation certifying that a manufactured home was installed in compliance with the provisions of this part 33. However, the certificate of installation applies only to installation of a manufactured home built in a factory and components shipped with the manufactured home as reflected in the approved plans for the manufactured home. The certificate of installation shall include but not be limited to the following:

(I) The name, address, and telephone number of the division;

(II) The date the installation was completed; and

(III) The name, address, telephone number, and registration number of the registered installer who performed the installation.

(b) If a vacant manufactured home fails an installation inspection because of conditions that endanger the health or safety of the occupant, the manufactured home shall not be occupied. If a manufactured home fails an installation inspection because of conditions that do not endanger the health or safety of the occupant, the manufactured home may be occupied pending the correction of those defects or deficiencies that served as the basis of the failed inspection.

(6) In addition to inspections performed pursuant to subsection (2) of this section, the division or the independent contractor that performs inspections and enforcement of proper installation of manufactured homes may inspect the installation of a manufactured home upon request filed by the owner, installer, manufacturer, or retailer of the manufactured home. The inspection shall be paid for by the party that requested the inspection.

(7) If the installation of a manufactured home by an installer has failed the inspection conducted by the division or the independent contractor and it is determined by the division or the independent contractor that the installer has violated any of the

installation standards promulgated by the division, the installer shall reimburse the party requesting the inspection for the cost of the failed inspection and shall pay for any subsequent repairs necessary to bring the installation into compliance with the manufacturer's instructions or standards promulgated by the division. The installer shall also pay for any subsequent inspections required by the division or the independent contractor. Failure of the installer to pay for any inspections or subsequent repairs deemed necessary by the division or the independent contractor shall result in the forfeiture of the installer's performance bond on behalf of the owner of the manufactured home.

(8) The division may authorize an independent contractor to perform inspections and enforcement of proper installation of manufactured homes. The division may provide training for independent contractors. Independent contractors shall be certified by the division to perform installation inspections. The division shall establish by rule the qualifications of an inspector and the areas of expertise necessary for inspecting manufactured homes. On and after July 1, 2008, a new inspector must pass a division-approved installation test. The qualifications for an inspector include but are not limited to those of a professional civil engineer or local housing inspector or independent contractor. Commencing in 2009, inspectors shall also complete, and maintain records of the completion of, either:

(a) Twelve hours of division-approved education and twelve hours of international code council education every three calendar years; or

(b) Twenty-four hours of division-approved education every three calendar years.

(9) If an installation or subsequent repair of an installation by an installer fails to meet the standards promulgated by the division within a period determined by the division, the division shall investigate the actions of the installer. The division may revoke, suspend, or refuse to renew the registration or certification of the installer for failing to comply with the division's standards regarding installation of a manufactured home. Any independent contractor that knows of an installer whose installations fail inspection and have not been cured by subsequent repair shall request that the division investigate the installer.

(10) The division shall adopt rules concerning:

(a) A standard installer inspection form to be used statewide by the division or an independent contractor that performs manufactured home installation inspection and enforcement activities;

(b) Certification requirements for independent contractors to use to inspect installations;

(c) Proper installation inspection and enforcement standards;

(d) A standard certificate of installation to be used statewide by the division; and

(e) Any other rule necessary for the implementation of manufactured home installation requirements in this part 33.

24-32-3318. Local installation standards preempted. A local government unit may not adopt less stringent standards for the installation of a manufactured home than those promulgated by the division. A local government unit may not, without express consent by the division, adopt different standards than the standards for the installation of a manufactured home promulgated by the division. Nothing in this section shall preclude a local government unit from enacting standards for manufactured homes concerning unique public safety requirements, such as weight restrictions for snow loads or wind shear factors, as otherwise permitted by law.

24-32-3319. Prohibited acts. It shall be unlawful for any person to perform an installation without regard to whether the person receives compensation, except as provided in this part 33. Any intentional violation of the installation provisions of this part 33 constitutes a deceptive trade practice subject to the provisions of article 1 of title 6, C.R.S. However, damages shall be limited in accordance with the provisions of section 6-1-113 (2.7), C.R.S.

24-32-3320. Penalty for violation. Any person found to have performed an installation in a manner contrary to the requirements of this part 33 shall be subject to revocation or suspension of an installer's registration, fines, or any other measures as prescribed by rule promulgated by the division or other applicable Colorado law. Multiple violations of this part 33 committed during a single installation shall constitute one violation. Each installation performed in violation of this part 33 shall constitute a separate violation. Fines shall be paid to the division and transmitted to the state treasurer who shall credit the fees to the building regulation fund created in section 24-32-3309.

24-32-3321. Investigations of consumer complaints. The division may investigate complaints filed by owners, occupants, or other consumers relating to the installation of manufactured homes as necessary to enforce and administer this part 33.

24-32-3322. Training of inspectors - acceptance of gifts, grants, and donations. (1) On and after July 1, 2000, the division shall train independent contractors to perform installation inspections for manufactured homes. The training shall enable independent contractors who successfully complete the training to become certified by the division.

(2) On and after July 1, 2000, the division may accept gifts, grants, or donations for the training of independent contractors. The gifts, grants, or donations received shall

be transmitted to the state treasurer who shall credit the moneys to the building regulation fund created in section 24-32-3309.

24-32-3323. Sellers of manufactured homes - registration. (1) Any person whose business involves the sale of manufactured homes shall be required to register with the division before engaging in the business of selling manufactured homes in Colorado. Any person who wishes to engage in the business of selling manufactured homes in Colorado through advertising or sales activities but who does not operate a retail location in Colorado shall obtain a single registration. Any person who wishes to engage in the business of selling manufactured homes from one or more retail locations in Colorado shall obtain a separate registration for each location. The registration requirements of this section shall not apply to any individual who, for a salary, commission, or compensation of any kind, is employed directly or indirectly by any registered manufactured home seller to sell or negotiate for the sale of manufactured homes.

(2) An application for a registration or renewal required by this section shall be submitted on a form provided by the division and shall be verified by a declaration signed, under penalty of perjury, by a principal of the manufactured home seller. The application shall contain, in addition to such other information regarding the conduct of the manufactured home seller's business as the division may reasonably require, the name, address, and position of each principal of the manufactured home seller and each person who exercises management responsibilities as part of the manufactured home seller's business activities. The application shall also contain the address and telephone number of each retail location operated by the applicant as well as the location and account number of the separate fiduciary account required by section 24-32-3324 (1). The declaration shall specify the date and location of the signing, and the division shall preserve the application and declaration and make them available for public inspection.

(3) A registration issued pursuant to subsection (2) of this section shall be valid for one year after the date of issuance. The amount of the registration fee shall be no more than two hundred dollars. If, after issuance of a registration, any of the required information submitted with the application for the registration pursuant to subsection (2) of this section becomes inaccurate, a principal of the manufactured home seller shall notify the division in writing of the inaccuracy within thirty days and provide the division with accurate updated information.

(4) For purposes of this section, a person is not engaged in the business of selling manufactured homes if the person:

(a) Is a natural person acting personally in selling a manufactured home owned or leased by the person;

(b) Sells a manufactured home in the course of engaging in activities that are subject to the provisions of article 61 of title 12, C.R.S., or activities that would be subject

to the provisions but for a specific exemption set forth in article 61 of title 12, C.R.S.;

(c) Sells a manufactured home for salvage or nonresidential use; or

(d) Directly or indirectly sells, in any calendar year, three or fewer previously occupied manufactured homes that are owned by a manufactured home park owner and are located within one or more manufactured home parks in Colorado.

24-32-3324. Escrow and bonding requirements. (1) Any person required to register with the division pursuant to section 24-32-3323 shall escrow all manufactured home sale down payments in a separate fiduciary account in a bank or trust company that does business in the state of Colorado until the manufactured home is delivered to the purchaser.

(2) A person required to register with the division pursuant to section 24-32-3323 shall provide a letter of credit, certificate of deposit issued by a licensed financial institution, or surety bond issued by an authorized insurer in the amount of fifty thousand dollars and conditioned upon the person's refund of any home sale down payment in accordance with the terms of the contract pursuant to which the payment was received. A person required to register with the division pursuant to section 24-32-3323 who wishes to engage in the business of selling manufactured homes from one or more retail locations in Colorado need not provide a separate letter of credit, certificate of deposit, or surety bond for each retail location, but may meet the requirements of this section by providing a single letter of credit, certificate of deposit, or surety bond. The letter of credit, certificate of deposit, or surety bond shall be filed with the division at the same time as the initial application for registration and shall be drawn in favor of the attorney general for the use of the people of Colorado. At least once per month, the division shall send the attorney general an updated list of all persons registered and bonded pursuant to the requirements of this part 33. The letter of credit, certificate of deposit, or surety bond shall be revocable only upon the written consent of the attorney general. However, a financial institution or authorized insurer shall only be required to make payment to a person making a claim against the letter of credit, certificate of deposit, or surety bond if a court of competent jurisdiction has rendered a final judgment in favor of such person based on a finding that the registered person failed to refund a manufactured home down payment or provide a reasonable per diem living expense in violation of the contractual provisions required by section 24-32-3325 or upon a ceasing of business operations or a bankruptcy filing by the registered person. Any person who is required to register with the division pursuant to section 24-32-3323 and who fails to provide a letter of credit, certificate of deposit, or surety bond as required by this subsection (2) or who otherwise fails to pay any judgment by a court of competent jurisdiction in favor of a purchaser of a manufactured home shall be subject to the suspension or revocation of the registration by the division.

24-32-3325. Contract for sale of manufactured home - requirements. (1) A seller who is required to register with the division pursuant to section 24-32-3323 shall make the following disclosures in any contract for the sale of a manufactured home:

(a) That the buyer may have no legal right to rescind the contract absent delinquent delivery of the manufactured home or the existence of a specific right of rescission set forth in the contract;

(b) That the seller has a separate fiduciary account for the escrow of home sale down payments pending delivery of the manufactured home and a letter of credit, certificate of deposit, or surety bond filed with the division for the repayment of home sale down payments pending delivery of manufactured homes;

(c) That an aggrieved person may file a complaint for a refund of a down payment held in escrow by a seller of manufactured homes against the seller with the attorney general or with the district attorney for the district in which the sale occurs; and

(d) That an aggrieved person may bring a civil action pursuant to the provisions of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., to remedy violations of manufactured home seller requirements in this part 33.

(2) A contract for the sale of a manufactured home by a person who is required to register with the division pursuant to section 24-32-3323 shall contain the following provisions:

(a) A date certain for the delivery of the manufactured home or a listing of specified delivery preconditions that must occur before a date certain for delivery can be determined; and

(b) A statement that if delivery of the manufactured home is delayed by more than sixty days after the delivery date specified in the contract of sale or by more than sixty days after the delivery preconditions set forth in the contract of sale have been met if no date certain for delivery has been set, the seller will either refund the manufactured home sale down payment or provide a reasonable per diem living expense to the buyer for the days between the delivery date specified in the contract or the sixty-first day after the delivery preconditions set forth in the contract have been met, whichever is applicable, and the actual date of delivery, unless the delay in delivery is unavoidable or caused by the buyer.

24-32-3326. Unlawful manufactured home sale practices. (1) Any person who is required to register with the division pursuant to section 24-32-3323 engages in an unlawful manufactured home sale practice when the person:

(a) Fails to comply with the registration requirements of section 24-32-3323;

(b) Fails to comply with the escrow and bonding requirements of section 24-32-3324;

(c) Fails to include in any contract for the sale of a manufactured home any of the

disclosures or contract provisions required by section 24-32-3325; or

(d) Fails to refund a manufactured home down payment or provide a reasonable per diem living expense in violation of the contractual provisions required by section 24-32-3325 (2) (b).

24-32-3327. Inspections. (1) For the purposes of enforcement of this part 33, persons duly designated by the state director of housing, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(a) To enter at reasonable times and without advance notice any factory, warehouse, or establishment in which manufactured homes or factory-built structures are manufactured, stored, or held for sale;

(b) To inspect at reasonable times, within reasonable limits, and in a reasonable manner, any factory, warehouse, or establishment in which manufactured homes or factory-built structures are manufactured, stored, or held for sale and to inspect any books, papers, records, and documents that relate to the safety of manufactured homes or factory-built structures. Each inspection shall be commenced and completed with reasonable promptness;

(c) To enter at reasonable times and without advance notice any site on which manufactured housing is or has been installed for the first time for residential use; and

(d) To inspect at reasonable times, within reasonable limits, and in a reasonable manner any initial residential use installation and inspect any books, papers, records, and documents that relate to the proper installation of manufactured housing.

(2) In addition to any other inspection responsibilities, the division shall have the responsibility for the electrical inspections of any factory-built structures in plants that are certified by the division pursuant to this part 33.

(3) When acting as agent for the federal government, the division is authorized to conduct inspections and investigations pursuant to this section as may be necessary to promulgate or enforce federal manufactured home construction and safety standards established under the federal act or otherwise to carry out its duties under its agreement as agent. The division shall furnish the secretary any information obtained indicating noncompliance with the standards for appropriate action.

(4) The state director of housing is authorized to contract, as an agent for the federal government to:

(a) Conduct inspections, hearings, and building plan approvals;

(b) Keep records;

(c) Report inspections; and

(d) Perform all other necessary activities to fulfill federal functions under the federal act.

ARTICLE 33

Department of Natural Resources

PART 1

DEPARTMENT OF NATURAL RESOURCES

24-33-101. Department of natural resources. (1) There is hereby created the department of natural resources, the head of which is the executive director of the department of natural resources.

(2) Whenever any law of this state refers to the division of natural resources, said law shall be construed as referring to the department of natural resources, and whenever any law of this state refers to the natural resources coordinator, said law shall be construed as referring to the executive director of the department of natural resources.

24-33-102. Powers and duties of the executive director and deputy director. (1) The commissioner of mines, who shall be appointed and act pursuant to section 34-21-102, C.R.S., may be the executive director of the department.

(2) The executive director shall require of the head of each subordinate agency assigned to the department of natural resources an annual report containing such information and submitted at such time as the executive director decides.

(3) The executive director shall exercise control over publications of the department and any division thereof. He shall cause such publications as are approved for circulation in quantity outside the executive branch to be issued in accordance with the provisions of section 24-1-136.

(4) The executive director may request from the board of governors of the Colorado state university system such information and statistics concerning forests and forestry in the state and other reports at such times and on such matters as the executive director may require.

(5) The executive director has the power and duty to develop, encourage, promote, and implement programs for the prevention, abatement, and control of litter within the state of Colorado. The executive director may enter into such contracts as may be appropriate for the implementation of any such program.

(5.5) The executive director shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

(6) The executive director may appoint the deputy director of the department of natural resources, pursuant to section 13 of article XII of the state constitution. Subject to the supervision of the executive director, the deputy director shall have all of the powers, duties, and responsibilities of the executive director as provided by law and shall exercise such powers, duties, and responsibilities in the absence of the executive director and when so instructed by the executive director.

(7) No later than ninety days following confirmation by the senate of the public members of the state board of the great outdoors Colorado trust fund, the executive director shall secure a memorandum of understanding among the joint budget committee of the general assembly, the department of natural resources, and the state board of the great outdoors Colorado trust fund establishing policies and procedures which will facilitate cooperation and coordination of efforts concerning investment in and development, operation, and management of the state's parks and wildlife systems.

24-33-103. Legislative declaration. The state policy shall be to encourage, by every appropriate means, the full development of the state's natural resources to the benefit of all of the citizens of Colorado and shall include, but not be limited to, creation of a resource management plan to integrate the state's efforts to implement and encourage full utilization of each of the natural resources consistent with realistic conservation principles. The governor, through the executive director of the department of natural resources, shall develop and direct the resource management plan and shall be responsible for negotiations with the federal government in all resource and conservation matters.

24-33-104. Composition of the department. (1) The department of natural resources consists of the following commissions, divisions, boards, offices, and councils:

(a) The Colorado water conservation board;

(b) (Deleted by amendment, L. 2000, p. 556, § 4, effective July 1, 2000.)

(c) The state board of land commissioners, subject to the provisions of sections 9 and 10 of article IX of the state constitution;

(d) The division of reclamation, mining, and safety, the head of which shall be the director of the division of reclamation, mining, and safety. The director of the division shall also serve as the head of the office of active and inactive mines or the office of mined land reclamation. The director of the division shall have professional and supervisory experience in mining, reclamation, oil and gas, geology, or natural resource planning and management and shall have a college degree from an accredited college or university in mining engineering, petroleum engineering, geological engineering, geology, or related natural/physical sciences, or mineral economics. The division shall consist of the following sections:

(I) (Deleted by amendment, L. 92, p. 1919, § 3, effective July 1, 1992.)

(II) The office of active and inactive mines;

(III) and (IV) Repealed.

(V) The office of mined land reclamation.

(VI) (Deleted by amendment, L. 2005, p. 1463, § 2, effective July 1, 2005.)

(VII) Repealed.

(e) The division of water resources, the head of which shall be the state engineer. The division shall consist of the following sections:

(I) The office of the state engineer;

(II) The division engineers;

(III) The ground water commission;

(IV) The state board of examiners of water well construction and pump installation contractors.

(V) Repealed.

(f) The oil and gas conservation commission of the state of Colorado;

(g) Repealed.

(h) The division of parks and wildlife and the parks and wildlife commission;

(i) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1383, § 4, effective July 1, 2011.)

(j) (Deleted by amendment, L. 92, p. 1919, § 3, effective July 1, 1992.)

(k) The division of forestry.

(2) Repealed.

24-33-105. Executive director given power to contract with Colorado school of mines. (1) The executive director is hereby given authority to:

(a) Enter into contracts with the Colorado school of mines to develop and conduct research concerning:

(I) New and more efficient methods of mining, preparing, and utilizing coal;

(II) Markets for coal of the western United States and especially that of Colorado;

(III) Development in the scientific, technical, and economic fields related to the coal industry;

(b) Accept grants from, contract with, and otherwise cooperate with the office of coal research of the United States department of the interior.

24-33-106. Appropriation. (Repealed)

24-33-107. Acquisition of state lands by department - interests in

land. (1) Certain state lands under control and supervision of the state board of land commissioners have unique economic or environmental value for the public, but they are legally subject to being sold into private ownership. It is the purpose of this section to authorize interests in such lands other than agricultural or grazing rights therein to be transferred to and held by the department of natural resources in exchange for fair and adequate consideration being transferred to the appropriate trust fund.

(2) (a) Whenever the executive director of the department of natural resources is informed that a specific piece of land held by the state board of land commissioners has a characteristic that is alleged to have a unique economic or environmental value for the public, including land under the control of the division of parks and wildlife that has the potential to support renewable energy generation development as contemplated in section 24-33-114, and that such characteristic allegedly would be damaged or destroyed if the land passed to private ownership, the executive director may, with the written consent of either the president of the state board of land commissioners or the commissioner of agriculture, give written notification to the board that said land, other than agricultural or grazing rights, is subject to acquisition by the department of natural resources. The notification by the executive director shall identify said lands by their appropriate legal description and shall specify the characteristic of the land that is alleged to have unique economic or environmental value for the public. Not later than during the next regular session of the general assembly, the executive director shall request such authorization and appropriation as may be necessary to enable the department to acquire said land or an interest therein in accordance with this section.

(b) Within sixty days after receipt of such notification, the state board of land commissioners shall meet in public session after fifteen days' public notice and hear and receive testimony and evidence concerning the proposed acquisition. Within thirty days after the completion of the hearing, said board shall submit its written findings and recommendations concerning such acquisition to the joint budget committee and to the executive directors of the departments of agriculture and natural resources. Such recommendations may include recommendations for compensation to insure the continued use of grazing and agricultural rights as they existed at the time of the acquisition.

(c) Within thirty days following completion of such written findings and recommendations, the president of the state board of land commissioners, the executive director of the department of natural resources, and the commissioner of agriculture shall meet and review said findings and recommendations and may then modify or withdraw the notification given to said board of land commissioners pursuant to paragraph (a) of this subsection (2). To the extent of such withdrawal, all procedures initiated by such notification shall be deemed terminated.

(3) All acquisitions from the state board of land commissioners pursuant to this section shall be:

(a) By the exercise of eminent domain in the name of the state of Colorado through condemnation proceedings pursuant to article 1 of title 38, C.R.S.; or

(b) At any public sale.

(4) (a) In acquisitions under this section the department may not acquire any agricultural or grazing rights but otherwise may acquire the full fee interest or any and all rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land held by the department when properly recorded shall be deemed to run with the land to which it pertains for the benefit of the citizens of this state and may be protected and enforced by the department in the district court of the county in which the land, or any portion thereof, is located.

(b) No acquisition of any interest in any tract of land, as authorized by this section, shall preclude the state board of land commissioners from leasing said tract of any portion thereof for grazing or agricultural purposes.

24-33-108. Gifts and devises to the department. (1) The department of natural resources is authorized to receive or reject gifts and devises of money or property and, subject to the terms of any gift or devise and to the provisions of any applicable law, to hold such funds or property in trust or invest, sell, or exchange the same and use either principal or interest or the proceeds of sale or the exchanged property received for the benefit of the department and the public as specified in this section.

(2) The department of natural resources may cooperate with and assist any donor or foundation or similar organization intending to make gifts and devises of money and property for donation to or use by the department in the provision and maintenance of parks, recreational areas, or scenic or natural areas and for related uses. The acceptance of any gift or devise shall not commit the state to any expenditure of state funds.

(3) Any moneys received as gifts under this section and any moneys received from the investment of such moneys or property received under this section and any interest therefrom shall be credited to a special fund known as the Colorado natural resources foundation fund. Such fund and any gifts or devises received by the department of natural resources pursuant to this section shall not diminish any appropriations made to the department. Such funds shall not be expended in such a manner as to commit expenditures from the general fund or any cash fund which is designated for regulatory purposes within the division of water resources. The use of gifts and devises shall be subject to audit by the state auditor or the auditor's designee, the cost of which shall be borne by the department.

(4) Repealed.

24-33-109. Educational programs - youth educational programs. (1) (a) The executive director of the department and the directors of the divisions within the department shall have the authority to direct and manage an integrated natural resources and environmental educational program.

(b) Natural resource and environmental education for the purposes of this article shall include but not be limited to scientific concepts underlying natural resource and environmental management, the history of natural resource development and management in Colorado, and natural resource public policy concepts such as private property rights and the interdependence between private and public resource management, an appreciation for the economic benefits and costs associated with natural resource management decisions, and an understanding of the role which land-based industries, such as agriculture, mining, and timbering, play in preserving and managing natural resources.

(2) (a) The department shall develop and conduct an educational program for the youth in this state. The goals of the youth educational program are to foster an interest in and a sense of stewardship toward the natural resources of the state, to provide summer jobs for students interested in pursuing careers in natural resources, and to provide career and educational development opportunities for students participating in these programs.

(b) As part of the educational programs of the department mandated in paragraph (a) of this subsection (2), a youth in natural resources summer work program shall be established. To the greatest extent possible, such work program shall incorporate opportunities for seasonal work with the department including, but not limited to, parks maintenance and wildlife field work. Any such seasonal work opportunities shall be geared toward disadvantaged youth with a particular emphasis on including youth who are disadvantaged as a result of economic circumstances, race, national origin, ethnicity, or gender.

(3) Any funds received or expended for the educational programs pursuant to this section shall be in accordance with section 24-33-108. Funds from other sources including, but not limited to, federal funds and any appropriation made by the general assembly to the department may be accepted and used for the purposes of this section.

(4) Repealed.

24-33-109.5. Colorado kids outdoors grant program - created - fund created - rules - report - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Advisory council" means the Colorado kids outdoors advisory council created in subsection (4) of this section.

(b) "Eligible entity" means:

(I) A school district; a board of cooperative services created pursuant to article 5

of title 22, C.R.S.; a district charter school authorized by a school district pursuant to part 1 of article 30.5 of title 22, C.R.S.; an institute charter school authorized by the state charter school institute pursuant to part 5 of article 30.5 of title 22, C.R.S., or an approved facility school as defined in section 22-2-402 (1), C.R.S.; or

(II) A nonprofit organization or an agency of the state or a local government, which organization or agency provides outdoor activities for youth that emphasize the environment and experiential, field-based learning.

(c) "Executive director" means the executive director of the department of natural resources.

(d) "Fund" means the Colorado kids outdoors grant program fund created in subsection (6) of this section.

(e) "Grant program" means the Colorado kids outdoors grant program created in subsection (2) of this section.

(2) There is hereby created in the office of the executive director the Colorado kids outdoors grant program to fund opportunities for Colorado youth to participate in outdoor activities in the state, including but not limited to programs that emphasize the environment and experiential, field-based learning. The grant program shall be funded through public or private gifts, grants, or donations received by the department of natural resources for said purpose pursuant to subsection (6) of this section. In addition, the executive director may use moneys received by the department of natural resources for the purposes of section 24-33-109 (2) to make awards through the grant program to eligible entities that provide outdoor activities that meet the criterion specified in subparagraph (V) of paragraph (b) of subsection (3) of this section. The grant program shall not receive appropriations of general fund moneys.

(3) The executive director shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title, to implement the grant program. At a minimum, the rules shall specify:

(a) The procedures, timelines, and form for applying for a grant; and

(b) Criteria for selecting grant recipients, which criteria shall address, at a minimum:

(I) Providing outdoor activities for youth who reside in the metropolitan, urban, and rural areas of the state;

(II) Encouraging youth to participate with their parents or legal guardians in outdoor activities;

(III) Providing outdoor activities for youth from low-income families;

(IV) Whether the outdoor activity will occur in a state park, a national park or monument, county open space, or some other natural area of the state that is either developed for outdoor recreational activities or undeveloped; and

(V) Whether the outdoor activity is designed to foster an interest in and a sense of stewardship toward the natural resources of the state by providing summer jobs for youth

interested in careers in natural resources or providing other career development opportunities; except that this criterion is applicable only to grants awarded from moneys received by the department of natural resources for the purposes of section 24-33-109 (2).

(4) (a) There is hereby created the Colorado kids outdoors advisory council to assist the executive director in implementing the grant program. The advisory council shall consist of six members as follows:

(I) The following ex officio members or their designees:

(A) The executive director of the department of public health and environment;

(B) The commissioner of education;

(C) The executive director of the great outdoors Colorado program;

(D) The director of the division of parks and wildlife in the department of natural resources; and

(E) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1389, § 13, effective July 1, 2011.)

(II) Two persons with expertise in outdoor recreation and environmental education, one of whom is appointed by the executive director of the department of natural resources and one of whom is appointed by the commissioner of education.

(b) The appointed members of the advisory council shall serve voluntarily and without reimbursement for expenses. Each appointed member shall serve at the pleasure of the appointing authority and for a two-year term. If a vacancy arises in an appointed position, the appropriate appointing authority shall appoint a person who meets the criteria specified in subparagraph (II) of paragraph (a) of this subsection (4) to fill the vacancy.

(c) The advisory council shall have the following duties:

(I) To review grant applications received by the office of the executive director and make recommendations to the executive director for grant awards;

(II) To assist the executive director in establishing the criteria for awarding grants through the grant program; and

(III) To otherwise advise the executive director concerning implementation of the grant program.

(d) This subsection (4) is repealed, effective July 1, 2020. Prior to said repeal, the advisory council shall be reviewed as provided in section 2-3-1203, C.R.S.

(5) An eligible entity that seeks a grant through the grant program shall submit an application to the office of the executive director in accordance with rules promulgated by the executive director. Subject to the availability of funding, the executive director shall select grant recipients, specifying the amount to be awarded, taking into account the recommendations of the advisory council and the criteria established in rule.

(6) (a) The department of natural resources is authorized to seek, accept, and expend public or private gifts, grants, or donations for the implementation of the grant program; except that the department of natural resources may not accept a gift, grant, or

donation for the grant program that is subject to conditions that are inconsistent with this section or any other law of the state. The department of natural resources shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the Colorado kids outdoors grant program fund, which fund is hereby created. The moneys in the fund are continuously appropriated to the department of natural resources for the direct and indirect costs associated with implementing this section.

(b) Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. The department of natural resources may expend up to two percent of the moneys annually credited to the fund to offset the costs incurred in implementing the grant program. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(7) On or before February 1, 2011, and on or before February 1 each year thereafter in which the executive director awards grants pursuant to the grant program, the executive director shall submit to the agriculture, livestock, and natural resources committee of the house of representatives, or any successor committee, the agriculture and natural resources committee of the senate, or any successor committee, and the education committees of the house of representatives and the senate, or any successor committees, a report summarizing the following information for the preceding fiscal year:

(a) The amount received for implementation of the grant program and the sources of said amount;

(b) The eligible entities that received grants and the amounts awarded to each recipient; and

(c) The activities funded with the grant awards.

24-33-110. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department of natural resources or any authorized agent of such department shall require the applicant's name, address, and social security number; except that the division of parks and wildlife shall not collect applicants' social security numbers on license applications unless required by federal law or mandated as a condition of the state receiving federal funds. No license issued by the department of natural resources or any authorized agent of such department shall display the holder's social security number.

(2) The department of natural resources or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent

thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department of natural resources, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department of natural resources or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department of natural resources shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department of natural resources and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department of natural resources is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department of natural resources or any authorized agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-33-111. Conservation of native species - fund created. (1) **Legislative declaration.** The general assembly hereby recognizes the importance of conserving native species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service. The general assembly hereby declares and determines that the Colorado department of natural resources and the division of parks and wildlife are responsible for the development, implementation, or approval of appropriate programs to address the conservation of such species and for negotiating agreements with federal agencies and other states to avoid regulatory conflicts pursuant to section 24-33-103.

(2) **Species conservation trust fund - creation.** (a) (I) There is hereby created in the state treasury the species conservation trust fund, which is subject to annual authorization by the general assembly to carry out the purposes of this section. The state

treasurer shall transfer all revenues previously allocated to the operation and maintenance account and the capital account, as such accounts existed before June 8, 2012, to the fund. All income derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended moneys in the fund remain in the fund and shall not be credited or transferred to the general fund or any other fund. To the maximum extent practical, only interest from the fund shall be expended for activities pursuant to this section.

(II) Beginning with the state fiscal year commencing on July 1, 2009, the general assembly shall appropriate an amount not to exceed five hundred thousand dollars from the species conservation trust fund to the department of natural resources for the purpose of acquiring water for instream flows. Moneys appropriated for this purpose shall be used to preserve or improve the natural environment of species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species. The executive director of the department of natural resources, in preparing the species conservation eligibility list pursuant to this section, shall provide a list of the specific instream flow acquisitions that would be financed pursuant to this subparagraph (II). Such list shall include the species that would benefit from each proposed instream flow acquisition. Prior to obligating revenues from the fund, the list of specific instream flow acquisitions is subject to modification and adoption by the general assembly through passage of a bill.

(b) to (e) Repealed.

(3) **Species conservation eligibility list and annual report.** (a) The executive director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the parks and wildlife commission, and the director of the division of parks and wildlife, shall annually prepare a species conservation eligibility list describing programs and associated costs that are eligible to receive funding pursuant to this section. The species conservation eligibility list is subject to modification and adoption through passage of a bill. At the same time as the species conservation eligibility list is submitted, the director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the parks and wildlife commission, and the director of the division of parks and wildlife, shall also provide a detailed report to the general assembly on the progress and status of activities to date and their effectiveness in the recovery of the species and identify proposed future activities. The report shall include an assessment of habitat benefits, both public and private, attributable to such activities.

(b) Funding shall be distributed by the executive director of the department of natural resources among projects included in the species conservation eligibility list for the following purposes:

(I) Cooperative agreements, recovery programs, and other programs that are designed to meet obligations arising under the federal "Endangered Species Act of 1973",

16 U.S.C. 1531, et seq., and that provide regulatory certainty in accordance with subsection (4) of this section;

(II) Studies and programs established or approved by the division of parks and wildlife and the executive director of the department of natural resources regarding:

(A) Species placed on the state endangered or threatened list in accordance with section 33-2-105, C.R.S.;

(B) Candidate species in order to assist in the recovery or protection of the species to avoid listing of the species;

(C) Scientific research relating to listing or delisting any species; or

(D) If a species that is not on the federal endangered or threatened species list is proposed to be added to the state endangered or threatened species list, the evaluation of the species pursuant to this sub-subparagraph (D) shall include: Scientific evaluation of genetic data that proves the species is a separate and distinct species in the ecosystem; evaluation of the species habitat that encompasses the entire geographic area of the species habitat not just portions of such habitat; and the reliable scientific baseline data used to ascertain that the number of the species in the habitat is rapidly declining over time.

(c) In no event shall moneys from the species conservation trust fund, created in subsection (2) of this section, be used to acquire any property through the exercise of eminent domain.

(4) **Agreement requirements.** In order to be eligible for funding under subsection (3) of this section, agreements entered into by or on behalf of the state with any person, entity, organization, political subdivision, state, or the federal government relating to the conservation of native species that have been listed as threatened or endangered under federal or state law or that are candidate species or are likely to become candidate species, species at risk and species of special concern, or species the decline or extinction of which may affect the welfare of the citizens of the state, must be voluntary, shall protect private property rights, and shall assist in meeting the regulatory requirements that currently exist or that may become applicable in the future pertaining to the conservation of species. Funds allocated for the purpose of implementing such agreements through the species conservation list process shall be utilized, to the maximum extent possible, for the purchase or construction of capital assets that shall be owned by the state and that may be sold or utilized for other purposes in the event that the agreement is terminated unless the state elects not to own such assets and for the implementation of activities the division of parks and wildlife has determined may eliminate the need to list a species as threatened or endangered or, in the case of previously listed species, may hasten delisting.

(5) **Maximization of funds.** The Colorado water conservation board and the parks and wildlife commission shall maximize the species conservation trust fund by applying for available grants consistent with the purposes of the fund. Federal grants and voluntary contributions may be accepted and expended as provided in this section. Such grants and

contributions shall, upon acceptance, be placed in the species conservation trust fund created in subsection (2) of this section. Nothing in this section limits the authority of the Colorado division of parks and wildlife to manage or regulate game, nongame, or threatened or endangered species. No funding shall be accepted, approved, or used to initiate the listing of species as threatened or endangered under federal law. Nothing in this section is intended to be construed as a mechanism to substitute funding that would otherwise be available for expenditure by the division of wildlife or to replace or reduce the obligation of the division to carry out nongame programs under title 33, C.R.S.

24-33-112. Conservation easement holders - submission of information. (Repealed)

24-33-113. Landowner incentive conservation programs - definition - report. (1) The general assembly finds, determines, and declares that current federal programs exist in which Colorado landowners, in exchange for monetary compensation or other financial assistance, abide by various practices related to conservation for lands enrolled in the programs. The general assembly further declares that lands, waters, and wildlife in Colorado have derived enormous benefits as a result of such programs. However, such federal programs may be reduced or eliminated, and similar federal or state programs may exist or be created, in the near future. Therefore, the general assembly declares that a study conducted by the department of natural resources concerning such programs, including the types of lands desirable for the programs, the cost to administer the programs, and the value of the programs to public and private interests, would assist the general assembly in assessing whether and how the implementation of such programs in Colorado can be improved and, where possible, supplemented through new federal or state programs.

(2) (a) The department shall compile information regarding participation by Colorado landowners in landowner incentive conservation programs. As used in this section, "landowner incentive conservation program", also referred to in this section as a "program", means any federal or state program that provides monetary compensation to landowners who agree to set aside lands or apply land management strategies or conservation practices to lands enrolled in the program. A program may also directly or incidentally protect, enhance, or otherwise provide benefits to the environment, wildlife, or wildlife habitat. In gathering information pursuant to this paragraph (a), the department shall review any federal or state programs that currently exist or are created prior to February 1, 2010. The information gathered by the department shall include data regarding the amount and types of Colorado lands enrolled in a program, methods and costs to administer the programs, and the benefits to lands, the environment, or wildlife

realized through the programs.

(b) The department shall study the information obtained pursuant to paragraph (a) of this subsection (2) in order to assess the feasibility of administering such a program in Colorado if the federal programs are eliminated or reduced. In assembling this information, the department shall consult with any potentially affected groups or entities, including:

(I) Federal agencies that administer programs;

(II) Any potentially affected state agencies;

(III) Landowners or entities representing landowner interests;

(IV) Groups organized for the purpose of wildlife conservation; and

(V) The agriculture industry task force created pursuant to section 35-1-107 (8), C.R.S.

(c) The data compilation and study efforts required by this subsection (2) shall be funded with moneys appropriated to the department from the operation and maintenance account of the species conservation trust fund created in section 24-33-111 (2) for the fiscal year beginning July 1, 2009.

(3) On or before February 1, 2010, the department shall report to the house of representatives committee on agriculture, livestock, and natural resources and the senate committee on agriculture and natural resources, or their successor committees, regarding the feasibility of administering a landowner incentive conservation program in Colorado. If possible, such report shall be made at the same time as the report described in section 24-33-111 (3) (a).

(4) Information gathered by the department pursuant to this section that allows any Colorado landowner or land to be specifically identified shall be exempt from inspection pursuant to section 24-72-204 (3) (a) (XXI), provided, however, that summary or aggregate data that does not specifically identify individual landowners or specific parcels of land shall not be subject to such exemption.

24-33-114. Renewable resource generation development areas - inventory of resources - fund - definitions - repeal. (Repealed)

24-33-115. Reenergize Colorado program - powers and duties of executive director - repeal. (1) In addition to all other powers and duties conferred upon the executive director by law, the executive director is hereby authorized and directed to work with the Colorado energy office, the state board of land commissioners, public utilities, and other state and federal agencies as necessary to initiate the reenergize Colorado program. The purposes of the program are:

(a) To maximize the ability of the division of parks and wildlife, also referred to

in this section as the "division", to achieve energy self-sufficiency using eligible energy resources, as defined in section 40-2-124, C.R.S., with the goal of generating or offsetting one hundred percent of the division's electrical energy consumption using eligible energy resources on land owned, leased, or controlled by the division by the year 2020; and

(b) To demonstrate best practices in the efficient deployment of eligible energy resources to meet the electrical energy needs of the division in a manner consistent with its goal and mission and the outdoor experience of visitors to Colorado's public lands.

(2) Notwithstanding section 40-2-124 (1) (c) (II) (B), (1) (e) (II), or (1) (e) (III), C.R.S., or any rule or order of the public utilities commission to the contrary, for the purpose of enabling the division to achieve a net zero reliance on electricity generated from nonrenewable sources for all of its property, whether contiguous or noncontiguous, a qualifying retail utility may, on a case-by-case or project-by-project basis:

(a) Waive any existing limits on the net metering of electricity generated on contiguous property constituting the customer's site;

(b) Waive any existing limits on generating capacity or customer service entrance capacity if the customer proposes to make any necessary upgrades to its service entrance capacity at its own expense; and

(c) Have the right of first refusal to purchase, and the right not to purchase, electricity from customer-sited renewable energy generating equipment that is sized to supply more than one hundred twenty percent of the average annual consumption of electricity by the customer at that site. If the qualifying retail utility exercises its option to purchase excess generation under this paragraph (c), it may claim renewable energy credits based on such purchases.

(3) To achieve the goals set forth in this section, the executive director may use performance contracting, available cash funds, public-private partnerships with reliable third parties, loan and grant programs funded or administered by any state or federal agency, including revolving loan programs, and any available loan or bonding mechanisms established by Colorado law.

(4) Nothing in this section shall be construed:

(a) To permit any state agency to make retail sales of electric energy or to transmit or distribute electric energy between or among state agencies or properties; or

(b) To limit, expand, alter, or otherwise affect any right conferred by any other law upon a public utility subject to article 3, 3.5, or 9.5 of title 40, C.R.S., to assess fees for the use of its facilities.

(5) This section is repealed, effective July 1, 2020.

24-33-116. Colorado avalanche information center - creation - duties - fund. (1) There is hereby created in the department of natural resources the Colorado avalanche information center to promote safety by reducing the impact of avalanches on

recreation, industry, and transportation in the state through a program of avalanche forecasting and education.

(2) (a) The Colorado avalanche information center is authorized to enter into agreements to provide training and materials to the general public, industries, and units of local government and to recover the direct costs of providing the training and materials. The Colorado avalanche information center is also authorized to establish and collect fees for training programs and materials that approximate the direct costs of providing the training and materials.

(b) The Colorado avalanche information center is authorized to contract with agencies of state government for the provision of services and may establish and collect fees to recover the direct costs of those services.

(c) (I) The department of natural resources shall transmit all moneys collected pursuant to this section to the state treasurer, who shall credit the same to the Colorado avalanche information center fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the department of natural resources for the direct and indirect costs associated with the Colorado avalanche information center.

(II) The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or another fund.

PART 2

DIVISION OF FORESTRY

24-33-201. Division of forestry - creation - state forest service agreement. (1) There is hereby created the division of forestry in the department of natural resources. The executive director of the department of natural resources shall enter into an agreement with Colorado state university, through the board of governors of the Colorado state university system, to cooperate in the state's efforts to improve the management and health of Colorado's forests and to provide staff for the division of forestry.

(2) The division of forestry's powers and duties shall include:

(a) Strengthening natural resource policy formulation and coordination concerning public and private forest land in Colorado by:

(I) Producing an annual forest health report for all forest land in Colorado;

(II) Addressing cooperative management of forest land across jurisdictions;

(III) Mitigating the natural and urban interface fire hazard;

(IV) Restoring critical watersheds;

(V) Assisting in the management of forest lands under the jurisdiction of the agencies within the department of natural resources.

(b) Preparing and updating the memorandum of understanding between the department of natural resources and Colorado state university that provides for the staffing of the division of forestry by the Colorado state forest service;

(c) Preparing the annual joint work plan for the division of forestry and Colorado state forest service for submittal to and approval by the department of natural resources and Colorado state university;

(d) Repealed.

(e) Reviewing and approving all Colorado state forest service publications that are issued as a result of the memorandum of understanding between the department of natural resources and Colorado state university;

(f) Promoting cooperation with the federal land management agencies to facilitate collaboration across boundaries warranted by forest land conditions;

(g) Incorporating rural development through forestry in program delivery;

(h) Assuring that state water quality best management practices are available and understood; and

(i) Preparing an annual report on the accomplishments of the division of forestry.

(3) The division of forestry, the state forester, and the Colorado state forest service shall enforce and administer the provisions of law conferred upon the division of forestry, state forester, and Colorado state forest service.

24-33-202. Forestry advisory board - creation - repeal. (Repealed)

24-33-203. State forester - authority to permit controlled burns during drought conditions - civil. (Repealed)

24-33-204. State forester - authority to permit controlled burns during drought conditions - criminal. (Repealed)

24-33-205. Management of state forest lands. (1) The department of natural resources and its divisions that own forested land, in consultation and cooperation with the state forester, shall actively manage all forested state lands, consistent with applicable

laws and state best management practices, using the range of management options appropriate to the given forest ecosystem, to:

(a) Reestablish natural forest conditions;

(b) Reduce the threat of large, high-intensity wildfires;

(c) Sustain and promote natural habitat consistent with healthy forest conditions; and

(d) Protect and restore watersheds.

PART 3

COLORADO COORDINATION COUNCIL

24-33-301 to 24-33-304. (Repealed)

ARTICLE 33.5

Public Safety

PART 1

DEPARTMENT OF PUBLIC SAFETY

24-33.5-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) The various agencies of this state concerned with public safety have functioned independently and without central direction or focus;

(b) Consolidation of these agencies under a single department would provide the state with greater responsibility for and direction of the several aspects of the public safety system without creating a new bureaucracy; and

(c) The several state agencies thus brought together would benefit from such an association.

24-33.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "County" means any county in this state and includes a city and county.

(1.5) "Department" means the department of public safety.

(2) "Executive director" means the executive director of the department.

(3) "ICON" means the computerized database of court records known as the integrated Colorado on-line network used by the state judicial department.

(4) "Lifesaver program" or "program" means a search and rescue program designed to quickly find a wandering, lost, and missing person, as described in section 24-33.5-415.9 (2).

24-33.5-103. Department created - divisions. (1) There is hereby created the department of public safety, the head of which shall be the executive director of the department of public safety, which office is hereby created. The executive director shall be appointed by the governor with the consent of the senate and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109. The executive director has those powers, duties, and functions prescribed for the heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

(2) The department consists of the following divisions:

(a) Colorado state patrol;

(b) Repealed.

(c) Colorado bureau of investigation;

(d) Division of criminal justice;

(e) Repealed.

(f) (Deleted by amendment, L. 2002, p. 1205, § 2, effective June 3, 2002.)

(g) Repealed.

(h) Division of homeland security and emergency management; and

(i) Division of fire prevention and control.

(3) The executive director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the department and the divisions thereof.

(4) Publications by the executive director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(5) The executive director may appoint the deputy director of the department of public safety pursuant to section 13 of article XII of the state constitution. Subject to the supervision of the executive director, the deputy director has the same powers, duties, and responsibilities of the executive director as provided by law and shall exercise such powers, duties, and responsibilities in the absence of the executive director and when so instructed by the executive director.

24-33.5-104. Duties of executive director. (1) The executive director shall:

(a) Exercise general supervisory control over and coordinate the activities, functions, and employees of the department;

(b) Supervise the conduct of investigations into the activities of organized crime and receive allocations of state, federal, or other funds made available for such purposes.

24-33.5-104.5. Powers of executive director - DNA evidence issues - working group. (1) (a) The executive director shall convene a working group to address issues relating to evidence retention. Beginning in 2008, the working group shall meet at least annually.

(b) The working group convened pursuant to paragraph (a) of this subsection (1) shall include the executive director, or his or her designee, and the following persons:

(I) The state attorney general or his or her designee;

(II) The director of the Colorado bureau of investigation or his or her designee;

(III) The director of the Colorado district attorneys' council or his or her designee;

(IV) The state public defender or his or her designee;

(V) A defense attorney in private practice;

(VI) Representatives of local law enforcement agencies selected by the executive director;

(VII) Two members of the house of representatives, one appointed by the speaker of the house of representatives and the other by the minority leader; and

(VIII) Two members of the senate, one appointed by the president of the senate and the other by the minority leader.

(2) The department of public safety, in conjunction with the working group, shall prepare a report regarding the information collected pursuant to section 18-1-1109, C.R.S. The department shall submit the report to the judiciary committees of the house of representatives and the senate, or any successor committees, no later than October 1, 2010.

(3) (a) After completing the report required in subsection (2) of this section, the working group shall convene to make recommendations to the general assembly for legislation addressing the issues of DNA evidence retention and storage. The recommendations shall include, but need not be limited to, standardized timelines for retention of reasonable and relevant DNA evidence, provision of storage facilities, and best practices for evidence collection and storage. The working group shall make its recommendations by December 1, 2010.

(b) The working group shall convene to discuss and make recommendations regarding the appropriateness and implementation of Senate Bill 09-241. Prior to January 12, 2010, the working group shall provide a report to the general assembly regarding its discussion and recommendations regarding the appropriateness and implementation of Senate Bill 09-241. The report may include both a majority and minority report.

24-33.5-105. Transfer of functions. (1) The department shall, on and after July 1, 1984, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the department of local affairs, the department of military affairs, and the state department of highways prior to July 1, 1984, concerning the duties and functions transferred to the department. On July 1, 1984, all employees of the department of local affairs, the department of military affairs, and the state department of highways whose principal duties are concerned with the duties and functions transferred to the department and whose employment in the department of public safety is deemed necessary by the executive director to carry out the purposes of this article shall be transferred to the department of public safety and shall become employees thereof. Such employees shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(2) Repealed.

(3) Whenever the department of local affairs, the department of military affairs, or the state department of highways is referred to or designated by any contract or other document in connection with the duties and functions transferred to the department, such reference or designation shall be deemed to apply to the department of public safety. All contracts entered into by the said departments prior to July 1, 1984, in connection with the duties and functions transferred to the department are hereby validated, with the department of public safety succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the department of public safety for the payment of such obligations.

24-33.5-106. Witness protection board - creation - Javad Marshall-Fields and Vivian Wolfe witness protection program - witness protection fund. (1) There is hereby created in the department of public safety the witness protection board, which shall consist of the attorney general, the executive director of the department of public safety, and the executive director of the Colorado district attorneys council or their respective designees.

(2) The witness protection board shall exercise its powers and perform its duties and functions as if the same were transferred to the department of public safety by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(3) The board shall create a witness protection program that shall be referred to as the Javad Marshall-Fields and Vivian Wolfe witness protection program, through which

the board may fund or provide for the security and protection of a prosecution witness or potential prosecution witness during or subsequent to an official proceeding or investigation that involves great public interest or as a result of which the board determines that an offense such as intimidating a witness as described in section 18-8-704 or 18-8-705, C.R.S., tampering with a witness as described in section 18-8-707, C.R.S., or retaliating against a witness as described in section 18-8-706, C.R.S., is likely to be committed. The board may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered.

(4) In connection with the security and protection of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the board may fund any action the board determines to be necessary to protect such person from bodily injury or to assure the person's health, safety, and welfare for as long as, in the judgment of the board, such danger exists. In an emergency situation requiring immediate attention, any member of the board is authorized to distribute an amount not to exceed five hundred dollars in order to protect a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness.

(5) Any district attorney or the attorney general may request funding from the board for the purpose of providing witness security and protection, or for contracting or arranging for security provided by other local, state, or federal agencies such as the United States marshal's service. Requests shall be made and approved in a timely and equitable manner as established by the board.

(6) Any moneys distributed by the board shall be made from the witness protection fund, which fund is hereby created in the state treasury. The general assembly may make appropriations from the general fund for purposes of the witness protection program when the witness protection board demonstrates that there is a need to replenish the fund. In order to receive consideration for additional appropriations to the witness protection fund, the witness protection board shall submit information to the general assembly detailing how much money has been allocated out of the fund in the prior year, how many witnesses have received witness security and protection from allocations out of the fund, and how many requests for witness security and protection are anticipated in the next fiscal year. The department of public safety is authorized to accept, receive, use, and expend gifts, grants, donations, services, or assistance from any source to provide for the security or protection of a witness as specified in this section. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(7) The state, the witness protection board, and the individual board members shall not be liable for injury or damages in any civil action brought by or on behalf of any person who was provided or denied security and protection pursuant to this section.

(8) (a) The Colorado district attorneys and law enforcement agencies shall provide at least annual training for district attorneys, victims' advocates employed in or working with law enforcement agencies, and law enforcement personnel related to witness protection. The witness protection board shall develop program materials, including a model witness protection risk assessment instrument, which shall be made available to Colorado's district attorneys and law enforcement agencies.

(b) Any witness protection curriculum developed by the witness protection board shall be provided to the peace officers standards and training board. The peace officers standards and training board shall provide the training curriculum to any law enforcement agency upon request and may include the curriculum in the training it provides. Any law enforcement agency in the state that develops its own witness protection curriculum may provide the curriculum to the peace officers standards and training board which shall make that curriculum available to any law enforcement agency in the state upon request.

24-33.5-106.5. Confidentiality of materials - definitions. (1) For purposes of this section, unless the context otherwise requires:

(a) "In camera review" means an inspection of materials by the court, in chambers, to determine what, if any, materials are discoverable. Any materials excised pursuant to a judicial order following the in camera review shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(b) "Materials" means any records, claims, writings, documents, or information.

(2) (a) Any materials received, made, or kept by a witness protection board, the department, or a prosecuting attorney concerning a witness protection matter shall be confidential. The materials shall not be discoverable unless the court conducts an in camera review of the materials sought to be discovered and determines that the materials are necessary for the resolution of an issue then pending before the court. The attorney general acting on behalf of the witness protection board shall have standing in any action to oppose the disclosure of materials in the custody of the witness protection board.

(b) A person who knowingly or intentionally discloses confidential materials in violation of the provisions of this subsection (2) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Notwithstanding any provision of law to the contrary, a criminal prosecution brought pursuant to the provisions of this subsection (2) shall be brought within five years after the date upon which the violation occurred.

24-33.5-107. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department or any authorized agent of the department shall require the applicant's name, address, and

social security number.

(2) The department or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department or any authorized agent of the department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-33.5-108. Statewide fire fighting resource database - creation. (Repealed)

24-33.5-109. Cold case task force - creation - rules - repeal. (1) (a) There is hereby created in the department of public safety the cold case task force, referred to in this section as the "task force", to review general cold case homicide investigation tactics and practices.

(b) The task force shall exercise its powers and perform its duties and functions as if the same were transferred to the department of public safety by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this

title.

(2) The task force shall consist of sixteen members, as follows:

(a) The executive director of the department of public safety, or his or her designee, who shall chair the task force;

(b) The attorney general, or his or her designee;

(c) Three district attorneys, or their designees, who shall be appointed by the executive director of the Colorado district attorneys council, one of whom shall be from an urban judicial district, one of whom shall be from a suburban judicial district, and one of whom shall be from a rural judicial district;

(d) Two members who represent a statewide victims advocacy organization and who shall be appointed by the governor;

(e) One sheriff and one police chief who shall be appointed by the speaker of the house of representatives;

(f) One sheriff and one police chief who shall be appointed by the president of the senate;

(g) Two representatives from victims' families who shall be appointed by the speaker of the house of representatives;

(h) Two representatives from victims' families who shall be appointed by the president of the senate; and

(i) A forensic pathologist who is appointed by the governor.

(3) (a) The members of the task force appointed pursuant to paragraphs (c) to (h) of subsection (2) of this section shall serve terms of three years; except that the members first appointed by the speaker of the house of representatives and the president of the senate shall each serve a two-year term. The member of the task force appointed pursuant to paragraph (i) of subsection (2) of this section shall serve a three-year term.

(b) The initial members shall be appointed by their appointing authority within thirty days after June 1, 2007; except that the governor shall appoint the initial member described in paragraph (i) of subsection (2) of this section by September 1, 2012. An appointed member shall not serve more than two consecutive full terms, in addition to any partial term. In the event of a vacancy in an appointed position by death, resignation, removal for misconduct, incompetence, or neglect of duty, or otherwise, the appointing authority shall appoint a member within sixty days to fill the position for the remainder of the unexpired term.

(4) The members of the task force shall serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties pursuant to this section.

(5) The task force shall meet at least four times a year beginning October 1, 2007.

(6) The task force shall review cold case homicide investigation strategies and practices and make recommendations on best practices.

(7) Members of the task force, employees, and consultants shall be immune from

suit in any civil action based upon any official act performed in good faith pursuant to this section.

(8) On or before October 1, 2008, and annually each year thereafter, the task force shall report to the judiciary committees of the senate and the house of representatives, or any successor committees, on the implementation of this section.

(9) (a) This section is repealed, effective September 1, 2019.

(b) Prior to said repeal, the task force shall be reviewed as provided in section 24-34-104.

24-33.5-110. Posting of notice of NIMS classes. (Repealed)

24-33.5-111. Motor carrier safety assistance - study. (Repealed)

24-33.5-112. State law enforcement agencies to provide identification cards to retired peace officers upon request - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Law enforcement agency of the state" means the department and any agency that exists within the department and employs at least one peace officer, including but not limited to the Colorado state patrol created in part 2 of this article, the Colorado bureau of investigation created in part 4 of this article, and the division of criminal justice created in part 5 of this article.

(b) "Peace officer" means a certified peace officer described in section 16-2.5-102, C.R.S.

(c) "Photographic identification" means a photographic identification that satisfies the description at 18 U.S.C. sec. 926C (d).

(2) Except as described in subsection (3) of this section, on and after August 7, 2013, if a law enforcement agency of the state has a policy, on August 7, 2013, of issuing photographic identification to peace officers who have retired from the agency, and the agency discontinues said policy after August 7, 2013, the agency shall continue to provide such photographic identification to peace officers who have retired from the agency if:

(a) The peace officer requests the identification;

(b) The peace officer retired from the law enforcement agency before the date upon which the agency discontinued the policy; and

(c) The peace officer is a qualified retired law enforcement officer, as defined in 18 U.S.C. sec. 926C (c).

(3) Before issuing or renewing a photographic identification to a retired law enforcement officer pursuant to this section, a law enforcement agency of the state shall

complete a criminal background check of the officer through a search of the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t), and a search of the state integrated criminal justice information system. If the background check indicates that the officer is prohibited from possessing a firearm by state or federal law, the law enforcement agency shall not issue the photographic identification.

(4) A law enforcement agency of the state may charge a fee for issuing a photographic identification to a retired peace officer pursuant to subsection (2) of this section, which fee shall not exceed the direct and indirect costs assumed by the agency in issuing the photographic identification.

(5) Notwithstanding any provision of this section to the contrary, a law enforcement agency of the state shall not be required to issue a photographic identification to a particular peace officer if the chief administrative officer of the agency elects not to do so.

(6) If a law enforcement agency of the state denies a photographic identification to a retired peace officer who requests a photographic identification pursuant to this section, the law enforcement agency shall provide the retired peace officer a written statement setting forth the reason for the denial.

24-33.5-113. Forensic medical evidence in sexual assault cases - rules - testing - confidentiality - repeal. (1) **Rules.** (a) On or before thirty days after June 5, 2013, the executive director shall begin the process of promulgating rules for forensic medical evidence collected in connection with an alleged sexual assault. Not less than ninety days prior to the promulgation of the rules, the division shall convene a representative group of participants as defined in section 24-4-102 (14.5) to solicit input into the development of the rules. The representative group must include persons affected by the rules and persons responsible for implementation of the rules. The division may convene as many meetings of the representative group as is necessary.

(b) On or before six months after June 5, 2013, the executive director shall promulgate the rules. The rules must include:

(I) A requirement that forensic evidence must be collected if a victim of an alleged sexual assault requests it to be collected;

(II) Standards for what evidence must be submitted to the Colorado bureau of investigation or another accredited crime laboratory;

(III) Time frames for when the evidence must be submitted, analyzed, and compared to DNA databases. The rules on time frames must indicate that, once the backlog described in subsection (4) of this section is resolved, evidence that meets the criteria for mandatory submission must be submitted within twenty-one days after receipt

by a law enforcement agency.

(IV) Standards for consent for the collection, testing, and release of test results of the forensic medical evidence, including but not limited to:

(A) Consent forms that notify persons of the potential effects of each step of the process, including collection, testing, and release of test results and require acknowledgment of consent for each step of the process;

(B) Who may give consent and when is it required;

(C) Who may withdraw consent and when it may be withdrawn; and

(D) When and how results of tests may be released and for what purposes;

(V) A plan for prioritizing the testing of the backlog of forensic medical evidence to be forwarded to the Colorado bureau of investigation pursuant to subsection (4) of this section and a plan for testing newly collected forensic medical evidence once the backlog is resolved; and

(VI) The date, as soon as practicable, by which a law enforcement agency must analyze its backlog of forensic medical evidence if it does not forward such evidence to the Colorado bureau of investigation for analysis.

(2) Law enforcement and medical personnel shall not, for any reason, discourage a victim of an alleged sexual assault from receiving a forensic medical examination.

(3) **Compliance.** (a) (I) On and after ninety days after the promulgation of the rules authorized by paragraph (b) of subsection (1) of this section, all law enforcement agencies in the state shall comply with the promulgated rules.

(II) The failure of a law enforcement agency to comply with the rules promulgated pursuant to paragraph (b) of subsection (1) of this section does not affect:

(A) The authority of the agency to submit the evidence to the Colorado bureau of investigation or other accredited crime laboratory;

(B) The authority of the Colorado bureau of investigation or other accredited crime laboratory to analyze the evidence or provide results of the analysis to appropriate persons; or

(C) The admissibility of the evidence in any court.

(b) On and after ninety days after the promulgation of the rules described in paragraph (b) of subsection (1) of this section, all personnel at a medical facility performing a forensic medical examination and all other persons having custody of forensic medical evidence collected in connection with an alleged sexual assault or the results of tests conducted on the evidence shall comply with the promulgated rules.

(c) A person who receives evidence or results of tests under this section shall not disclose the evidence or test results except to the extent that disclosure is consistent with the authorized purpose for which the person obtained the evidence.

(4) **Backlog.** (a) On or before ninety days after June 5, 2013, each law enforcement agency shall submit to the Colorado bureau of investigation an inventory of all forensic medical evidence of any alleged sexual assaults that has not been analyzed by

the Colorado bureau of investigation or other accredited crime laboratory and that is for an active criminal investigation.

(b) Subject to available laboratory space, on or before one hundred twenty days after June 5, 2013, each law enforcement agency shall forward to the Colorado bureau of investigation or other accredited crime laboratory the forensic medical evidence identified on the inventory submitted to the Colorado bureau of investigation.

(c) On or before one hundred twenty days after June 5, 2013, the Colorado bureau of investigation shall submit to the governor and to the judiciary committees of the senate and house of representatives, or any successor committees, a proposed plan for analyzing as soon as practicable all of the forensic medical evidence of alleged sexual assaults inventoried pursuant to paragraph (a) of this subsection (4) and for analyzing newly collected forensic medical evidence as soon as practicable.

(d) A law enforcement agency may develop its own plan to analyze forensic medical evidence of alleged sexual assaults if all evidence is analyzed by the date specified by rule pursuant to subsection (1) of this section. If a law enforcement agency develops its own plan, it shall not forward an inventory of the forensic medical evidence to the Colorado bureau of investigation as required by paragraph (a) of this subsection (4).

(e) This subsection (4) is repealed, effective July 1, 2015.

(5) The department of public safety shall include within its budget requests and supplemental budget requests submitted to the joint budget committee funding requests to analyze as soon as practicable the backlog of forensic medical evidence of any alleged sexual assaults forwarded to the Colorado bureau of investigation pursuant to subsection (4) of this section and to analyze newly collected forensic medical evidence as soon as practicable.

PART 2

COLORADO STATE PATROL

24-33.5-201. Colorado state patrol created. (1) There is hereby created as a division of the department of public safety the Colorado state patrol, which division shall consist of a chief as its executive head and of such officers and employees as may be appointed under the provisions of this part 2. The policies and procedures of the Colorado state patrol shall be approved by the executive director.

(2) The Colorado state patrol and the office of the chief shall exercise their powers and perform their duties and functions under the department of public safety and the executive director as transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

24-33.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Chief" means the executive and administrative head or chief of the Colorado state patrol.

(2) "Civilian employee" means any member of the Colorado state patrol who is not authorized to wear a uniform and has not been designated the authority to perform the duties as set forth in this part 2 for a uniformed member of the Colorado state patrol.

(3) "Commissioned officer" means any member of the Colorado state patrol with the rank of lieutenant to colonel.

(4) "Member" means any employee of the Colorado state patrol, whether a commissioned officer, noncommissioned officer, trooper, or civilian employee.

(5) "Noncommissioned officer" means any member of the Colorado state patrol with the rank of corporal to master sergeant.

(6) "Officer" means the chief and any commissioned or noncommissioned officer and trooper of the Colorado state patrol.

(7) "Trooper" means a uniformed member of the Colorado state patrol other than commissioned or noncommissioned officers.

24-33.5-203. Duties of executive director and patrol. (1) (a) The executive director has the power, authority, and responsibility to approve policies governing the activities of the Colorado state patrol so as to secure the proper and efficient enforcement of all laws of the state delegating enforcement, authority, and responsibility to the Colorado state patrol.

(b) Except as otherwise provided in section 40-10.1-108 (1), C.R.S., the executive director has the duty to establish, for motor carriers as defined in section 42-4-235, C.R.S., reasonable requirements to promote safety of operation and, to that end, to prescribe qualifications and maximum hours of service of employees and minimum standards of equipment and for the operation of commercial vehicles as defined in section 42-4-235, C.R.S. For the purpose of carrying out the provisions of this section pertaining to safety, the executive director may enlist the assistance of any agency of the United States or of this state having special knowledge of any matter as may be necessary to promote the safety of operation and equipment of motor vehicles as provided in this section. In adopting such rules, the executive director shall use as general guidelines the standards contained in the current rules of the United States department of transportation relating to explosives and other dangerous articles, safety regulations, qualifications of drivers, driving of motor vehicles, parts and accessories, recording and reporting of accidents, hours of service of drivers, and inspection and maintenance of motor vehicles. The state patrol shall enforce or aid in enforcing all of such rules.

(2) The Colorado state patrol shall enforce or aid in enforcing all state laws

pertaining to motor and all other vehicles, their equipment, weight, cargoes, and licenses, vehicle operators, and other operations including checking for brand inspection certificates or official bills of sale or acceptable trucking waybills on livestock or agricultural products upon the highways of Colorado and for the use thereof. The Colorado state patrol shall also aid in the enforcement of the collection of all motor and other vehicle taxes and license fees, motor fuel taxes, and highway compensation taxes (with respect to the transportation of persons and property over public highways) as provided by law and shall otherwise promote safety, protect human life, and preserve the highways of this state by the courteous and strict enforcement of laws of this state which relate to highways and traffic upon such highways, notwithstanding any provisions of law charging any other department or agency in the state with the enforcement of such laws. The Colorado state patrol shall also establish and operate port of entry weigh stations pursuant to article 8 of title 42, C.R.S. The Colorado state patrol shall also aid in the enforcement of other laws of this state as specifically authorized by the provisions of this part 2.

24-33.5-204. Departmental cooperation. (1) Nothing in this part 2 shall be construed as repealing any laws or depriving any department or agency of the state of its power and duty to enforce the laws, enforcement of which has been delegated to any such department or agency. The Colorado state patrol shall cooperate with all such departments of the state in enforcing such laws.

(2) In the event that any department regulating and controlling motor vehicles or the taxation thereof is aggrieved at any rules or regulations promulgated for the control of traffic or collection of taxes or any other rule or regulation governing vehicles or motor vehicles upon the highways of this state by the Colorado state patrol and desires to resist the same, such department, within five days of such promulgation, shall serve written notice upon the executive director for a hearing on the question, and the decision of the executive director shall be conclusive and binding on any department and all persons concerned.

24-33.5-205. Chief - appointment - qualifications. Pursuant to section 13 of article XII of the state constitution and state personnel system laws, the executive director shall appoint a chief. The chief shall be the executive head and senior administrative officer of the Colorado state patrol. He shall supervise and direct the administration and all activities of the Colorado state patrol. The chief shall set forth, with the approval of the executive director, rules and regulations governing all operating procedures of the Colorado state patrol and courtesies and customs for the good order of the service. He shall have been an officer of the Colorado state patrol for at least seven years immediately

preceding his appointment, four years of which must have been served in an administrative capacity as a commissioned officer. The chief may designate an officer as acting chief to act in his stead at any time he is unable to perform his duties. He shall fulfill all requirements which are in effect at the time of his appointment, as are set forth in the job specification for the position by the state personnel director. He shall receive such compensation as is commensurate with the specific grade assigned his position by the state personnel director.

24-33.5-205.5. Rules - financial responsibility requirements - vehicles transporting hazardous materials. (Repealed)

24-33.5-206. Personnel - appointment. Pursuant to section 13 of article XII of the state constitution and state personnel system laws, the chief shall appoint the necessary commissioned and noncommissioned officers in staff and command or supervisory positions and troopers to permit the Colorado state patrol to adequately and efficiently perform its duties and functions and such necessary civilian employees as are essential to conduct an efficient patrol administration twenty-four hours daily. All members of the Colorado state patrol shall be under the immediate direction and control of the chief, and shall perform such duties as are specifically assigned by the chief under the job specifications and regulations of the state personnel director, and shall receive such compensation as is commensurate with the specified grade assigned to the individual position by the state personnel director.

24-33.5-207. Personnel - qualifications - salary. (1) All commissioned and noncommissioned officers and troopers of the Colorado state patrol, before promotion, shall be required to serve the designated period of time in each grade as provided in this section. A trooper shall serve a period of three years as such before the trooper is eligible to compete in the examination for promotion to a noncommissioned officer's rank. All commissioned and noncommissioned officers shall serve a period of one year in a grade before they are eligible to compete in promotional examinations. All commissioned and noncommissioned officers and troopers shall fulfill all requirements as set forth in the job specifications for their particular positions by the state personnel director.

(2) In addition to the compensation provided by section 24-33.5-206 and by the provisions of other laws concerning the state personnel system and because of the number of hours and the extraordinary service performed by members of the Colorado state patrol, each member of such patrol and each member of the administrative staff of such patrol shall be reimbursed for maintenance and ordinary expenses incurred in the

performance of his or her duties in an amount to be determined by the executive director, but the amount so authorized for any such member of the patrol or staff shall not exceed the sum of one hundred dollars per month.

24-33.5-208. Bonds. (1) The members of the Colorado state patrol shall be required to give bond to the state in the amount indicated in this section, to be approved and paid for by the state. The bonds shall be issued by a surety company authorized to do business in the state in the following amounts:

(a) Chief, fifty thousand dollars;

(b) All commissioned officers, thirty thousand dollars;

(c) All noncommissioned officers, ten thousand dollars;

(d) All troopers, five thousand dollars.

24-33.5-209. Trooper - age qualifications. Each trooper appointed according to the provisions of this part 2, at the time of his or her appointment, shall be at least twenty-one years of age.

24-33.5-210. General qualifications of members of patrol. Each member of the Colorado state patrol shall be of good moral character and shall possess and maintain such physical and educational requirements and qualifications as are specified by the state personnel director after consultation with the chief and the executive director.

24-33.5-211. Divisions - publications. (1) The chief may establish such divisions as are necessary for adequate patrolling of the highways of this state. He shall place in the field such members of the Colorado state patrol as are necessary to carry out the activities and operations of the Colorado state patrol.

(1.5) The chief shall establish a division to address human smuggling and human trafficking on the highways of this state. For the fiscal year beginning July 1, 2006, this division shall include twelve full-time employees, and, for the fiscal year beginning July 1, 2007, this division shall include twenty-four full-time employees. The chief shall appoint these employees as well as any additional employees to the division.

(2) The chief may establish, staff, and maintain a division of safety and education to cooperate with the various schools, civic organizations, and other bodies interested in the teaching and promotion of safety upon the streets and highways of this state, to distribute safety information, tabulations, and data to the officers of the Colorado state patrol, as well as to other interested persons and organizations, to furnish speakers, data,

and programs for safety meetings, and to cooperate in the organization and functioning of all highway safety organizations within the state. The chief is authorized to obtain motion picture projectors, safety film, and other material essential to the promotion of a safety education program in this state.

(3) The chief may establish a school for the training and education of the members of the Colorado state patrol. Attendance at such school may include officers of other police agencies and departments of the state if attendance is deemed beneficial to the interests of the general law enforcement program of this state.

(4) Repealed.

(5) Any publications of the Colorado state patrol circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

24-33.5-212. Powers and duties of officers. (1) All officers of the Colorado state patrol have all the powers of any peace officer to:

(a) (I) Make arrest upon view and with or without warrant for any violation of any law of this state regulating the operation of vehicles and use of the highways or concerning motor vehicle registration; motor fuel tax laws; public utility laws, rules, and regulations, insofar as they pertain to motor carriers as defined in section 42-4-235, C.R.S.; the inspection laws of this state; and any criminal law of this state if, during an officer's exercise of powers or performance of duties under this section, probable cause is established that a violation of said criminal law has occurred;

(II) Enforce the automobile theft law, article 5 of title 42, C.R.S.;

(III) Inspect, examine, investigate, impound, or hold any vehicle for violation of said laws of this state;

(b) Require the operator of any vehicle to stop and, upon demand, exhibit his driver's license and registration card issued for such vehicle and submit to a complete inspection of such vehicle and the equipment, interior, cargo, license plates, and any other paper or document required by law to be in his possession or to an inspection and test of the equipment of such vehicle when there is reasonable cause to believe that the vehicle is being operated in violation of any law of this state regulating the operation of vehicles or use of the highways or any other law mentioned in this part 2;

(c) Inspect any vehicle of a type required to be registered or licensed under a provision of law in any public place where such vehicles are held for sale or wrecking for the purpose of locating stolen vehicles, or parts thereof, and investigate the title and registration thereof;

(d) Serve all warrants, notices, summonses, or other processes relating to the enforcement of laws regulating the operation of the vehicles or the use of the highways and serve distraint warrants issued by the public utilities commission or department of revenue of the state of Colorado;

(e) Investigate traffic accidents and make reports thereof to the chief and make such reports to the department of transportation and department of revenue as these departments may require, but the reports required to be made to the chief in this paragraph (e) shall not be public records and shall be for the confidential use of the Colorado state patrol;

(f) Direct, control, and regulate all traffic at any intersection or any portion of streets or highways or elsewhere in this state when it is deemed necessary in the interest of public safety and for the safe and speedy movement of persons and property;

(g) Investigate reported thefts of vehicles, motor vehicles, trailers, and semitrailers and take and hold any stolen vehicles or parts thereof discovered in any such investigation;

(h) Stop any truck, automobile, or other vehicle found carrying or suspected of carrying any kind of livestock or poultry or the carcasses thereof or any hides of cattle for the purpose of examining and checking said load for permits, written statements, or livestock inspectors' certificates and make arrest for any violation of the law in this state relating to livestock theft and the transportation thereof. At the request of the state board of stock inspection commissioners, the Colorado state patrol shall cooperate with said board in the enforcement of any law within the jurisdiction of said state board of stock inspection commissioners or any rule or regulation issued by said board.

(i) Enforce all of the laws of this state with respect to grounds and buildings owned by the state or any agency or institution thereof. Such enforcement shall not supersede the jurisdiction of the sheriff or other peace officers of the county, city, or city and county within which such enforcement may be required but shall be in addition thereto. In any such activity, officers have and are hereby granted all powers of sheriffs and other peace officers.

(2) The powers specified in subsection (1) of this section are vested in the chief and every officer of the Colorado state patrol, and it is their primary duty to promote safety, protect human life, and preserve the highways of this state by the courteous and strict enforcement of the laws and regulations of this state relating to highways and the traffic on such highways and all other laws of this state concerning inspection, registration, and regulation of all vehicles and the cargoes transported therein and to assist other state departments in the collection of motor vehicle license fees and taxes, motor fuel taxes, and highway compensation taxes.

(3) The chief and all the officers appointed under the provisions of this part 2, subject to the exceptions stated in this subsection (3), shall not be used at any time, nor under any circumstances, by any authority of the state in any manner in the enforcement of any law other than that specifically provided in this part 2 or as may be otherwise specifically provided in any other law of this state; except that they are empowered to assist or aid any sheriff or other peace officer in the performance of his duties upon his request or the request of other local officials having jurisdiction, and, on such occasions

while so acting, they have the powers of any sheriff or other peace officer. Furthermore, they shall not be deputized as deputy sheriffs or as other peace officers by any local or state authority, nor shall they be permitted to serve or act on strike duty, lockouts, or other labor disputes.

(4) The highway users tax fund, created in section 43-4-201, C.R.S., shall be reimbursed out of the general fund or the governor's contingency fund or from any other appropriation for the purpose for all expenses of the Colorado state patrol incurred pursuant to paragraph (i) of subsection (1) and subsection (3) of this section.

24-33.5-213. Release of impounded vehicles - penalty. (Repealed)

24-33.5-213.5. Impounded vehicles - notice - hearing. (Repealed)

24-33.5-214. Complaints against officers. All complaints against officers or other employees of the Colorado state patrol shall be investigated, and, at the discretion of the chief, the complaint shall be in writing and bear the signature and verification of the person making such complaint. In the event that the chief determines that said complaint has sufficient merit, he shall institute corrective or disciplinary action as prescribed by the state personnel rules.

24-33.5-215. Political activity prohibited. No officer or other employee of the Colorado state patrol, while so employed, shall take part in promoting the candidacy of any candidate for any public office within this state, but nothing in this section shall be construed as denying any citizen the right to cast his individual vote.

24-33.5-216. Patrol services furnished to governor and lieutenant governor. The chief shall provide a motor vehicle and driver for the use of the governor of the state during his term of office. The chief shall also assign officers to protect the governor and his immediate family. Officers assigned to this duty shall be selected by the chief with the approval of the governor. The chief shall also provide a motor vehicle for the lieutenant governor and, at the discretion of the governor, may assign an officer to provide protection for the lieutenant governor in the performance of the duties of such office. The chief shall also make available an officer to protect any governor-elect.

24-33.5-217. Books, supplies, and equipment. The chief shall purchase and procure all necessary books, supplies, equipment, uniforms, badges, and stationery and shall incur such other expenses as may be actually necessary to carry out the provisions of this part 2; and such expenses shall be paid for in the same manner as other expenses authorized by this part 2.

24-33.5-218. Patrol has access to files. The Colorado state patrol shall have access to all motor vehicle files at all times for the purpose of enforcing the provisions of this part 2 and shall assist the department of revenue whenever necessary and by whatever means is required on all investigations and inspections of foreign titles to cars that are to be sold or licensed within the state whenever the persons do not have the proper bills of sale, titles, or proof of ownership.

24-33.5-219. Badges - uniforms - unauthorized use. (1) The chief shall issue to each officer of the Colorado state patrol a badge of authority with the seal of the state in the center thereof and the words "Colorado State Patrol" encircling said seal and, below, the designation of the position held by the officer to whom issued. Such badge shall be serially numbered, or each member shall otherwise display a distinctive serial number.

(2) All officers of the Colorado state patrol, when on duty, shall be dressed in full distinctive uniform and display the official badge of their office except when they are authorized by the chief to work in plain clothes. Neither the chief nor any other person shall issue a badge or like uniform to any person who is not a duly authorized, classified, and regularly paid officer of the Colorado state patrol. Any person who, without authority, wears the badge of a member of the Colorado state patrol or in any manner attempts to duplicate the official uniform or equipment with the intent of representing himself or herself as a member of the Colorado state patrol commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-33.5-220. Costs of administration. Except as otherwise provided in section 24-33.5-226 (3) (c), the cost of administration of this part 2 and of all payrolls and salaries of the chief, commissioned and noncommissioned officers, troopers, and office personnel and the cost of clerical work, stationery, postage, uniforms, badges, all supplies and equipment, and necessary travel and subsistence allowances shall be appropriated by the general assembly out of the moneys in the highway users tax fund. The expenses and salaries provided for in this section are declared to be for the administration and enforcement of the several statutes referred to in this part 2 and for the construction, maintenance, and supervision of the public highways. Expenses and salaries shall be paid by the state treasurer upon warrants of the controller issued upon vouchers provided by

the chief and shall be charged against net collection of highway users taxes as an expense of construction, maintenance, and supervision of public highways and the administration of the laws of the state governing the public highways and their use. The expenditures of the Colorado state patrol shall be audited and approved from time to time by the executive director and the state auditor.

24-33.5-221. Provisional appointments - veterans' rights. Any members, at any time, holding provisional appointments in the Colorado state patrol who were, at the time of their appointment, within the age limits fixed by this part 2 or by the law in effect at the time of their appointment shall be construed to be in compliance with the age limitations of this part 2. Members who left the Colorado state patrol to go directly into the armed services or merchant marine of the United States shall not be deprived of holding their positions or of taking any future state personnel system examinations, if such members are and have remained in continuous service with the Colorado state patrol and met all age requirements upon entering the Colorado state patrol, said continuous service to include military service. All time accrued by members of the patrol while in the armed services, when on military leave from the patrol, shall be deemed as continuous service in the Colorado state patrol; and members shall be entitled to all service benefits which would have accrued to them had they remained in continuous service with the Colorado state patrol.

24-33.5-222. Officers incapacitated. In the event that any officer of the Colorado state patrol becomes incapacitated, by reason of service on the Colorado state patrol, to the extent that he is unable to perform the usual duties of an officer of the Colorado state patrol, he may be transferred, at the discretion of the chief, to duty in any of the offices of the Colorado state patrol in whatever capacity the chief may deem advisable. Any officer who is transferred to office duty, as set out in this section, shall not be deprived of any benefits as to pay because of such transfer or partial disability. A vacancy in the ranks of officers on Colorado state patrol duty caused by such transfer shall be filled in the usual manner, although such appointment would otherwise be in excess of the statutory limitations.

24-33.5-223. State telecommunications network. (1) In order to more efficiently support the efforts of state departments, state institutions, state agencies, and law enforcement and public safety political subdivisions, and to better serve the public, there is authorized to be established a state telecommunications network, the construction, maintenance, and management of which shall be under the supervision of the state

telecommunications director.

(2) (a) The state telecommunications director is authorized, subject to appropriation by the general assembly, to purchase or lease any real estate, buildings, and property necessary to the operation or development of the telecommunications network, and to use any available facilities and telecommunications equipment of any state agency or institution, and, if necessary, to provide for the construction of the network.

(b) The facilities of the network shall be made available for the use of:

(I) State departments, state institutions, state agencies, and law enforcement and public safety political subdivisions of the state;

(II) Other local, state, and federal governmental entities or public safety related nonprofit organizations that directly support any agency described in subparagraph (I) of this paragraph (b) and that:

(A) May be requested to support the purposes expressed in section 24-37.5-502 (1) (c) and (1) (e) and aggregate telecommunications service requirements of any public office described in section 24-32-3001 (1) (h); or

(B) Make donations, grants, bequests, and other contributions to the public safety communications trust fund pursuant to section 24-37.5-506 (2) (b).

(c) Nothing in this section shall be construed to allow the state telecommunications director to purchase or lease any real estate, buildings, and property necessary to the operation or development of a telecommunications network for other than state departments, state institutions, state agencies, law enforcement and public safety political subdivisions, and the entities described in subparagraph (II) of paragraph (b) of this subsection (2), nor to allow for the resale and sharing of services.

(3) All expenses of dispatchers and other necessary employees used in connection with the operation of the law enforcement radio system within the state telecommunications network shall be paid by the chief of the Colorado state patrol in the same manner as expenses of other employees of said patrol are paid.

24-33.5-224. Duties during state fair at Pueblo. (1) In addition to the duties and powers of officers of the Colorado state patrol enumerated in this part 2, such officers are granted all powers of sheriffs and other peace officers with respect to the enforcement of all of the laws of this state during and in connection with the Colorado state fair and industrial exposition held annually at Pueblo, Colorado, but such powers shall be exercised only within the grounds and buildings utilized for fair purposes and at the request of the board of commissioners of the Colorado state fair authority.

(2) The powers and jurisdiction granted officers of the Colorado state patrol under the provisions of subsection (1) of this section shall not supersede the jurisdiction of the sheriff or other peace officers of the county or city within which such activity takes place but shall be in addition thereto; and such powers and jurisdiction so granted shall

commence not more than ten days in advance of said events and continue until not more than ten days after the conclusion thereof as may be determined necessary by the executive director.

(3) The highway users tax fund shall be reimbursed by the board of commissioners of the Colorado state fair authority, within the amount appropriated by the general assembly for this purpose, and such reimbursement is authorized, as an administrative expense of said board, for any expenditures incurred from such fund resulting from the activities of the Colorado state patrol under subsection (1) of this section, such reimbursement to be made immediately following the termination of the service performed by the Colorado state patrol.

24-33.5-225. Receipt of proceeds from forfeited property. The division of the Colorado state patrol is authorized to accept, receive, and expend proceeds allocated to the division after sale of forfeited property pursuant to part 5 of article 13 of title 16, C.R.S., and such funds shall be in addition to the moneys appropriated to the division by the general assembly. The executive director shall submit an annual report to the joint budget committee at the time the annual budget request is submitted providing information on the amounts received under this section, if any, and the uses made thereof.

24-33.5-226. Athletic or special events - closure of highways by patrol or municipality or county - payment of costs. (1) (a) Subject to the provisions of this section, highways or designated portions of highways may be partially or completely closed or restricted for the purpose of conducting athletic or special events thereon or for the purpose of ensuring the safe and efficient movement of traffic to and from or around an athletic event or special event which is in such proximity to a highway that the event or any traffic attendant thereto will have a significant effect on the normal traffic flow.

(b) When the term "close" or "closure" is used in this section, it shall be deemed to include the partial closure of any lane or other portion of a highway or the restriction or regulation of traffic on the highway by the Colorado state patrol, members of the department of transportation, or authorized agents of a municipality or county.

(c) (I) The chief has the authority to close a state highway or portion thereof for the purposes of paragraph (a) of this subsection (1) when an athletic or special event is proposed to be held on such highway or when a proposed event may cause a significant disruption to the normal flow of traffic on a state highway and such highway is outside the boundaries of a municipality.

(II) The chief or his designee shall coordinate any closure of a state highway with the executive director of the department of transportation or his designee.

(III) The chief shall not approve an event which the state does not have sufficient

resources to properly manage in a manner consistent with the preservation of the public peace, health, and safety.

(d) Notwithstanding the provisions of paragraph (c) of this subsection (1), a municipality has the exclusive authority to close a highway or portion thereof for the purposes of paragraph (a) of this subsection (1) if the highway or portion to be closed is contained entirely within the boundaries of the municipality and any attendant disruption of traffic is contained within the boundaries of the municipality; except that, if such closure is on a state highway, the municipality shall coordinate the closure with the executive director of the department of transportation or his designee and shall provide for adequate traffic control and an alternate route where applicable.

(e) Notwithstanding the provisions of paragraphs (c) and (d) of this subsection (1), a board of county commissioners or the duly authorized sheriff, county division of public works, or other county division or department authorized and designated by the board of county commissioners shall have the authority to close a highway or portion thereof for the purposes of paragraph (a) of this subsection (1) when such highway is not a state highway and the highway or portion to be closed does not extend within the boundaries of a municipality. When a proposed event may cause a significant disruption to the normal flow of traffic on a state highway or to any municipal highway, such closure shall be approved by and coordinated among all agencies involved.

(f) In the event that a closure or disruption of traffic resulting from a closure crosses jurisdictional boundaries, such closure shall be coordinated among all agencies involved. If the event requires the active participation of the patrol and if the event may cause a significant disruption to the normal flow of traffic, the chief's authority under paragraph (c) of this subsection (1) shall apply.

(2) A closure by the chief may be authorized only if:

(a) A written application therefor is submitted to the chief, containing such information as the chief deems necessary, and the application is approved by the chief; and

(b) The applicant pays to the Colorado state patrol at the time he submits the application the amount estimated by the chief to be the actual costs of said patrol for processing the application and the applicant agrees to pay in accord with subsection (3) of this section the actual costs of the patrol and the department of transportation in providing any services for the conduct of the closure. Such costs shall include any regular or overtime salaries, equipment, and fuel; and

(c) The applicant agrees to pay for and provide evidence of liability coverage in those amounts specified in section 24-10-114 (1) to protect the state from any liability for any injuries or damages which may arise out of the closure or the Colorado state patrol's or the department of transportation's assistance in ensuring the safe conduct of the closure. Such insurance shall provide coverage which corresponds to the requirements of article 10 of this title. Liability claims resulting from the closure of a highway pursuant to

this section shall be first paid from the liability insurance required by this paragraph (c) prior to any payment from the risk management fund created in section 24-30-1510. Nothing in this paragraph (c) shall alter or affect the application of article 10 of this title; and

(d) A local jurisdiction approves the closure if the closure of the highway would restrict the use of any road, street, or highway of the affected jurisdiction; and

(e) The closure is implemented in a manner that will cause the least inconvenience to the driving public consistent with the requirements of the athletic or special event and the event can be conducted in a manner consistent with the preservation of the public peace, health, and safety.

(2.5) (a) No liability shall attach to the state of Colorado for any injuries or damages which are caused solely by the use of a state highway for an athletic or special event when such event has not been approved by the chief. Claims for such injuries or damages shall be subject to the limitations of article 10 of this title.

(b) Any person who conducts an athletic or special event on a state highway when a permit for said event has not been issued or any person conducting said event who violates the terms of a permit which has been issued for an athletic or special event commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) (a) If a closure application is approved, the applicant shall pay, when applicable, to the Colorado state patrol and the department of transportation prior to the closure the amounts the chief and executive director of the department of transportation estimate to be the costs of the patrol and the department of transportation in conducting the closure and shall provide the chief with evidence of the acquisition of the insurance provided for in paragraph (c) of subsection (2) of this section.

(b) Moneys paid to the Colorado state patrol pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the Colorado state patrol closure fund created in paragraph (c) of this subsection (3).

(c) There is hereby created in the state treasury the Colorado state patrol closure fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the purpose of paying salaries for officers performing duties in accord with the provisions of this section and for all other expenses incurred by the Colorado state patrol in carrying out the provisions of this section, and such moneys shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. Such salaries and other expenses shall be paid at the direction of the chief, and, notwithstanding section 24-33.5-207 (2), the chief may authorize payment of such overtime salaries as he deems necessary for officers performing any duties pursuant to this section.

(d) All moneys paid to the department of transportation pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the state highway

supplementary fund.

(4) The chief and executive director of the department of transportation are authorized to use such equipment and personnel as they deem necessary to ensure the safe conduct of the closure.

24-33.5-227. Equipment for counterdrug activities - payments from local governments and state agencies - cash fund. (1) The Colorado state patrol may receive moneys from a political subdivision or state agency for the procurement of law enforcement equipment suitable for counterdrug activities through the United States department of defense pursuant to 10 U.S.C. sec. 381 or a successor provision.

(2) Moneys received pursuant to this section shall be transmitted to the state treasurer, who shall credit the moneys to the counterdrug activities cash fund, which fund is hereby created in the state treasury. The moneys in the counterdrug activities cash fund are hereby continuously appropriated to the Colorado state patrol to fund payments for equipment for counterdrug activities procured by political subdivisions and state agencies through the United States department of defense.

PART 3

COLORADO LAW ENFORCEMENT TRAINING ACADEMY

24-33.5-301 to 24-33.5-314. (Repealed)

PART 4

COLORADO BUREAU OF INVESTIGATION

24-33.5-401. Colorado bureau of investigation. (1) There is hereby created as a division of the department of public safety the Colorado bureau of investigation, referred to in this part 4 as the "bureau".

(2) The Colorado bureau of investigation and the office of the director shall exercise their powers and perform their duties and functions under the department of public safety and the executive director as transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

24-33.5-402. Director - appointment. Subject to the provisions of section 13 of article XII of the state constitution, the executive director shall appoint a director of the

bureau, referred to in this part 4 as the "director".

24-33.5-403. Director - qualifications. The director shall be experienced in scientific methods for the detection of crime and in the enforcement of law and order. The director shall possess such other qualifications as may be specified by the state personnel director after consultation with the executive director.

24-33.5-404. Duties of the director. The director shall be the chief administrative officer of the bureau and shall also be an agent. He shall supervise and direct the administration and all other activities of the bureau. The director shall prescribe rules and regulations, not inconsistent with law, for the operation of the bureau and the conduct of its personnel and the distribution and performance of their duties.

24-33.5-405. Deputy director - appointment. Subject to the provisions of section 13 of article XII of the state constitution, the director may appoint a deputy director, whose qualifications shall be the same as those for an agent.

24-33.5-406. Deputy director - duties. The deputy director shall serve as an agent, and, at the request of the director or in his absence or disability, the deputy director shall perform all of the duties of the director, and, when so acting, he shall have all of the powers of and be subject to all of the restrictions upon the director. In addition, he shall perform such other duties as may from time to time be assigned to him by the director.

24-33.5-407. Bureau personnel - appointment. Subject to the provisions of section 13 of article XII of the state constitution, the director shall appoint agents and other employees necessary to conduct an efficient bureau.

24-33.5-408. Agents - qualifications. The director shall appoint persons of honesty, integrity, and outstanding ability as agents. Agents shall possess such qualifications as may be specified by the state personnel director after consultation with the director of the bureau.

24-33.5-409. Agents - duties - powers. Agents shall perform duties in the

investigation, detection, and prevention of crime and the enforcement of the criminal laws of this state. Only agents of the bureau shall be vested with the powers of peace officers of this state and have all the powers of any sheriff or police or other peace officer.

24-33.5-410. Agents - limitation of powers. Powers vested in agents by this part 4 shall in no way usurp or supersede the powers of the local sheriffs and police and other law enforcement officers; except that this limitation shall not apply to functions of the bureau described in section 24-33.5-412 (1) (c) and (1) (d).

24-33.5-411. Agents - defenses - immunities. Any agent required to perform any official function under the provisions of this part 4 shall be entitled to the protection, defense, or immunities provided by statute to safeguard a peace officer in the performance of official acts.

24-33.5-412. Functions of bureau - legislative review - interagency cooperation with reporting functions - processing time for criminal history record checks. (1) The bureau has the following authority:

(a) (I) When assistance is requested by any sheriff, chief of police, district attorney, head of a state agency, or chief law enforcement officer and with the approval of the director, to assist such state agency or law enforcement authority in the investigation and detection of crime and in the enforcement of the criminal laws of the state.

(II) For purposes of subparagraph (I) of this paragraph (a), "state agency" means any department or agency of the executive branch and the office of the state auditor.

(b) When assistance is requested by any district attorney and upon approval by the director, to assist the district attorney in preparing the prosecution of any criminal case in which the bureau had participated in the investigation under the provisions of this part 4;

(c) To establish and maintain fingerprint, crime, criminal, fugitive, stolen property, and other identification files and records; to operate the statewide uniform crime reporting program; and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(c.5) To maintain a computerized data file of motor vehicle information received from the department of revenue accessible to law enforcement agencies through the telecommunications network operated by the bureau, and, by January 1, 2001, to allow law enforcement agencies to search multiple fields in the motor vehicle files including but not limited to vehicle license plate numbers, vehicle identification numbers, manufacturers, models, years, tab, and primary body colors, or any combinations thereof;

(d) To investigate suspected criminal activity when directed to do so by the governor;

(e) To procure any records furnished by any law enforcement agency of this state, including local law enforcement agencies, at the expense of the bureau;

(f) To enter into and perform contracts with the department of human services for the investigation of any matters arising under the "Uniform Interstate Family Support Act", article 5 of title 14, C.R.S., or a substantially similar enactment of another state;

(g) Repealed.

(h) To compile, maintain, and distribute a list of missing children as required by section 24-33.5-415.1;

(i) To develop and maintain a computerized data base for tracking gangs and gang members both within the state and among the various states;

(j) When assistance is requested by the P.O.S.T. board, to investigate the backgrounds of applicants for certification as peace officers by the P.O.S.T. board, by a review of fingerprint files or records;

(k) To carry out the duties described in article 22 of title 16, C.R.S., including but not limited to promptly transmitting to the federal bureau of investigation upon receipt any fingerprints and conviction data concerning a person convicted of unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(l) To carry out the duties set forth in section 24-33.5-424 concerning the national instant criminal background check system ("NICS") in connection with the transfer of firearms;

(m) To carry out the duties described in section 18-6-803.7, C.R.S.;

(n) To carry out the duties of maintaining information related to crimes involving acts of domestic violence or sexual assault as required by article 21 of title 16, C.R.S.;

(o) To carry out the duties set forth in part 2 of article 12 of title 18, C.R.S.;

(p) Repealed.

(q) To locate and apprehend persons who are fugitives from the law;

(r) To conduct criminal history records checks pursuant to section 24-72-305.3; and

(s) When requested by the chief of a fire department or his or her designee, and approved by the director or his or her designee, the bureau may assist in the investigation of a possible crime related to arson. When such a request is made by a fire department, the fire department shall notify the appropriate law enforcement agency that a request for assistance from the bureau has been made.

(2) In order to enable the bureau to carry out the functions enumerated in this section, it shall establish and maintain statewide telecommunications programs consistent with telecommunications programs and policies of the state telecommunications director.

(3) (a) Any other provision of law to the contrary notwithstanding and excluding title 19, C.R.S., except as provided in paragraph (b) of this subsection (3), on and after

July 1, 1971, in accordance with a program to be established by the bureau, every law enforcement, correctional, and judicial entity, agency, or facility in this state shall furnish to the bureau all arrest, identification, and final charge dispositional information on persons arrested in Colorado for federal, state, or out-of-state criminal offenses and on persons received for service of any sentence of incarceration. The department of corrections shall furnish its information to the bureau within twenty-four hours of the time a person is received into the custody of the department for service of sentence and prior to twenty-four hours of the time of the person's final discharge from supervision. The department shall also report to the bureau a person's release to parole or to a community correctional facility or program prior to twenty-four hours of such release. The provision of information required by this subsection (3) shall be made in a manner prescribed by the bureau; except that the provision of information by judicial entities, agencies, and facilities shall be under procedures to be established jointly by the state court administrator and the director.

(b) On or after July 1, 1983, the bureau may establish a program under which every entity, agency, or facility specified in paragraph (a) of this subsection (3) shall furnish to the bureau the information specified in section 19-1-306 (3), C.R.S.

(c) For purposes of improving the performance of criminal background checks and the implementation of the integrated criminal justice information system established in article 20.5 of title 16, C.R.S.:

(I) The criminal justice information program task force created in section 16-20.5-103, C.R.S., shall establish and require the use of uniform identifiers in the information required by this subsection (3) in order to facilitate the matching of criminal records in the bureau's databases and in the ICON system at the state judicial department, and such identifiers may be any identifiers existing on or after May 30, 2001; and

(II) Except as otherwise provided in this subsection (3), every law enforcement, correctional, and judicial entity, agency, or facility in this state shall forward to the bureau the information required by this subsection (3) within seventy-two hours after receiving such information; except that the time period shall not include Saturdays, Sundays, or legal holidays. The information forwarded to the bureau shall include, but need not be limited to, the fingerprints of said arrested persons.

(d) The bureau shall electronically forward the information required by this subsection (3) to the judicial department through the integrated criminal justice information system program established by article 20.5 of title 16, C.R.S., within twenty-four hours after the receipt of:

(I) An electronic version of the suspect's arrest and fingerprint information by the bureau; or

(II) A paper copy of the suspect's arrest and fingerprint information by the bureau if the information is from a jurisdiction that does not use an electronically-based fingerprint transmission system.

(4) The bureau is charged with the responsibility to investigate organized crime which cuts across jurisdictional boundaries of local law enforcement agencies, subject to the provisions of section 24-33.5-410.

(5) To assist the bureau in its operation of the uniform crime reporting program, every law enforcement agency in this state shall furnish such information to the bureau concerning crimes, arrests, and stolen and recovered property as is necessary for uniform compilation of statewide reported crime, arrest, and recovered property statistics. In cases involving child abuse or sexual assault on a child and in all other cases involving murder, sexual assault, or robbery, the law enforcement agency shall furnish information to the bureau concerning the modus operandi of such crimes in order to facilitate the identification of cross-jurisdictional offenders. Information required to be submitted pursuant to this section shall be submitted in a form specified by the bureau; except that the bureau shall adopt a form and reporting standards consistent with the development of the strategic plan for an integrated criminal justice information system, in accordance with article 20.5 of title 16, C.R.S., that shall be consistent with applicable federal and state laws and regulations such as the national criminal justice information system standards. The cost to the law enforcement agency of furnishing such information shall be reimbursed out of appropriations made therefor by the general assembly; except that the general assembly shall make no such reimbursement if said cost was incurred in a fiscal year during which the Colorado crime information center was funded exclusively by state or federal funds.

(6) The bureau is charged with the responsibility of implementing, administering, complying with the terms of, and serving as the state's criminal history record repository as defined in the "National Crime Prevention and Privacy Compact" established in accordance with the provisions of part 27 of article 60 of this title. For purposes of said compact, the compact officer for the state of Colorado shall be the director of the bureau or a designee of the director.

(7) Notwithstanding any provision of law to the contrary, if a department or agency of the executive branch is required by statute to request a fingerprint-based criminal history record check from or through the bureau and obtain and process the results within a specified time, whether for purposes of issuance of a professional license or for any other reason, and, due to a backlog in requests pending with the bureau or due to other factors beyond the control of the department or agency, the department or agency is unable to act within the time required by statute:

(a) The department or agency is allowed an extension of time within which to obtain and process the results of the record check;

(b) The department or agency shall notify the applicant and other interested persons of the reason for the delay; and

(c) The status of the person whose criminal history is the subject of the record check, and his or her rights and responsibilities as specified in the statute that set forth the

original period for agency action, do not change as a result of the delay.

24-33.5-413. Credentials. The director shall issue to each agent of the bureau proper credentials and a badge of authority with the seal of the state of Colorado in the center thereof and the words "Colorado Bureau of Investigation" encircling said seal. Each agent of the bureau, when on duty, shall carry said badge upon his person. Such badges shall be serially numbered.

24-33.5-414. Rewards. No reward offered for the apprehension or conviction of any person or for the recovery of any property may be accepted by an employee or agent of the bureau.

24-33.5-415. Temporary agents - qualifications - term - tenure. In addition to and apart from any other appointment provisions of this part 4, the director, with the approval of the appropriate law enforcement agency or agencies, may appoint peace officers of law enforcement agencies outside the bureau as temporary agents of the bureau. Such temporary agents shall have all the powers, protections, defenses, and immunities provided by statute or otherwise to agents of the bureau. Such temporary agents, if from outside the state personnel system, shall not have the protection of tenure afforded by part 1 of article 50 of this title to certified employees. Except for overtime payments authorized by the bureau, the compensation of temporary agents shall not be paid out of state funds allocated to the bureau. During such special assignments as temporary agents, the compensation and employment benefits of such temporary agents shall continue to be paid by their employing law enforcement agencies. The bureau may pay the reasonable expenses of such temporary agents pursuant to the same criteria it uses to pay the reasonable expenses of agents of the bureau. The bureau, upon request by the employing law enforcement agencies of such temporary agents and prior to any such temporary appointment, shall provide the employing law enforcement agencies with a statement detailing the expenses, if any, of such temporary agents that will be the financial responsibility of the employing law enforcement agency and those that will be the financial responsibility of the bureau.

24-33.5-415.1. List of missing children. (1) For the purposes of this section, "missing child" means a child whose whereabouts are unknown, whose domicile at the time he was first reported missing was Colorado, and whose age at the time he was first reported missing was seventeen years of age or younger.

(2) (a) To aid in the identification and location of missing children, the bureau

shall compile, maintain, and distribute a list of missing children. Such list shall be compiled from missing children reports submitted by law enforcement agencies pursuant to subsection (3) of this section.

(b) The bureau shall keep records of statistics on all missing children reports which it receives. Such records shall include the following information:

(I) The number of cases of missing children reported in Colorado;

(II) The number of missing children cases which have been solved in Colorado;

(III) The approximate physical location at which each child was last seen;

(IV) The time of day each child was last seen;

(V) The age, gender, and physical description of each child reported missing;

(VI) The activity the child was engaged in at the time he was last seen;

(VII) The number of reported sightings of missing children; and

(VIII) Any other pertinent information regarding a missing child.

(b.1) The bureau shall obtain, if available, the dental records of any child who has been missing thirty or more days, and any custodian of such records shall comply with the bureau's request for the records.

(c) The bureau shall release general statistical information to the public at least once each calendar year and shall report such statistics and other information the bureau deems appropriate to the governor at least once each calendar year.

(3) To assist the bureau in compiling the list of missing children, every law enforcement agency in this state shall, upon receipt of information that a child is believed to be missing, send a missing child report containing identifying and descriptive information about the child to the bureau as soon as possible but no later than twenty-four hours after obtaining such information. If, at a later time, the law enforcement agency determines that the missing child has been located, the agency shall send notification to the bureau no later than twenty-four hours after making such determination.

(4) To assist the bureau in identifying missing children, a county coroner shall report to the bureau any unidentified or unclaimed dead human body which is found within his jurisdiction and which could be the body of a missing child. Such report shall be made within five days of the time the coroner takes charge of the unidentified or unclaimed dead human body and shall include fingerprints, dental information, and a physical description of the body with respect to approximate age, height, weight, hair and eye color, deformities, and scars or other identifying marks. If the bureau determines that the information submitted on an unidentified or unclaimed dead human body matches the information for a missing child, the bureau shall immediately notify the law enforcement agency that submitted the missing child report.

(5) A timely list of missing children shall be distributed on a regular basis to all school districts in this state, except those school districts which have elected to provide the names of all new or transfer students to the bureau, and each school district shall distribute such information to the individual schools within the district in whatever

manner deemed appropriate. The list shall include the names of missing children together with whatever information the bureau determines would be helpful in making identification. A school district shall either immediately notify the bureau if it comes in contact with a child whose name appears on the list of missing children or send the names of all new or transfer students to the bureau on a regular basis, and, if a missing child is identified, the bureau shall, in turn, notify the law enforcement agency that submitted the missing child report. All information received or transmitted pursuant to this subsection (5) shall be confidential and shall only be used for law enforcement purposes.

(6) In addition to distributing the list of missing children to school districts, the bureau may distribute such list to any other person or entity that the bureau determines might be instrumental in the identification and location of missing children. The bureau shall also list the name of every missing child with appropriate nationally maintained missing children lists. The bureau shall provide identifying and descriptive information about children determined to be missing immediately after receipt of reports from law enforcement agencies pursuant to subsection (3) of this section for entry into the national crime information center computer operated by the federal bureau of investigation. Immediately after a missing child is located, the law enforcement agency which located or returned the child shall notify the law enforcement agency having jurisdiction over the investigation and the bureau, and the bureau shall cancel the entry from the national crime information center computer.

(7) In order to accomplish the purposes of this section, the bureau is authorized to accept, receive, and expend assistance in the form of grants, gifts, grants-in-aid, bequests, and contributions from any agency, organization, or person. Such assistance shall be in addition to moneys appropriated to the bureau by the general assembly. Assistance received by the bureau in the form of money shall not revert to the general fund.

24-33.5-415.2. Receipt of proceeds from forfeited property. The division of the Colorado bureau of investigation is authorized to accept, receive, and expend proceeds allocated to the division after sale of forfeited property pursuant to part 3 or 5 of article 13 of title 16, C.R.S., or article 17 of title 18, C.R.S., and such funds shall be in addition to the moneys appropriated to the division by the general assembly. The executive director shall submit an annual report to the joint budget committee at the time the annual budget request is submitted providing information on the amounts received under this section, if any, and the uses made thereof.

24-33.5-415.3. Information on gangs - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The proliferation of gangs and gang-related crimes is no longer merely a

matter facing urban communities, and has become a matter of statewide concern;

(b) Gang activity involves a multitude of crimes, and illegal drug use and drug-trafficking constitute common factors associated with all gang-related activities and in the continuing pattern of gang-related violence;

(c) While the primary responsibility for law enforcement rests with local police and sheriffs' departments, drugs and drug-related crimes and gang-related criminal activity resulting therefrom have placed an overwhelming burden on the existing resources of all law enforcement agencies, especially rural departments. Therefore, the state has an obligation to make additional support available to local law enforcement through increased assistance in the investigation of narcotics and dangerous drug law violations; expanded training of local officers to improve their ability to interdict the sale and use of drugs in their communities; increased ability to assist in seizing moneys and properties utilized in drug transactions; improved forensic laboratory capability for the quantification and qualitative analysis of narcotics and dangerous drugs; and enhanced capability to collect, analyze, and disseminate information on drug and gang-related criminal activity.

(d) In order to contain the spread of gang violence, the development of a computerized data base tracking system is necessary to improve the consistency of data shared by the different law enforcement and judicial elements of the criminal justice system, both within the state and among various states confronted with similar gang violence.

(2) For the purposes of this section, unless the context otherwise requires, "gang" means a group of three or more individuals with a common interest, bond, or activity characterized by criminal or delinquent conduct.

(3) To aid in the identification and location of gangs and gang members and to prevent recruitment of new gang members from both the population in general and persons in the custody of the department of corrections and the department of human services, the Colorado bureau of investigation shall develop and maintain a computerized data base system which tracks the whereabouts of identified gang members. Such data base shall be compiled from reports submitted to the bureau pursuant to section 16-21-103, C.R.S. Such information shall include the following:

(a) The person's name, along with any aliases;

(b) The person's last-known address;

(c) The person's date of birth;

(d) The date of any arrest and the arrest numbers, the investigating agency's case number, the final disposition of any criminal case filed with a court, and the court number;

(e) Any information relevant to the person's association or affiliation with a gang or with gang activities.

(4) The bureau shall make every reasonable effort to locate and cooperate with

other such data bases in the United States in order to track gangs and gang members involved in interstate activities.

24-33.5-415.4. Security guard clearance - criminal history record checks. (1) As used in this section, unless the context otherwise requires:

(a) "Contract security agency" means any business which, for a fee or other consideration, agrees to furnish a uniformed security guard to protect persons, property, information, or other assets.

(b) "Proprietary security organization" means any internal functional organizational unit of a company which provides uniformed security guards for the exclusive use of such employing company.

(c) "Security guard" means any private uniformed security officer, armored car service officer, alarm response runner, watchman, lobby attendant, or other private uniformed person who is engaged in the protection of persons, property, information, or other assets.

(2) After January 1, 1992, any contract security agency or proprietary security organization may submit fingerprints of security guards to the bureau for purposes of a fingerprint-based criminal history record check pursuant to part 3 of article 72 of this title. The information obtained from the criminal history record check conducted pursuant to this section may be used by the contract security agency or proprietary security organization to determine whether or not to employ a person as a security guard. Nothing in this section shall be used as a basis for discrimination banned by section 24-34-402 (1) (a). The bureau shall charge a fee for record checks conducted pursuant to this section. The bureau shall set such fee at a level sufficient to cover the direct and indirect costs of processing requests made pursuant to this section. Moneys collected by the bureau pursuant to this section shall be subject to annual appropriation by the general assembly for the administration of criminal history record checks of security guards pursuant to this section.

24-33.5-415.5. Sex offender identification - fund. (Repealed)

24-33.5-415.6. Offender identification - fund. (1) There is hereby created in the state treasury the offender identification fund, referred to in this section as the "fund". Moneys in the fund shall consist of costs and surcharges levied pursuant to this section and payments for genetic testing received from offenders pursuant to sections 16-11-102.4, 18-1.3-407, and 19-2-925.6, C.R.S. Subject to annual appropriations by the general assembly, the executive director and the state court administrator are authorized to expend

moneys in the fund to pay for genetic testing of offenders pursuant to sections 16-11-102.4 and 18-1.3-407, C.R.S. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.

(2) (Deleted by amendment, L. 2006, p. 1692, § 14, effective July 1, 2007.)

(3) (a) A cost of two dollars and fifty cents is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided in section 18-1.3-102, C.R.S., for a felony, a misdemeanor, or misdemeanor traffic offense, charged pursuant to state statute. The defendant shall pay the costs to the clerk of the court. Each clerk shall transmit the moneys to the state treasurer, who shall credit the same to the fund.

(b) The provisions of sections 18-1.3-701 and 18-1.3-702, C.R.S., shall apply to the collection of costs levied pursuant to this subsection (3).

(4) A surcharge of two dollars and fifty cents is hereby levied against each penalty assessment notice issued pursuant to section 42-4-1701, C.R.S., for a misdemeanor or a class 1 or class 2 misdemeanor traffic offense under state statute that results in payment of the penalty assessment without the commencement of a criminal action. All moneys collected by the department of revenue pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the same to the fund.

(5) A cost of two dollars and fifty cents is hereby levied against each civil action resulting in an admission of liability or a judgment against the defendant for a class A or class B traffic infraction charged pursuant to state statute. The defendant shall pay the cost to the clerk of the court. Each clerk shall transmit the moneys to the state treasurer, who shall credit the same to the fund.

(6) A surcharge of two dollars and fifty cents is hereby levied against each penalty assessment notice issued pursuant to section 42-4-1701, C.R.S., for a class A or class B traffic infraction under state statute that results in payment of the penalty assessment without the commencement of a civil action. All moneys collected by the department of revenue pursuant to this subsection (6) shall be transmitted to the state treasurer, who shall credit the same to the fund.

(7) A surcharge of two dollars and fifty cents is hereby levied against each penalty assessment issued pursuant to section 33-6-104 or 33-15-102, C.R.S., that results in payment of the penalty assessment without the commencement of a criminal action. All moneys collected by the division of parks and wildlife in the department of natural resources pursuant to this subsection (7) shall be transmitted to the state treasurer, who shall credit the same to the fund.

(8) (Deleted by amendment, L. 2011, (SB 11-208), ch. 293, p. 1389, § 14, effective July 1, 2011.)

(9) The court may waive a cost or surcharge levied pursuant to this section if the court determines the defendant is indigent.

24-33.5-415.7. Amber alert program. (1) The general assembly hereby finds that, in the case of an abducted child, the first few hours are critical in finding the child. To aid in the identification and location of abducted children, there is hereby created the Amber alert program, referred to in this section as the "program", to be implemented by the bureau. The program shall be a coordinated effort among the bureau, local law enforcement agencies, and the state's public and commercial television and radio broadcasters.

(2) For the purposes of this section, "abducted child" means a child:

(a) Whose whereabouts are unknown;

(b) (I) Whose domicile at the time he or she was reported missing was Colorado; or

(II) About whom credible information is received from a law enforcement agency located in another state that the abducted child is traveling to or in the state of Colorado;

(c) Whose age at the time he or she was first reported missing was seventeen years of age or younger, including a newborn; and

(d) Whose disappearance poses a credible threat as determined by local law enforcement to the safety and health of the child.

(3) The program shall consist of the following:

(a) A procedure established by rule that a local law enforcement agency may follow to verify a child has been abducted. Once the local law enforcement agency verifies an abduction has occurred, the local law enforcement agency may notify the bureau.

(b) Upon receipt of a notice of a child abduction from a local law enforcement agency, the bureau shall confirm the accuracy of the information and then issue an alert via the state emergency alert system. In the case of an abducted newborn, the bureau need not have complete identification information on the newborn in order to issue an alert.

(c) The alert shall be sent to the federal communications commission's designated state emergency alert system broadcaster in Colorado. Participating radio and television stations shall issue the alert at designated intervals as specified in rule.

(d) The alert shall include all appropriate information the local law enforcement agency has that may assist in the safe recovery of the abducted child and a statement instructing anyone with information related to the abduction to contact his or her local law enforcement agency.

(e) The alert shall be cancelled upon bureau notification to the federal communications commission's designated state emergency alert system broadcaster that the child has been found or at the end of the notification period, whichever occurs first. Any local law enforcement agency that locates a child who is the subject of an alert shall notify the bureau as soon as possible that the child has been located.

(4) The executive director of the department of public safety shall promulgate

rules in accordance with the "State Administrative Procedure Act", article 4 of this title, for the implementation of the program. The rules shall include, but need not be limited to:

(a) Procedures for a local law enforcement agency to use to verify whether a child abduction has occurred and the circumstances under which the agency shall report the abduction to the bureau;

(b) The process to be followed by the bureau in confirming the local law enforcement agency's information;

(c) The process for reporting the information to the federal communications commission's designated state emergency alert system broadcaster in Colorado; and

(d) Any additional processes concerning implementation of the program.

24-33.5-415.8. Missing senior citizen and person with developmental disabilities alert program. (1) The general assembly hereby finds that, in the case of a missing senior citizen or missing person with developmental disabilities, the first few hours are critical in finding the senior citizen or person with developmental disabilities. To aid in the identification and location of missing senior citizens and missing persons with developmental disabilities, there is hereby created the missing senior citizen and missing person with developmental disabilities alert program, referred to in this section as the "program", to be implemented by the bureau. The program shall be a coordinated effort among the bureau, local law enforcement agencies, and the state's public and commercial television and radio broadcasters.

(2) For the purposes of this section:

(a) "Missing person with developmental disabilities" means a person:

(I) Whose whereabouts are unknown;

(II) Whose domicile at the time he or she is reported missing is Colorado;

(III) Who has a verified developmental disability; and

(IV) Whose disappearance poses a credible threat to the safety and health of himself or herself, as determined by a local law enforcement agency.

(b) "Missing senior citizen" means a person:

(I) Whose whereabouts are unknown;

(II) Whose domicile at the time he or she is reported missing is Colorado;

(III) Whose age at the time he or she is first reported missing is sixty years of age or older and who has a verified impaired mental condition; and

(IV) Whose disappearance poses a credible threat to the safety and health of the person, as determined by a local law enforcement agency.

(3) (a) The bureau shall implement the program as provided in this subsection (3) and pursuant to rules promulgated as provided in subsection (4) of this section.

(b) (I) When a local law enforcement agency receives notice that a senior citizen is missing, the agency shall require the senior citizen's family or legal guardian to provide

documentation of the senior citizen's impaired mental condition. The agency may follow a procedure established by rule to verify the senior citizen is missing and has an impaired mental condition. Once the local law enforcement agency verifies the senior citizen is missing and has a verified impaired mental condition, the local law enforcement agency may notify the bureau.

(II) When a local law enforcement agency receives notice that a person with developmental disabilities is missing, the agency shall require the family, legal guardian, or service provider of the missing person with developmental disabilities to provide documentation of the person's developmental disability. The agency may follow a procedure established by rule to verify the person is missing and has a developmental disability. Once the local law enforcement agency verifies the person with developmental disabilities is missing, the local law enforcement agency may notify the bureau.

(c) When notified by a local law enforcement agency that a senior citizen is missing and has a verified impaired mental condition or a person with developmental disabilities is missing, the bureau shall confirm the accuracy of the information and then issue an alert.

(d) The alert shall be sent to designated media outlets in Colorado. Participating radio stations, television stations, and other media outlets may issue the alert at designated intervals as specified by rule.

(e) The alert shall include all appropriate information from the local law enforcement agency that may assist in the safe recovery of the missing senior citizen or missing person with developmental disabilities and a statement instructing anyone with information related to the missing senior citizen or missing person with developmental disabilities to contact his or her local law enforcement agency.

(f) The alert shall be cancelled upon bureau notification that the missing senior citizen or missing person with developmental disabilities has been found or at the end of the notification period, whichever occurs first. A local law enforcement agency that locates a missing senior citizen or missing person with developmental disabilities who is the subject of an alert shall notify the bureau as soon as possible that the missing senior citizen or missing person with developmental disabilities has been located.

(4) The executive director of the department of public safety shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title, for the implementation of the program. The rules shall include, but need not be limited to:

(a) Procedures for a local law enforcement agency to use to verify whether a senior citizen or person with developmental disabilities is missing and to verify whether a senior citizen has an impaired mental condition or a person has a developmental disability and the circumstances under which the agency shall report the missing senior citizen or missing person with developmental disabilities to the bureau;

(b) The process to be followed by the bureau in confirming the local law enforcement agency's information;

(c) The process for reporting the information to designated media outlets in Colorado; and

(d) Any additional processes concerning implementation of the program.

24-33.5-415.9. Local lifesaver programs - legislative declaration - administration - rules - grants to counties - program requirements - cash fund. (1) The general assembly hereby finds, determines, and declares that:

(a) There are currently millions of people in the United States with medical conditions that cause wandering, with many of these individuals becoming lost and missing.

(b) In Colorado, there are currently estimated to be approximately seventy-nine thousand people with medical conditions, such as Alzheimer's disease, autism, Down syndrome, and other mental impairments, that cause wandering.

(c) It is estimated that the number of people in Colorado with Alzheimer's disease alone will increase to approximately one hundred forty thousand by 2025.

(d) Local law enforcement agencies currently expend significant resources searching for individuals with medical conditions who wander and become lost and missing.

(e) Technology enabling the quick location of missing and lost individuals now exists, and the use of this technology would be beneficial to the citizens of Colorado by allowing lost and missing individuals to be located quickly and safely in a manner that is more cost-effective for the citizens of Colorado.

(f) Establishing a grant program to encourage county sheriffs' departments to establish lifesaver programs pursuant to this section will be beneficial to the citizens of Colorado by saving the lives of lost and missing persons.

(2) The general assembly encourages each county or any combination of counties to implement a lifesaver program, under which a participant wears a small transmitter on his or her wrist to allow the county sheriffs' departments to electronically locate the participant if necessary using a radio receiver.

(3) The executive director shall serve as the liaison to lifesaver programs in counties that choose to implement them and shall administer the state grant moneys awarded for the purpose of starting the programs. The executive director may promulgate such rules as are necessary for the administration of this section, including but not limited to annual deadlines for submitting applications, reporting of search and rescue statistics using technology obtained under this section, and implementation policies for programs. The maximum amount that a county may receive for startup is ten thousand dollars.

(4) (a) If a county initiates a lifesaver program, it may submit a written application in a form specified by the executive director. Counties may submit applications jointly. The application shall include, but not be limited to:

(I) An estimate of the number of people who might qualify for assistance in the county;

(II) An estimate of the startup cost; and

(III) A statement of the number of personnel available for tracking lost individuals.

(b) The executive director shall prioritize the grant awards in accordance with the respective needs of each county for tracking services and the availability of local funding sources, as documented in the applications submitted pursuant to paragraph (a) of this subsection (4). Awards to qualifying counties shall be prorated in accordance with the availability of state grant funds.

(5) (a) If a county accepts a grant under this section, the county shall use such grant moneys to purchase emergency response kits, which shall include equipment necessary to track and triangulate searches, as well as transmitters, and shall provide such training as is necessary for search personnel. Grant moneys awarded under this section shall be used for startup capital equipment costs and initial training of search personnel and inventory including transmitters or any other related equipment or training required in order to implement the program. Counties accepting grant moneys under this section shall manage and provide ongoing costs associated with lifesaver programs once implemented.

(b) For all counties establishing a lifesaver program under this section, the Alzheimer's association Colorado chapter, or its successor organization, shall provide free training for law enforcement and families about the dangers of wandering and other potentially hazardous behavior secondary to Alzheimer's disease, as well as follow-up with families when a wandering incident has occurred. The training shall delineate the course of the disease and the potential for problematic behavior that exists in each stage, and shall provide families and the law enforcement community with the tools for handling difficult situations when they arise and strategies for warding off behavior before it threatens the life and safety of an individual with Alzheimer's disease.

(6) There is hereby created in the state treasury the lifesaver program cash fund. The moneys in the cash fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this section, including grants to counties to implement lifesaver programs. Any interest earned on the investment of moneys in the cash fund shall remain in the cash fund and shall not revert to the general fund of the state at the end of any fiscal year. It is the intent of the general assembly that the maximum amount of state moneys made available to implement lifesaver programs under this section shall be three hundred eighty thousand dollars.

24-33.5-416. Colorado organized crime strike force - established. (Repealed)

24-33.5-416.5. Blue alert program - definitions - rules. (1) The general assembly hereby finds that:

(a) A person who kills or inflicts a life-threatening injury upon a peace officer poses a serious and imminent threat to the safety of the public;

(b) When a person kills or inflicts a life-threatening injury upon peace officer, the first few hours after the act are critically important to apprehending the person; and

(c) It is therefore necessary to create an alert system to facilitate the immediate apprehension of such persons by law enforcement agencies of the state.

(2) As used in this section, unless the context otherwise requires:

(a) "Blue alert" means an alert issued by the bureau pursuant to the provisions of this section.

(b) "Designated broadcaster" means a broadcaster that is designated by rules promulgated pursuant to paragraph (e) of subsection (4) of this section to receive and broadcast a blue alert.

(c) "Notification period" means the period of time established by rules promulgated pursuant to paragraph (c) of subsection (4) of this section, during which time a blue alert shall remain effective unless it is cancelled by the bureau as described in paragraph (g) of subsection (3) of this section.

(d) "Peace officer" means:

(I) Any peace officer described by the provisions of part 1 of article 2.5 of title 16, C.R.S.; and

(II) A federal law enforcement officer who is authorized to carry a firearm and make arrests for violations of federal law.

(e) "Program" means the blue alert program created pursuant to paragraph (a) of subsection (3) of this section.

(3) (a) To facilitate the immediate apprehension of persons who kill or inflict life-threatening injuries upon peace officers, there is hereby created the blue alert program to be implemented by the bureau on and after January 1, 2012. The program shall be a coordinated effort among the bureau, law enforcement agencies, and the state's public and commercial television and radio broadcasters.

(b) Using procedures established by rules promulgated pursuant to subsection (4) of this section, a law enforcement agency may notify the bureau after verifying that a peace officer has been killed or has received a life-threatening injury and the suspect or suspects have fled the scene of the offense.

(c) Upon receipt of a notice from a law enforcement agency that a peace officer has been killed or has received a life-threatening injury and the suspect or suspects have fled the scene of the offense, the bureau, using procedures established by rules promulgated pursuant to subsection (4) of this section, shall confirm the accuracy of the information and issue a blue alert.

(d) The bureau shall send the blue alert, including the notification period

associated with the blue alert, to each designated broadcaster to be broadcast at designated intervals as specified in rules promulgated pursuant to subsection (4) of this section.

(e) A blue alert shall include:

(I) All appropriate information that the reporting law enforcement agency has that may assist in the apprehension of the suspect or suspects;

(II) A statement instructing anyone with information related to the killing or injuring of the peace officer to contact his or her local law enforcement agency; and

(III) A warning that the suspect or suspects are dangerous and that members of the public should not attempt to apprehend the suspect or suspects themselves.

(f) A federal, state, or local law enforcement agency that locates or apprehends the suspect or suspects shall notify the bureau as soon as practicable of such fact.

(g) A blue alert shall be cancelled when the bureau notifies the designated broadcaster that the suspect or suspects have been apprehended or at the end of the notification period, whichever occurs first.

(4) On or before November 1, 2011, the executive director of the department of public safety shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title, for the implementation of the program. The rules shall include, but need not be limited to:

(a) Procedures for a law enforcement agency to use to notify the bureau that a peace officer has been killed or has received a life-threatening injury and the suspect or suspects have fled the scene of the offense;

(b) Procedures for the bureau to follow in confirming the reporting law enforcement agency's information and reporting the information to each designated broadcaster;

(c) The establishment of a notification period to be used for each blue alert;

(d) The intervals at which designated broadcasters shall issue a blue alert; and

(e) A list of designated broadcasters who have volunteered to participate in the broadcasting of blue alerts.

24-33.5-417. Definition. (Repealed)

24-33.5-418. Agent in charge - powers and duties. (Repealed)

24-33.5-419. Advisory commission - powers and duties. (Repealed)

24-33.5-420. Peace officer staff - qualifications - powers. (Repealed)

24-33.5-421. Cooperation with local authorities. (Repealed)

24-33.5-422. Cooperation with attorney general. (Repealed)

24-33.5-423. Repeal of sections. (Repealed)

24-33.5-424. National instant criminal background check system - state point of contact - fee - grounds for denial of firearm transfer - appeal - rule-making - unlawful acts - instant criminal background check cash fund - creation - repeal. (1) For purposes of this section:

(a) "18 U.S.C. sec. 922 (t)" means 18 U.S.C. sec. 922 (t) as it exists as of March 7, 2000, or as it may be amended.

(b) "Firearm" has the same meaning as set forth in 18 U.S.C. sec. 921 (a) (3), as amended.

(c) "NICS system" means the national instant criminal background check system created by Public Law 103-159, known as the federal "Brady Handgun Violence Prevention Act", the relevant portion of which is codified at 18 U.S.C. sec. 922 (t).

(d) "Transfer" means the sale or delivery of any firearm in this state by a transferor to a transferee. "Transfer" shall include redemption of a pawned firearm by any person who is not licensed as a federal firearms licensee by the federal bureau of alcohol, tobacco, and firearms or any of its successor agencies. "Transfer" shall not include the return or replacement of a firearm that had been delivered to a federal firearms licensee for the sole purpose of repair or customizing.

(e) "Transferee" means any person who is not licensed as a federal firearms licensee by the federal bureau of alcohol, tobacco, and firearms or any of its successor agencies, in accordance with the federal "Gun Control Act of 1968", chapter 44 of title 18 U.S.C., as amended, and to whom a transferor wishes to sell or deliver a firearm.

(f) "Transferor" means any licensed importer, licensed manufacturer, or licensed dealer as defined in 18 U.S.C. sec. 921 (a) (9), (a) (10), and (a) (11), as amended, respectively.

(2) The bureau is hereby authorized to serve as a state point of contact for implementation of 18 U.S.C. sec. 922 (t), all federal regulations and applicable guidelines adopted pursuant thereto, and the NICS system.

(3) (a) The bureau, acting as the state point of contact for implementation of 18

U.S.C. sec. 922 (t), shall transmit a request for a background check in connection with the prospective transfer of a firearm to the NICS system and may also search other databases. The bureau shall deny a transfer of a firearm to a prospective transferee if the transfer would violate 18 U.S.C. sec. 922 (g) or (n) or result in the violation of any provision of state law, including but not limited to section 18-12-108 (4) (c), C.R.S., involving acts which, if committed by an adult, would constitute a burglary, arson, or any felony involving the use of force or the use of a deadly weapon.

(b) (I) In addition to the grounds for denial specified in paragraph (a) of this subsection (3), the bureau shall deny a transfer of a firearm if, at any time the bureau transmits the request or searches other databases, information indicates that the prospective transferee:

(A) Has been arrested for or charged with a crime for which the prospective transferee, if convicted, would be prohibited under state or federal law from purchasing, receiving, or possessing a firearm and either there has been no final disposition of the case or the final disposition is not noted in the other databases; or

(B) Is the subject of an indictment, an information, or a felony complaint alleging that the prospective transferee has committed a crime punishable by imprisonment for a term exceeding one year as defined in 18 U.S.C. sec. 921 (a) (20), as amended, and either there has been no final disposition of the case or the final disposition is not noted in the other databases.

(II) Repealed.

(c) The bureau is authorized to cooperate with federal, state, and local law enforcement agencies to perform or assist any other law enforcement agency in performing any firearm retrievals, and to assist in the prosecution of any rescinded transfers.

(3.5) (a) On and after March 20, 2013, the bureau shall impose a fee for performing an instant criminal background check pursuant to this section. The amount of the fee shall not exceed the total amount of direct and indirect costs incurred by the bureau in performing the background check.

(b) The bureau shall transmit all moneys collected pursuant to this subsection (3.5) to the state treasurer, who shall credit the same to the instant criminal background check cash fund, which fund is hereby created and referred to in this subsection (3.5) as the "fund".

(c) The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct costs associated with performing background checks pursuant to this section. The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. The state treasurer shall credit any interest and income derived from the deposit and investment of moneys in the fund to the fund.

(d) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited to any other fund. To the

extent practicable, the bureau shall use any such remaining funds to reduce the amount of the fee described in paragraph (a) of this subsection (3.5).

(e) The bureau is authorized to contract with a public or private entity for services related to the collection of the fee described in paragraph (a) of this subsection (3.5).

(f) On January 15, 2014, and on January 15 of each calendar year thereafter, the bureau shall report to the joint budget committee concerning:

(I) The number of full-time employees used by the bureau in the preceding year for the purpose of performing background checks pursuant to this section; and

(II) The calculations used by the bureau to determine the amount of the fee imposed pursuant to this subsection (3.5).

(g) (I) The bureau is authorized to continue using general fund moneys appropriated to the bureau for the 2013-14 fiscal year for the purpose of performing criminal background checks pursuant to this section until the sooner of:

(A) A date six months after March 20, 2013; or

(B) A date upon which sufficient moneys exist within the fund to pay for the performing of criminal background checks pursuant to this section.

(II) This paragraph (g) is repealed, effective July 1, 2014.

(4) Pursuant to section 16-21-103 (4) (c), C.R.S., and section 19-1-304 (1) (b.8), C.R.S., the bureau shall receive and process information concerning final case disposition data of any cases prosecuted in a court in this state within seventy-two hours after the final disposition of the case for purposes of carrying out its duties under this section.

(5) (a) Upon denial of a firearm transfer, the bureau shall notify the transferor and send notice of the denial to the NICS system, pursuant to 18 U.S.C. sec. 922 (t). In addition, the bureau shall immediately send notification of such denial and the basis for the denial to the federal, state, and local law enforcement agencies having jurisdiction over the area in which the transferee resides and in which the transferor conducts any business.

(b) Upon denial of a firearm transfer, the transferor shall provide the transferee with written information prepared by the bureau concerning the procedure by which the transferee, within thirty days after the denial, may request a review of the denial and of the instant criminal background check records that prompted the denial. Within thirty days of receiving such a request, the bureau shall:

(I) Perform a thorough review of the instant criminal background check records that prompted the denial; and

(II) Render a final administrative decision regarding the denial within thirty days after receiving information from the transferee that alleges the transfer was improperly denied.

(c) In the case of any transfer denied pursuant to paragraph (b) of subsection (3) of this section, the inability of the bureau to obtain the final disposition of a case that is no longer pending shall not constitute the basis for the continued denial of the transfer.

(d) If the bureau reverses a denial, the bureau shall immediately request that the agency that provided the records prompting the denial make a permanent change to such records if necessary to reflect accurate information. In addition, the bureau shall provide immediate notification of such reversal to all agencies and entities that had been previously notified of a denial pursuant to paragraph (a) of this subsection (5).

(6) If in the course of conducting any background check pursuant to this section, whether the firearms transaction is approved or denied, the bureau obtains information that indicates the prospective transferee is the subject of an outstanding warrant, the bureau shall immediately provide notification of such warrant to the federal, state, and local law enforcement agencies having jurisdiction over the area in which the transferee resides and in which the transferor conducts any business.

(7) (a) The executive director or his or her designee shall adopt such rules as are necessary to:

(I) Carry out the duties of the bureau as the state point of contact, as those duties are set forth in federal law, and assist in implementing 18 U.S.C. sec. 922 (t), all federal regulations and applicable guidelines adopted pursuant thereto, and the NICS system; and

(II) Ensure the proper maintenance, confidentiality, and security of all records and data provided pursuant to this section.

(b) The rules adopted pursuant to paragraph (a) of this subsection (7) shall include, but need not be limited to:

(I) Procedures whereby a prospective transferee whose transfer is denied may request a review of the denial and of the instant criminal background check records that prompted the denial;

(II) Procedures regarding retention of records obtained or created for purposes of this section or for implementation of 18 U.S.C. sec. 922 (t); except that the bureau shall not retain a record for more than forty-eight hours after the day on which the bureau approves the transfer;

(III) Procedures and forms adopted by the bureau that request information from and establish proper identification of a prospective transferee and that may correspond with any firearms transaction record required by 18 U.S.C. sec. 922 (t). Such procedures and forms shall not preclude any person from making a lawful firearm transfer under this section.

(IV) Procedures for carrying out the duties under this section, including at a minimum:

(A) That the bureau shall be open for business at least twelve hours per day every calendar day, except Christmas day and Thanksgiving day, in order to transmit the requests for a background check to the NICS system and search other databases;

(B) That the bureau shall provide a toll-free telephone number for any person calling from within the state that is operational every day that the office is open for business for the purpose of responding to requests from transferors in accordance with

this section; and

(C) That the bureau shall employ and train personnel at levels that ensure prompt processing of the reasonably anticipated volume of inquiries received under this section.

(8) Nothing in this section shall be construed to create any civil cause of action for damages in addition to that which is available under the "Colorado Governmental Immunity Act", article 10 of this title.

(9) No act performed by the bureau or its agents in carrying out their lawful duties under this section shall be construed to be a violation of any provision of title 18, C.R.S.

(10) (a) It is unlawful for:

(I) Any person, in connection with the acquisition or attempted acquisition of a firearm from any transferor, to willfully make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification that is intended or likely to deceive such transferor with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under federal or state law;

(II) Any transferor knowingly to request criminal history record information or a background check under false pretenses or knowingly to disseminate criminal history record information to any person other than the subject of such information;

(III) Any agent or employee or former agent or employee of the bureau knowingly to violate the provisions of this section.

(b) Any person who violates the provisions of paragraph (a) of this subsection (10) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(11) Any transferor who complies with the provisions of this section shall not be subject to any civil or criminal liability or regulatory sanction that may arise from the lawful transfer or lawful denial of the transfer of a firearm.

24-33.5-425. Cold case homicide team. (1) There is hereby created a cold case homicide team in the bureau, referred to in this section as the "team".

(2) (a) The team shall develop a database that shall contain information related to each homicide investigation that is open in a Colorado jurisdiction for more than three years from the date of the commission of the crime and was committed since 1970. The bureau shall adopt rules that specify the information that shall be collected and maintained in the database, including the information required pursuant to paragraph (b) of subsection (3) of this section.

(b) Each law enforcement agency in the state shall provide the information required for inclusion in the database for each homicide investigation that is open in a Colorado jurisdiction for more than three years from the date of the commission of the crime and was committed since 1970. The law enforcement agency shall maintain the physical evidence and investigation file for each such case unless otherwise agreed by the

law enforcement agency and the bureau.

(3) (a) The team may provide assistance to local law enforcement agencies, upon request and within existing appropriations, on homicide investigations. If the team declines to provide assistance to a local law enforcement agency after a request is made pursuant to this subsection (3), the team shall provide the local law enforcement agency with a written explanation for its decision, which may include but need not be limited to lack of resources and shall include the written explanation in the database created in subsection (2) of this section.

(b) A family member of a homicide victim may request that the local law enforcement agency investigating the homicide ask the team for assistance in investigating the homicide. The local law enforcement agency shall decide whether to ask the team for assistance. Within thirty days after receiving a request from a family member, the local law enforcement agency shall notify the family member whether it will seek the assistance of the team. If the local law enforcement agency decides not to seek the assistance of the team, it shall inform the family member of its reasons for the decision in writing and provide that same information in writing to the bureau for inclusion in the database created in subsection (2) of this section. If the local law enforcement agency decides to seek the assistance of the team, it shall contact the team and request the assistance. Within thirty days after receiving a request from a local law enforcement agency, the team shall notify the local law enforcement agency regarding whether it will offer assistance to the local law enforcement agency. If the team decides not to offer assistance to the local law enforcement agency, it shall inform the local law enforcement agency of the reasons for its decision in writing and include those reasons in the database created in subsection (2) of this section.

24-33.5-426. Colorado bureau of investigation identification unit fund. All moneys collected by the department for the purposes of fingerprint criminal history record checks and name criminal history record checks shall be transmitted to the state treasurer, who shall credit the same to the Colorado bureau of investigation identification unit fund, which fund is hereby created and referred to in this section as the "fund". In addition, the fund may consist of moneys that may be appropriated to the fund by the general assembly. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with conducting criminal history record checks. Any moneys in the fund not expended for the purpose of criminal history record checks may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-33.5-427. Colorado bureau of investigation grants and donations fund. The department is authorized to seek, accept, and expend grants or donations from private or public sources for the purposes of this part 4; except that the department may not seek, accept, or expend a grant or donation that is subject to conditions that are inconsistent with this part 4 or any other law of the state. The department shall transmit all private and public moneys received through grants or donations to the state treasurer, who shall credit the same to the Colorado bureau of investigation grants and donations fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the department for the purposes of this part 4. The state treasurer shall credit all interest derived from the deposit and investment of moneys in the fund to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund remain therein and shall not be credited or transferred to the general fund or any other fund. Moneys received pursuant to this section are not subject to the provisions of part 13 of article 75 of this title.

PART 5

DIVISION OF CRIMINAL JUSTICE

24-33.5-501. Legislative declaration. In enacting this part 5, the general assembly declares that its purpose is to improve all areas of the administration of criminal justice in Colorado, both immediately and in the long term, regardless of whether the direct responsibility for action lies at the state level or with the many units of local government. The implementation of this policy is facilitated by the availability of federal funds, but the policy itself is not dependent thereon.

24-33.5-502. Division of criminal justice created. (1) There is hereby created as a division of the department of public safety the division of criminal justice, referred to in this part 5 as the "division". The executive director, subject to the provisions of section 13 of article XII of the state constitution, shall appoint the director of the division, referred to in this part 5 as the "director", which office is hereby created.

(2) The division of criminal justice and the office of the director shall exercise their powers and perform their duties and functions under the department of public safety and the executive director as transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

24-33.5-503. Duties of division. (1) The division has the following duties:

(a) In cooperation with other agencies, to collect and disseminate information concerning crime and criminal justice for the purpose of assisting the general assembly and of enhancing the quality of criminal justice at all levels of government in this state;

(b) To analyze this state's activities in the administration of criminal justice and the nature of the problems confronting it and to make recommendations and to develop comprehensive plans of action for the improvement of criminal justice and for crime and delinquency control and related matters for consideration and implementation by the appropriate agencies of state and local government. In developing such plans, the division shall draw upon the planning capabilities of other agencies, particularly the judicial department and the department of corrections.

(c) To advise and assist law enforcement agencies in this state to improve their law enforcement systems and their relationships with other agencies and the statewide system;

(d) To act as the state planning agency under the federal "Crime Control Act of 1973", Pub.L. 93-83;

(e) To do all things necessary to apply for, qualify for, accept, and expend any state, federal, or other moneys made available or allotted under said Public Law 93-83 and under any other law or program, including the Colorado community policing program described in part 6 of this article, designed to improve the administration of criminal justice, court systems, law enforcement, prosecution, corrections, probation and parole, juvenile delinquency programs, and related fields;

(f) To administer a statistical analysis center for the purpose of collecting and analyzing statewide criminal justice statistics;

(g) To establish and maintain a jail health care project to assist detention facilities in acquiring accreditation from the American medical association, provide technical assistance to jails relating to the development, upgrading, and evaluation of inmate health care delivery systems, act as an educational clearinghouse for information related to jail health care, assist in the development of specialized training programs for detention personnel, provide technical assistance in the planning and construction of new jail facilities relating to inmate health care delivery systems, and implement cooperation between community and state agencies to improve detention health care;

(h) Repealed.

(i) To promulgate rules and regulations which set minimum standards for temporary holding facilities as defined in section 19-1-103 (106), C.R.S.;

(j) To carry out the duties specified in article 27.8 of title 17, C.R.S.;

(k) To carry out the duties prescribed in article 11.5 of title 16, C.R.S.;

(l) To carry out the duties prescribed in article 11.7 of title 16, C.R.S.;

(m) To provide information to the director of research of the legislative council concerning population projections, research data, and other information relating to the projected long-range needs of correctional facilities and juvenile detention facilities and

any other related data requested by the director;

(n) To carry out the duties prescribed in section 16-11-101.7 (3), C.R.S.;

(o) To develop, in consultation with the sex offender management board and the judicial branch by January 1, 1999, the risk assessment screening instrument that will be provided to the sentencing courts to determine the likelihood that a sex offender would commit one or more of the offenses specified in section 18-3-414.5 (1) (a) (II), C.R.S., under the circumstances described in section 18-3-414.5 (1) (a) (III), C.R.S.;

(p) To implement, in consultation with the judicial branch, by July 1, 1999, the risk assessment screening instrument developed pursuant to paragraph (o) of this subsection (1);

(q) To review existing policies relating to the issuance and use of no-knock search warrants pursuant to part 3 of article 3 of title 16, C.R.S.;

(r) To inspect secure juvenile facilities and collect data on juveniles that are held in secure juvenile facilities, jails, and lockups throughout the state;

(s) To report, on or before January 15, 2011, and every five years thereafter, in consultation with the state economist, to the judiciary committees of the senate and the house of representatives, or any successor committees, recommendations for changes to value-based crimes based upon inflationary changes during the previous five years;

(t) To analyze the data from the state board of parole provided to the division pursuant to section 17-22.5-404 (6), C.R.S., and to provide training to the board, pursuant to section 17-22.5-404 (6), C.R.S., regarding how to use the data obtained and analyzed to facilitate the board's decision-making;

(u) Repealed.

(v) To provide to the judiciary committees of the senate and the house of representatives, or any successor committees, a status report on the effect on parole outcomes and use of any moneys allocated pursuant to House Bill 10-1360, enacted in 2010;

(w) To develop the administrative release guideline instrument for use by the state board of parole as described in section 17-22.5-107 (1), C.R.S.;

(x) To develop the Colorado risk assessment scale as described in section 17-22.5-404 (2) (a), C.R.S.;

(y) To develop, in cooperation with the department of corrections and the state board of parole, a parole board action form;

(z) To provide training on the Colorado risk assessment scale and the administrative release guideline instrument as required by section 17-22.5-404 (2) (c), C.R.S.; and

(aa) To receive the information reported to the division by law enforcement agencies pursuant to section 22-32-146, C.R.S., and by district attorneys pursuant to section 20-1-113, C.R.S., and provide the information, as submitted to the division, to any member of the public upon request, in a manner that does not include any identifying

information regarding any student. If the division provides the information to a member of the public upon request pursuant to this paragraph (aa), the division may charge a fee to the person, which fee shall not exceed the direct and indirect costs incurred by the division in providing the information.

24-33.5-503.5. Training programs - assess fees - cash fund created. (1) The division may charge a fee in exchange for providing a training program. The fees charged shall be deposited into the criminal justice training fund created in subsection (2) of this section.

(2) There is hereby created in the state treasury the criminal justice training fund, referred to in this section as the "fund". All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with providing training. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-33.5-504. Policy guidelines for state plans and fund distribution. (1) In addition to the plans developed under section 24-33.5-503 (1) (b), separate plans may be developed for each region designated by the division of planning in the department of local affairs. The state plan shall take into account the regional plans but shall not be a mere compilation of them. Separate county or municipal plans shall also be developed as necessary within a metropolitan region.

(2) The state plan shall provide for the distribution of financial grants to local law enforcement and other agencies in such a way that each grant is of sufficient size to make a significant impact. Grants should be used to encourage coordination and consolidation of law enforcement agencies where appropriate and shall not be used in such a way as to perpetuate unnecessary fragmentation of the criminal justice system.

(3) In the distribution of planning funds and action grants, the state plan shall give due regard to the relative needs of different areas for planning and program help and encouragement, shall consider population and the incidence of major crime, and shall weigh the probable contribution of the grant to the improvement of law enforcement and justice through conventional programs and through new, innovative, or pilot approaches.

24-33.5-505. State jail advisory committee created - responsibilities - sunset review. (Repealed)

24-33.5-506. Victims assistance and law enforcement fund - creation. (1) There is hereby created in the state treasury a fund to be known as the victims assistance and law enforcement fund, referred to in this section as the "fund". The state treasurer shall credit to the fund all moneys deposited with the state treasurer pursuant to section 24-4.2-105 (1) and voluntary victim assistance payments from inmates pursuant to article 24 of title 17, C.R.S. The general assembly shall make annual appropriations of the moneys in the fund to the division:

(a) For payment of the direct and indirect costs incurred by said division in administering the provisions of this section and section 24-33.5-507 and in administering any victims program authorized by federal or state law;

(b) For distribution as determined by the division, with recommendations from the crime victim services advisory board, created in section 24-4.1-117.3 (1) and referred to in this section as the "advisory board", to the department of public safety, the department of corrections, the department of human services, and the office of the state court administrator to implement and coordinate statewide victim services. Subject to available appropriations, the amount of moneys distributed by the division to each agency each fiscal year shall be no less than the total of the amount distributed to the agency in the prior fiscal year minus any moneys budgeted for one-time projects or evaluations and minus any additional grant moneys that the agency received through the grant process described in section 24-33.5-507.

(c) For allocation to the department of law for the position of victims' services coordinator created pursuant to section 24-31-106. The amount allocated to the department of law pursuant to this paragraph (c) may be increased by up to five percent annually.

(c.5) Repealed.

(d) For distribution by the division, based on recommendations from the advisory board, through the awarding of grants.

(1.5) In addition to the annual appropriations specified in subsection (1) of this section, the general assembly shall make annual appropriations of the moneys in the victims assistance and law enforcement fund for payment of the direct and indirect costs of implementing the provisions of section 17-2-201 (5) (g), C.R.S.

(2) Any unexpended balance of moneys appropriated by the general assembly in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the fund for allocation pursuant to subsection (1) of this section.

(3) The priority use for moneys in the fund shall be for the implementation of the rights afforded to crime victims pursuant to section 24-4.1-302.5 and the provision of

services and programs for crime victims. The advisory board may set additional priorities for the use of moneys in the fund.

24-33.5-507. Application for grants. (1) The division shall accept applications from agencies and organizations requesting grants of moneys for the following purposes, including, but not limited to, the provision of services, training programs, additional personnel, and equipment and operating expenses related to victim assistance and notification programs. The crime victim services advisory board created in section 24-4.1-117.3 (1) shall evaluate the applications and make recommendations to the division.

(2) (Deleted by amendment, L. 2009, (SB 09-047), ch. 129, p. 558, § 9, effective July 1, 2009.)

(3) Repealed.

24-33.5-507.5. Definition of "status offender" to comply with federal law. For purposes of compliance with federal law, "status offender" shall have the same meaning as defined in federal law in 28 CFR 31.304, as amended. This definition is solely for the purpose of complying with federal statutory, regulatory, and program requirements.

24-33.5-508. Advisory board. (Repealed)

24-33.5-509. Repeal of sections. (Repealed)

24-33.5-510. Victim prevention programs - legislative declaration - grants - criteria. (1) The general assembly hereby declares that there is a great need to create innovative approaches to prevent persons from becoming victims of crime. In order to encourage the development of such innovative approaches for the primary prevention of crime and to encourage the integration of such innovative approaches with victim prevention methods which have been demonstrated to be effective, the general assembly hereby enacts this section.

(2) The division of criminal justice is hereby authorized to do all things necessary to apply for, qualify for, accept, and distribute any moneys made available from federal, state, or private entities which are to be used for the development of victim prevention programs.

(3) The division of criminal justice shall allocate the moneys obtained pursuant to subsection (2) of this section for the development of victim prevention programs which

meet the following criteria:

(a) The program shall have as its principal purpose the reduction or prevention of the incidence of crime in the community.

(b) The program shall be community-based and shall encourage the development of a public-private partnership to achieve the goals of the program.

(c) The program shall concentrate especially on the prevention of the commission of crime by persons between the ages of ten and eighteen years.

(d) The program may employ recognized victim prevention methods, including but not limited to victim impact panels, but shall be encouraged to develop new and innovative victim prevention methods.

(e) The program shall be operated by agencies or entities which are local in nature, and the program shall be local in administration and application. The grants of moneys pursuant to this section are intended to be used as a match for federal grant moneys provided pursuant to 42 U.S.C. sec. 3701.

(4) The division of criminal justice shall accept and evaluate applications from local agencies or entities requesting grants of moneys to develop victim prevention programs in accordance with this section. In evaluating such requests, the division shall consider the degree of community participation in each proposed program in determining whether to make any grant.

24-33.5-511. Inmate classification instrument - independent evaluation required. (Repealed)

24-33.5-512. Recidivism reduction grant program - creation - definitions - repeal. (Repealed)

24-33.5-513. Prostitution enforcement resources grant program - application process - cash fund - reports - rules - repeal. (1) There is hereby created in the division the prostitution enforcement resources grant program. Under the program, on and after July 1, 2013, a municipal law enforcement agency may apply for a grant to fund efforts to combat prostitution-related offenses. The division shall administer the program pursuant to the provisions of this section.

(2) The division shall solicit and review applications from municipal law enforcement agencies for grants pursuant to this section. The department may award grants to municipal law enforcement agencies for periods of one to three years.

(3) Each application, at a minimum, shall describe how the applicant municipal law enforcement agency will use any awarded grant moneys to combat prostitution-

related offenses. Each grant recipient shall use its grant moneys to supplement and not supplant any moneys currently being used by the grant recipient to combat prostitution-related offenses.

(4) The division shall select those municipal law enforcement agencies that will receive grants pursuant to this section and the duration and amount of each grant. In selecting the grant recipients, the division, at a minimum, shall take into account the criteria established by rules promulgated by the executive director pursuant to subsection (7) of this section.

(5) (a) There is hereby created in the state treasury the prostitution enforcement cash fund, referred to in this section as the "fund", to be administered by the division pursuant to this section. The fund shall consist of moneys transferred to the fund pursuant to paragraph (c) of this subsection (5) and pursuant to sections 18-7-202 (2), 18-7-203 (2) (a) and (2) (b), and 18-7-205 (2), C.R.S.

(b) Notwithstanding any other provision of this section, the division shall not be required to implement the provisions of this section until sufficient moneys have been transferred or appropriated to the fund.

(c) (I) The division may seek, accept, and expend public or private gifts, grants, and donations from public and private sources to implement this section; except that the division shall not accept a gift, grant, or donation that is subject to conditions that are inconsistent with the provisions of this article or any other law of the state. The division shall transfer all private and public moneys received through gifts, grants, and donations to the state treasurer, who shall credit the same to the cash fund.

(II) Nothing in this paragraph (c) shall be interpreted to require the division to solicit moneys for the purposes of this section.

(d) The moneys in the fund shall be subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund; except that all unexpended and unencumbered moneys remaining in the fund as of July 1, 2018, shall be transferred to the general fund.

(e) The division may expend up to three percent of the moneys annually appropriated from the fund to offset the costs incurred in implementing this section.

(6) On or before a date specified by the executive director pursuant to subsection (7) of this section, the division shall submit annually to the judiciary committees of the senate and house of representatives, or any successor committees, the following information regarding the administration of the program in the preceding year:

(a) The number of grant recipients that received grants under the program;

(b) The amount of each grant awarded to each grant recipient;

(c) The average amount of each grant awarded under the program;

(d) The number of arrests for prostitution-related offenses made by the recipient municipal law enforcement agency in the twelve-month period preceding the receipt of grant moneys; and

(e) The number of arrests for prostitution-related offenses made by the recipient municipal law enforcement agency since receiving grant moneys.

(7) On or before April 1, 2012, the executive director shall promulgate rules for the administration of this section, including but not limited to:

(a) Application procedures by which a municipal law enforcement agency may apply for a grant pursuant to this section;

(b) Criteria for the division to apply in selecting the municipal law enforcement agencies that shall receive grants and determining the amount of grant moneys to be awarded to each grant recipient, which criteria, at a minimum, shall require each grant recipient to use awarded grant moneys for the purpose of combating prostitution-related offenses; and

(c) The designation of a date by which the department shall annually submit to the judiciary committees of the senate and house of representatives, or any successor committees, the information described in subsection (6) of this section.

(8) This section is repealed, effective July 1, 2018.

24-33.5-514. Evidence-based practices implementation for capacity program - EPIC fund - creation - repeal. (1) There is hereby created the evidence-based practices implementation for capacity resource center in the division, referred to in this section as the "center". The intent of the center is to assist agencies serving juvenile and adult populations to develop and sustain effective implementation frameworks to support the use of evidence-based practices. The center is a collaborative effort among the department of public safety, the department of corrections, the department of human services, and the judicial department to increase the efficacy of individuals who work with various offender and victim populations by establishing an educational, skill-building, and consultation resource center to support practitioners in the implementation of evidence-based practices.

(2) (a) There is hereby created in the division the EPIC advisory board, referred to in this section as the "board".

(b) The board shall exercise its powers and perform its duties and functions under the department of public safety.

(c) (I) The board shall consist of, at a minimum, the following five members:

(A) The executive director of the department of public safety or his or her designee;

(B) The executive director of the department of corrections or his or her designee;

(C) The executive director of the department of human services or his or her designee;

(D) The director of the division of criminal justice in the department of public safety; and

(E) The director of the division of probation services in the judicial department or his or her designee.

(II) The director of the division of criminal justice may appoint additional members to ensure adequate representation and oversight.

(d) The members of the board shall serve without compensation and without reimbursement for expenses.

(e) The board shall meet at least four times per calendar year. The director of the division of criminal justice may call such additional meetings as may be necessary for the board to complete its duties.

(f) The board shall support the center to create and maintain internal, sustainable structural implementation components of evidence-based practices.

(g) The department shall provide office space, equipment, and staff services as may be necessary to implement the provisions of this section.

(h) (I) This subsection (2) is repealed, effective September 1, 2023.

(II) Prior to said repeal, the board shall be reviewed as provided for in section 2-3-1203, C.R.S.

(3) (a) The division is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section; except that the division may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The division shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the EPIC fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this section.

(b) The general assembly finds that the implementation of this section does not rely entirely or in any part on the receipt of adequate funding through gifts, grants, or donations. Therefore, the division is not subject to the notice requirements specified in section 24-75-1303 (3).

(4) By July 1, 2014, and July 1 every three years thereafter, the division shall provide a report to the members of the general assembly regarding the status of the center. The report must include quantitative measures identified by the advisory board that describe the center's impact.

24-33.5-515. Statewide automated victim information and notification system - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The federal department of justice offered grants to help establish statewide automated victim information and notification systems;

(b) A Colorado statewide association of county sheriffs applied for and received grants to establish a statewide automated victim information and notification system and recently received an additional grant to upgrade the system;

(c) The system allows crime victims and other concerned citizens to access timely and reliable information about criminal cases and the custody status of offenders twenty-four hours a day over the telephone, through the internet, or by electronic mail;

(d) The system is available for any county that wishes to participate and also includes the division of youth corrections;

(e) Although the federal grants were sufficient to establish the system, there is no funding source for the ongoing expenses of operating the system; and

(f) The division is in the best position to distribute funding for the system and to monitor its effectiveness.

(2) The general assembly may annually appropriate from the general fund to the division moneys for the operation of the statewide automated victim information and notification system. The division must distribute moneys appropriated to the division by the general assembly for the operation of the statewide automated victim information and notification system to be used by the county sheriffs, the division of youth corrections, and other departments or agencies.

24-33.5-516. Study marijuana implementation. (1) The division shall gather data and undertake or contract for a scientific study of law enforcement's activity and costs related to the implementation of section 16 of article XVIII of the state constitution over the two-year period beginning January 1, 2006, and over the two-year period beginning January 1, 2014.

(2) To be included in the study, the division or contractor must have data for both of the two-year periods described in subsection (1) of this section. The study must include information concerning:

(a) Marijuana-initiated contacts by law enforcement, broken down by judicial district and by race and ethnicity;

(b) Comprehensive school data, both statewide and by individual school, including suspensions, expulsions, and police referrals related to drug use and sales, broken down by specific drug categories;

(c) Marijuana arrest data, including amounts of marijuana with each arrest, broken down by judicial district and by race and ethnicity;

(d) Traffic accidents, including fatalities and serious injuries related to being

under the influence of marijuana;

(e) Diversion of marijuana to persons under twenty-one years of age;

(f) Diversion of marijuana out of Colorado;

(g) Crime occurring in and relating to the operation of marijuana establishments;

(h) Utilization of parcel services for the transfer of marijuana;

(i) Data related to drug-endangered children, specifically for marijuana;

(j) Probation data;

(k) Data on emergency room visits related to the use of marijuana and the outcomes of those visits, including information from Colorado poison control center;

(l) Outdoor marijuana cultivation facilities;

(m) Money laundering relating to both licensed and unlicensed marijuana; and

(n) The role of organized crime in marijuana.

(3) The division is not required to perform the duties required by this section until the marijuana cash fund, created in section 12-43.3-501, C.R.S., has received sufficient revenue to fully fund the appropriations made to the department of revenue related to articles 43.3 and 43.4 of title 12, C.R.S., and the general assembly has appropriated sufficient moneys from the fund for such duties.

PART 6

COLORADO COMMUNITY POLICING ACT

24-33.5-601. Short title. This part 6 shall be known and may be cited as the "Colorado Community Policing Act".

24-33.5-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "At-risk neighborhood" means an urban or rural neighborhood or community in which there are incidences of:

(a) Poverty, unemployment and underemployment, substance abuse, crime, school dropouts, illiteracy, teen pregnancies and teen parents, domestic violence, or other conditions that put families at risk; or

(b) Alcohol abuse, public intoxication, or repetitive disturbances of the peace.

(2) "Local law enforcement agency" means a police department in incorporated municipalities, the office of the county sheriff, or a campus police agency.

24-33.5-603. Colorado community policing program - creation. There is hereby created in the division of criminal justice the Colorado community policing

program for the purpose of providing grants to local law enforcement agencies for the implementation of community policing plans that are designed to proactively prevent crime in cooperation with residents of communities and at-risk neighborhoods and providing training and education related to the program.

24-33.5-604. Colorado community policing program - administration. (1) The Colorado community policing program shall be administered through the division of criminal justice. The division shall establish procedures and timelines for the submittal of grant applications by local law enforcement agencies seeking to implement a community policing plan or to continue the operation of an existing community policing program.

(2) To be eligible for moneys from the community policing program cash fund created in section 24-33.5-605, a local law enforcement agency shall apply to the division of criminal justice in accordance with the procedures and timelines developed by the division pursuant to subsection (1) of this section. The application of a local law enforcement agency shall include a community policing plan that meets the criteria for such plans developed by the division. A plan may include, but not be limited to, the following:

(a) The creation of a partnership or collaboration between the local law enforcement agency and the families, individuals, children, and youth who live in at-risk neighborhoods for the purpose of crime prevention activities and strategies;

(b) The utilization of public or private facilities for regular interaction between the local law enforcement agency and the community, including, but not limited to, community centers, gymnasiums, and libraries or other reading areas;

(c) The support of and participation in local youth educational and recreational programs by the local law enforcement agency;

(d) Regularly scheduled neighborhood meetings between local law enforcement professionals and the residents of the community or at-risk neighborhood;

(e) The enhanced and regularized presence of the local law enforcement agency in a community or at-risk neighborhood through the use of foot patrols, bicycles, motorcycles, and participation in activities and events; and

(f) The process or measurement for evaluating whether the Colorado community policing program is reducing or preventing the incidence of crime in a community or at-risk neighborhood.

(3) Subject to available appropriations, the division of criminal justice shall select those local law enforcement agencies that will receive grants through the Colorado community policing program. The division shall determine the amount of each grant awarded to a local law enforcement agency.

24-33.5-605. Community policing program cash fund - creation. (1) There is hereby created in the state treasury the community policing program cash fund. The moneys in the fund shall be subject to annual appropriation by the general assembly to award grants to local law enforcement agencies and for the direct and indirect costs associated with the implementation of this part 6. The division of criminal justice is authorized to accept on behalf of the state any grants, gifts, or donations from any private or public source for the purpose of this part 6 pursuant to section 24-33.5-503 (1) (e). All private and public funds received through grants, gifts, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. All investment earnings derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(2) Notwithstanding the provisions of subsection (1) of this section, the division of criminal justice shall not implement the Colorado community policing program until sufficient grants, gifts, or donations are obtained to cover the costs of implementing the program.

PART 7

EMERGENCY MANAGEMENT

24-33.5-701. Short title. This part 7 shall be known and may be cited as the "Colorado Disaster Emergency Act".

24-33.5-702. Purposes and limitations. (1) The purposes of this part 7 are to:

(a) Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural catastrophes or catastrophes of human origin, civil disturbance, or hostile military or paramilitary action;

(b) Prepare for prompt and efficient search, rescue, recovery, care, and treatment of persons lost, entrapped, victimized, or threatened by disasters or emergencies;

(c) Provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(d) Clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(e) Authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(f) Authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state

and its political subdivisions may participate;

(g) Provide a disaster and emergency management system embodying all aspects of predisaster and pre-emergency preparedness and postdisaster and postemergency response; and

(h) Assist in prevention of disasters caused or aggravated by inadequate planning for regulation of public and private facilities and land use.

(2) Nothing in this part 7 shall be construed to:

(a) Interfere with the course or conduct of a labor dispute; except that actions otherwise authorized by this part 7 or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(b) Interfere with dissemination of news or comment on public affairs; except that any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency;

(c) Affect the jurisdiction or responsibilities of police forces, fire-fighting forces, or units of the armed forces of the United States, or of any personnel thereof, when on active duty; except that state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies; or

(d) Limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in the governor under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provision of this part 7.

24-33.5-703. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Bioterrorism" means the intentional use of microorganisms or toxins of biological origin to cause death or disease among humans or animals.

(2) "Committee" means the governor's expert emergency epidemic response committee created in section 24-33.5-704.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to fire, flood, earthquake, wind, storm, wave action, hazardous substance incident, oil spill or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air pollution, blight, drought, infestation, explosion, civil disturbance, hostile military or paramilitary action, or a condition of riot, insurrection, or invasion existing in the state or in any county, city, town, or district in the state.

(4) "Emergency epidemic" means cases of an illness or condition, communicable or noncommunicable, caused by bioterrorism, pandemic influenza, or novel and highly fatal infectious agents or biological toxins.

(5) "Pandemic influenza" means a widespread epidemic of influenza caused by a highly virulent strain of the influenza virus.

(6) "Political subdivision" means any county, city and county, city, or town and may include any other agency designated by law as a political subdivision of the state.

(7) (a) "Publicly funded safety net program" means a program that is administered by a state department and that:

(I) Is funded wholly or in part with state, federal, or a combination of state and federal funds; and

(II) Provides or facilitates the provision of medical services to vulnerable populations, including children, disabled individuals, and the elderly.

(b) The term includes a program of medical assistance, as defined in section 25.5-1-103 (5), C.R.S.

(8) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress and preserving life of, and removing survivors from the site of a disaster, emergency, or hazard to a place of safety in case of lost, stranded, entrapped, or injured persons.

24-33.5-704. The governor and disaster emergencies - governor's disaster emergency council - creation - expert emergency epidemic response committee - creation. (1) The governor is responsible for meeting the dangers to the state and people presented by disasters.

(2) Under this part 7, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(3) (a) There is hereby created a governor's disaster emergency council, referred to in this part 7 as the "council", consisting of not less than six nor more than nine members. The attorney general, the adjutant general, and the executive directors of the following departments shall be members: Personnel, transportation, public safety, and natural resources. The additional members, if any, shall be appointed by the governor from among the executive directors of the other departments. The governor shall serve as chairperson of the council, and a majority shall constitute a quorum. The council shall meet at the call of the governor and shall advise the governor and the director of the division of homeland security and emergency management on all matters pertaining to the declaration of disasters and the disaster response and recovery activities of the state government; except that nothing in the duties of the council shall be construed to limit the authority of the governor to act without the advice of the council when the situation calls

for prompt and timely action when disaster threatens or exists.

(b) The members of the governor's disaster emergency council, as such existed prior to June 30, 2012, are the initial members of the council on July 1, 2012.

(4) A disaster emergency shall be declared by executive order or proclamation of the governor if the governor finds a disaster has occurred or that this occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the governor finds that the threat of danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty days unless renewed by the governor. The general assembly, by joint resolution, may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection (4) shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, shall be promptly filed with the office of emergency management, the secretary of state, and the county clerk and recorder and disaster agencies in the area to which it applies.

(5) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and shall be authority for the deployment and use of any forces to which the plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this part 7 or any other provision of law relating to disaster emergencies.

(6) During the continuance of any state of disaster emergency, the governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing in this section restricts the governor's authority to do so by orders issued at the time of the disaster emergency.

(7) In addition to any other powers conferred upon the governor by law, the governor may:

(a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(b) Utilize all available resources of the state government and of each political

subdivision of the state as reasonably necessary to cope with the disaster emergency;

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(d) Subject to any applicable requirements for compensation under section 24-33.5-711, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency;

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(g) Control ingress to and egress from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, or combustibles; and

(i) Make provision for the availability and use of temporary emergency housing.

(8) (a) There is hereby created a governor's expert emergency epidemic response committee. The committee shall:

(I) Meet at least annually to review and amend, as necessary, the supplement to the state disaster plan that is concerned with the public health response to acts of bioterrorism, pandemic influenza, and epidemics caused by novel and highly fatal infectious agents;

(II) Provide expert public health advice to the governor in the event of an emergency epidemic; and

(III) Provide information to, and fully cooperate with, the council.

(b) (I) State members of the committee include:

(A) The executive director of the department of public health and environment;

(B) The chief medical officer of the department of public health and environment;

(C) The chief public information officer of the department of public health and environment;

(D) The emergency response coordinator for the department of public health and environment;

(E) The state epidemiologist for the department of public health and environment;

(F) The attorney general or the designee of the attorney general;

(G) The president of the board of health or the president's designee;

(H) The president of the state medical society or the president's designee;

(I) The president of the Colorado health and hospital association or the president's designee;

(J) The state veterinarian of the department of agriculture; and

(K) The director of the division of homeland security and emergency

management.

(II) In addition to the state members of the committee, the governor shall appoint to the committee an individual from each of the following categories:

(A) A licensed physician who specializes in infectious diseases;

(B) A licensed physician who specializes in emergency medicine;

(C) A medical examiner;

(D) A specialist in posttraumatic stress management;

(E) A director of a county, district, or municipal public health agency;

(F) A hospital infection control practitioner;

(G) A wildlife disease specialist with the division of wildlife; and

(H) A pharmacist member of the state board of pharmacy.

(III) The executive director of the department of public health and environment shall serve as the chair of the committee. A majority of the membership of the committee, not including vacant positions, shall constitute a quorum.

(IV) The executive director of the department of public safety or the executive director's designee shall serve as an ex officio member of the committee and shall not be able to vote on decisions of the committee. He or she shall serve as a liaison between the committee, the council, and the Colorado emergency planning commission in the event of an emergency epidemic.

(c) The committee shall include in the supplement to the state disaster plan a proposal for the prioritization, allocation, storage, protection, and distribution of antibiotic medicines, antiviral medicines, antidotes, and vaccines that may be needed and in short supply in the event of an emergency epidemic.

(d) The committee shall convene at the call of the governor or the executive director of the department of public health and environment to consider evidence presented by the department's chief medical officer or state epidemiologist that there is an occurrence or imminent threat of an emergency epidemic. If the committee finds that there is an occurrence or imminent threat of an emergency epidemic, the executive director of the department of public health and environment shall advise the governor to declare a disaster emergency.

(e) In the event of an emergency epidemic that has been declared a disaster emergency, the committee shall convene as rapidly and as often as necessary to advise the governor, who shall act by executive order, regarding reasonable and appropriate measures to reduce or prevent spread of the disease, agent, or toxin and to protect the public health. Such measures may include:

(I) Procuring or taking supplies of medicines and vaccines;

(II) Ordering physicians and hospitals to transfer or cease admission of patients or perform medical examinations of persons;

(III) Isolating or quarantining persons or property;

(IV) Determining whether to seize, destroy, or decontaminate property or objects

that may threaten the public health;

(V) Determining how to safely dispose of corpses and infectious waste;

(VI) Assessing the adequacy and potential contamination of food and water supplies;

(VII) Providing mental health support to affected persons; and

(VIII) Informing the citizens of the state how to protect themselves, what actions are being taken to control the epidemic, and when the epidemic is over.

(9) Each department that administers a publicly funded safety net program shall develop a continuity of operations plan no later than July 1, 2008. The plan shall establish procedures for the response by, and continuation of operations of, the department and the program in the event of an epidemic emergency. Each department shall file its plan with the executive director of the department of public health and environment and shall update the plan at least annually. In addition, notwithstanding section 24-1-136 (11), each department shall submit a report by March 1 of each year to the health and human services committees of the senate and house of representatives, or any successor committees, regarding the status of the department's plan, as well as the status of any other plans or procedures of the department regarding emergency disaster preparedness.

24-33.5-705. Office of emergency management - creation. (1) (a) There is hereby created in the division of homeland security and emergency management the office of emergency management. Pursuant to section 13 of article XII of the state constitution, the director of the division of homeland security and emergency management shall appoint a director as head of the office of emergency management.

(b) The office of emergency management and the office of the director thereof shall exercise their powers and perform their duties and functions under the department 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 this title.

(2) The office of emergency management shall prepare, maintain, and keep current a state disaster plan that complies with all applicable federal and state regulations.

(3) The office of emergency management shall take part in the development and revision of local and interjurisdictional disaster plans prepared under section 24-33.5-707. To this end the office of emergency management shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. Such personnel shall consult with political subdivisions and disaster agencies and shall make field examinations.

(4) In preparing and revising the state disaster plan, the office of emergency management may seek the advice and assistance of local government, business, labor,

industry, agriculture, civic and volunteer organizations, and community leaders.

(5) The state disaster plan or any part thereof may be incorporated in regulations of the office of emergency management or executive orders that have the force and effect of law.

(6) The office of emergency management may do all things necessary for the implementation of this section, including:

(a) Hiring personnel;

(b) Contracting with federal, state, local, and private entities;

(c) Accepting and expending federal funds.

(7) Whenever the office of emergency management or the division of emergency management in the department of local affairs is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the office of emergency management in the division of homeland security and emergency management in the department of public safety.

(8) (a) Effective July 1, 2012, the office of emergency management in the division of homeland security and emergency management in the department of public safety shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested previously in the division of emergency management in the department of local affairs.

(b) (I) On July 1, 2012, all positions of employment in the division of emergency management in the department of local affairs shall be transferred to the office of emergency management in the division of homeland security and emergency management in the department of public safety and shall become employment positions therein.

(II) On July 1, 2012, all employees of the division of emergency management in the department of local affairs shall be considered employees of the office of emergency management in the division of homeland security and emergency management in the department of public safety. Such employees shall retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous.

(III) On July 1, 2012, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the division of emergency management in the department of local affairs are transferred to the office of emergency management in the division of homeland security and emergency management in the department of public safety and shall become the property thereof.

(c) Unless otherwise specified, whenever any provision of law refers to the division of emergency management, that law shall be construed as referring to the office of emergency management in the division of homeland security and emergency management in the department of public safety.

(d) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against the division of

emergency management in the department of local affairs, or any officer thereof in such officer's official capacity or in relation to the discharge of the official's duties, is abated by reason of the transfer of duties and functions in this section.

24-33.5-705.3. Statewide all-hazards resource database - creation - definitions. (1) For purposes of this section:

(a) "Private sector agencies and organizations" means any private sector or nonprofit agency or organization that has resources useful in a disaster or emergency that it desires to list in the private sector portion of the database.

(b) "Tribal, state, and local all-hazards response agency" means any all-hazards response agency of a tribe, the state and any of its subdivisions, and any town, city, and city and county, regardless of whether the personnel serving such department, district, or agency are volunteers or are compensated for their services.

(2) (a) Not later than June 30, 2013, the office of emergency management, using existing computer resources, shall develop and maintain a centralized computer database that includes a listing of all all-hazards response resources located within Colorado.

(b) The database created pursuant to paragraph (a) of this subsection (2) shall contain resource inventories, personnel counts, resource status, such other information relevant to the efficient tracking and allocation of all-hazards response resources, and a listing of all supplemental funding sources available to tribal, state, and local all-hazards response agencies. The information in this database shall be included with the information required to be collected and maintained pursuant to section 25-1.5-101 (1) (p), C.R.S. No data gathered for or stored in this database shall contain personally identifying information without prior notice to the involved individual. The database is not intended to be used in place of the existing interagency wildland fire dispatch system.

(3) (a) The office of emergency management shall encourage tribal, state, and local response agencies to enter the information described in paragraph (b) of subsection (2) of this section into the database via the internet and provide a means for such data entry. All data entered into the database shall be verifiable by the office of emergency management. The office of emergency management shall encourage participating tribal, state, regional, and local response agencies to update the data as necessary.

(b) The database shall be accessible via the internet to all tribal, state, regional, and local response agencies for the purpose of efficiently tracking and allocating response resources in the event of a disaster or local incident that requires more resources than those available under any existing interjurisdictional or mutual aid arrangement.

(4) The office of emergency management shall establish guidelines for the development and maintenance of the database created pursuant to subsection (2) of this section so that tribal, state, regional, and local response agencies can easily access the database. The guidelines shall be developed with input from tribal, state, regional, and

local response agencies and private sector agencies and organizations.

24-33.5-705.4. All-hazards resource mobilization system - creation - plan - duties - reimbursement for expenses incurred by mobilized entities - eligibility - resource mobilization fund - creation - definitions - legislative declaration - repeal. (1) (a) The general assembly hereby finds, determines, and declares that the statewide all-hazards resource mobilization system, which provides for efficient mobilizing, tracking, allocating, and demobilizing emergency resources and ensures that a requesting unit of government receives proper equipment and qualified personnel, is necessary to provide resources to any emergency incident beyond local capabilities and thus necessary to protect life, property, the environment, and cultural and economic resources. The general assembly further finds and declares that the need to ensure that the state is adequately prepared and able to address large-scale emergencies and disasters requires a mechanism to reimburse state agencies, tribal governments, and local jurisdictions that respond to requests for help from other jurisdictions in times of need. It is therefore necessary to:

(I) Formulate the policy and organizational structure for large-scale mobilization of emergency resources in the state through creation of a statewide all-hazards resource mobilization system;

(II) Establish the means by which state agencies and tribal and local jurisdictions may be reimbursed for expenses they incur when mobilized by the executive director pursuant to the mobilization plan; and

(III) Provide a procedure to reimburse a host jurisdiction when it has exhausted or will exhaust all of its own resources and the resources of its local mutual aid network available under a mutual aid or interjurisdictional agreement.

(b) In accordance with section 24-33.5-713, it is the intent of the legislature to encourage political subdivisions to enter into mutual aid and other interjurisdictional agreements. Such agreements produce enhanced emergency response and are thus essential to protecting the public peace, safety, health, and welfare, including the lives and property, of the people of the state of Colorado.

(2) As used in this section, unless the context otherwise requires:

(a) "Director" means the director of the office of emergency management created in section 24-33.5-705.

(b) "Emergency manager" means the director or coordinator of the local or interjurisdictional disaster agency, as described in section 24-33.5-707 (4), or other person, identified pursuant to section 24-33.5-707 (6), responsible for local or interjurisdictional disaster preparedness and response.

(c) "Executive director" means the executive director of the department or the executive director's designee.

(d) "Host jurisdiction" means the jurisdiction having authority over the disaster or emergency.

(e) "Incident command system" has the meaning set forth in section 29-22.5-102 (3), C.R.S.

(f) "Jurisdiction" means state and tribal authorities and county, city, city and county, town, special district, or other political subdivisions of the state.

(g) "Mobilization" means the process of providing, upon request and subject to availability, emergency resources beyond those available through existing interjurisdictional or mutual aid agreements in response to a request from a jurisdiction in which an emergency or disaster situation or local emergency incident that has exceeded or will exceed the capabilities of available local resources. The term includes the nonhost jurisdiction's authorization and approval for redistribution of resources either to direct emergency incident assignments or to assignment in communities where resources are needed to provide coverage when those communities' resources have been mobilized to assist other jurisdictions.

(h) "Mobilization plan" means the statewide all-hazards resource mobilization plan developed and utilized pursuant to this section.

(i) "Mobilization system" means the statewide all-hazards resource mobilization system created under this section, which system includes the mobilization plan and the technology and personnel necessary to mobilize resources according to the plan.

(j) "Mutual aid" means emergency interagency assistance rendered pursuant to an agreement between the jurisdictions rendering and receiving assistance.

(k) "Nonhost jurisdiction" means a jurisdiction providing disaster or emergency response resources to a host jurisdiction.

(l) "Unified command" has the meaning set forth in section 29-22.5-102 (8), C.R.S.

(3) **Powers and duties.** (a) The director shall develop and maintain a statewide all-hazards resource mobilization plan that sets forth procedures for mobilization, allocation, deployment, coordination, tracking, cost accounting, and demobilization of resources during disasters and other large-scale emergencies and local incidents that require more resources than those available under any existing interjurisdictional or mutual aid agreement. In developing the mobilization plan, the director shall consult with and solicit recommendations from the homeland security and all-hazards senior advisory committee created in section 24-33.5-1614 and other appropriate representatives of state, tribal, and local governmental and private sector emergency management organizations. The director shall ensure that the mobilization plan is consistent with, and incorporated into, the Colorado state emergency operations plan.

(b) (I) The executive director is responsible for implementing the mobilization plan, coordinating the mobilization of resources, and making a determination as to post-mobilization reimbursement to state and nonhost jurisdictions, in accordance with this

section, other applicable laws, and the mobilization plan, when the executive director determines it is necessary to do so to protect life, property, the environment, and cultural and economic resources.

(II) The executive director shall serve as state resource mobilization liaison when the mobilization plan is implemented.

(4) **Mobilization.** (a) (I) The executive director may order the implementation of the state resource mobilization plan pursuant to this section only if he or she receives a request to do so from the governor, sheriff, emergency manager, or other authorized person identified in the state resource mobilization plan.

(II) The executive director shall grant a mobilization request made pursuant to subparagraph (I) of this paragraph (a) if the executive director determines that the request is in response to a large-scale emergency, disaster, or other local incident that exceeds or will exceed the capabilities of available local resources and those resources available through existing mutual aid agreements.

(III) Upon receiving a request for mobilization and finding that the request complies with the approval requirements established in the mobilization plan and that either the local jurisdiction has exhausted or will exhaust all available resources, or that the complexity or severity of the incident requires resources not otherwise available to the local jurisdiction, the executive director shall determine whether to implement mobilization in accordance with the mobilization plan. If so, the executive director shall mobilize state and nonhost jurisdictions in accordance with the mobilization plan.

(IV) The executive director may consider resources that have already been deployed to address an incident to be mobilized for the purpose of reimbursement or cost-sharing under the mobilization plan.

(b) Upon and for the duration of mobilization:

(I) The executive director shall serve as a resource mobilization liaison to the local unified coordination group, incident commander, or the host jurisdiction's disaster agency under unified command to support the mobilization effort consistent with the incident command system and mobilization plan and procedures;

(II) The resources, including those of the host jurisdiction and those of nonhost jurisdictions that responded earlier under an existing interjurisdictional or mutual aid or other agreement, may remain mobilized, based on capability to do so and pursuant to agreement between the executive director, the incident commander, and the host jurisdiction or nonhost jurisdiction that provided the resources;

(III) The reassignment or reallocation of resources due to multiple concurrent incidents or other situations of resource scarcity shall be prioritized pursuant to the policies and procedures specified in the mobilization plan.

(IV) Any limits on or exemption from liability to which the jurisdictions providing resources in response to a mobilization effected under this section are entitled under law apply as though the jurisdictions were operating under their normal statutory authorities

within their jurisdictional boundaries.

(c) The executive director, in consultation with the local incident commander, shall determine when mobilization is no longer required and, at that time, shall declare the end to the mobilization.

(5) **Reimbursement.** (a) The director, in consultation with the office of state planning and budgeting created in section 24-37-102, shall develop procedures to facilitate reimbursement to state agencies and jurisdictions from appropriate federal and state funds when state agencies and jurisdictions are mobilized by the executive director pursuant to the mobilization plan. The director shall ensure that these procedures provide reimbursement in as timely a manner as possible.

(b) (I) In order to be eligible for support under the mobilization plan, a jurisdiction must be mobilized pursuant to subparagraph (III) of paragraph (a) of subsection (4) of this section and must be participating in an interjurisdictional or mutual aid agreement entered into pursuant to this part 7.

(II) All mobilized nonhost jurisdictions are eligible for expense reimbursement from the time of the mobilization declaration through demobilization.

(6) **Resource mobilization fund - notice of funding through gifts, grants, and donations - repeal.** (a) There is hereby created in the state treasury the resource mobilization fund, which fund shall be administered by the executive director, in accordance with paragraph (b) of this subsection (6), to provide reimbursement to state agencies and jurisdictions mobilized by the executive director pursuant to this section. The executive director is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this section. The fund consists of all moneys that may be appropriated thereto by the general assembly, moneys that may be transferred pursuant to section 24-33.5-706 (4.5), and all private and public funds received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund. All interest earned from the investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes indicated in this section. Any moneys not expended at the end of the fiscal year shall remain in the fund and shall not be transferred to or revert to the general fund.

(b) The executive director shall use the moneys in the resource mobilization fund to provide reimbursement to state agencies and jurisdictions for incidents in accordance with the terms of the mobilization plan.

(c) (I) The general assembly finds that the implementation of this section relies entirely or in part on the receipt of adequate funding through gifts, grants, or donations. The executive director shall notify the legislative council staff when adequate funding through gifts, grants, or donations for the purpose described in paragraph (b) of this subsection (6) has been received and shall include in the notice the information specified in section 24-75-1303 (3).

(II) This paragraph (c) is repealed, effective July 1, 2016.

(7) (a) Nothing in this section limits the powers of the governor during a disaster under 24-33.5-704.

(b) Except as expressly provided in this section, nothing in this section limits the eligibility of any nonhost jurisdiction for reimbursement of expenses incurred in providing resources for mobilization.

(c) Nothing in this section precludes a state or local governmental entity from seeking public assistance funding pursuant to the federal "Robert T. Stafford Disaster Relief and Emergency Assistance Act", as amended, 42 U.S.C. sec. 5121 et seq.

24-33.5-706. Disaster emergency fund - established - financing - legislative intent. (1) It is the intent of the general assembly and declared to be the policy of the state that funds to meet disaster emergencies shall always be available.

(2) (a) A disaster emergency fund is hereby established, which consists of any moneys appropriated by the general assembly, moneys transferred pursuant to paragraph (b) of subsection (4) of this section, and moneys to reimburse expenditures from the fund that are transmitted to the state treasurer and credited to the fund. Moneys in the disaster emergency fund shall remain in the fund until expended or until transferred pursuant to subsection (4.3) or (4.5) of this section.

(b) Repealed.

(3) The council shall review in detail each expenditure of disaster emergency moneys.

(4) (a) It is the legislative intent that first recourse be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, the governor may, with the concurrence of the council, make funds available from the disaster emergency fund.

(b) If moneys available from the disaster emergency fund are insufficient, the governor, with the concurrence of the council, may transfer to the fund and expend moneys appropriated for other purposes.

(4.3) If the disaster emergency fund is credited with reimbursements of moneys previously expended to cope with a particular disaster, to the extent that all or a portion of those moneys were transferred and expended by the governor pursuant to paragraph (b) of subsection (4) of this section, the governor may transfer moneys to the funds as repayment for the amounts the governor originally transferred from said funds to the disaster emergency fund.

(4.5) (a) The governor may, from time to time as the governor deems necessary based on his or her determination that a disaster emergency is imminent, direct the state treasurer to transfer, and the state treasurer shall transfer, moneys from the disaster

emergency fund to the resource mobilization fund created in section 24-33.5-705.4 (6).

(b) The governor may, from time to time as the governor deems necessary based on his or her determination that a wildfire-related disaster emergency is imminent, direct the state treasurer to transfer, and the state treasurer shall transfer, moneys from the disaster emergency fund to the wildfire emergency response fund created in section 24-33.5-1226 (1).

(5) The director of the division of homeland security and emergency management is authorized to establish, pursuant to article 4 of this title, the rules and regulations which will govern the reimbursement of funds to state agencies and political subdivisions and to promulgate such regulations.

(6) Nothing in this section limits the governor's authority to apply for, administer, and expend grants, gifts, or payments in aid of disaster prevention, preparedness, response, or recovery.

24-33.5-707. Local and interjurisdictional disaster agencies and services. (1) Each political subdivision is within the jurisdiction of and served by the office of emergency management and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(2) Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency which, except as otherwise provided under this part 7, has jurisdiction over and serves the entire county.

(3) The governor shall determine which municipal corporations need disaster agencies of their own and require that they be established and maintained. The governor shall make such determination on the basis of the municipality's disaster vulnerability and capability of response related to population size and concentration. The disaster agency of a county shall cooperate with the disaster agencies of municipalities situated within its borders but shall not have jurisdiction within a municipality having its own disaster agency. The office of emergency management shall publish and keep current a list of municipalities required to have disaster agencies under this subsection (3).

(4) The minimum composition of a disaster agency is a director or coordinator appointed and governed by the chief executive officer or governing body of the appointing jurisdiction. The director or coordinator is responsible for the planning and coordination of the local disaster services.

(5) Any provision of this part 7 or other law to the contrary notwithstanding, the governor may require a political subdivision to establish and maintain a disaster agency jointly with one or more contiguous political subdivisions if the governor finds that the establishment and maintenance of an agency or participation therein is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this

part 7.

(6) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of an agency shall have an elected official designated as liaison officer to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery.

(7) The mayor, chairman of the board of county commissioners, or other principal executive officer of each political subdivision in the state shall notify the office of emergency management of the manner in which the political subdivision is providing or securing disaster planning and emergency services, identify the person who heads the agency from which the services are obtained, and furnish additional information relating thereto as the office of emergency management requires.

(8) Each local and interjurisdictional disaster agency shall prepare and keep current a local or interjurisdictional disaster emergency plan for its area.

(9) The local or interjurisdictional disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

(10) The sheriff of each county shall:

(a) Be the official responsible for coordination of all search and rescue operations within the sheriff's jurisdiction;

(b) Make use of the search and rescue capability and resources available within the county and request assistance from the office of emergency management only when and if the sheriff determines such additional assistance is required.

(11) When authorized by the governor and executive director and approved by the director of the office of emergency management, expenses incurred in meeting contingencies and emergencies arising from search and rescue operations may be reimbursed from the disaster emergency fund.

(12) Any person providing information to a local or interjurisdictional disaster agency may request, in writing, that such information be disseminated only to persons connected with or involved in the preparation, update, or implementation of any disaster emergency plan, and said information shall thereafter not be released to any person without the expressed written consent of the person providing the information.

24-33.5-708. Establishment of interjurisdictional disaster planning and service area. (1) If the governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, the governor may delineate by executive order an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional

relationship, a joint disaster emergency plan, mutual aid, or an area organization for emergency planning and services.

(2) A finding of the governor pursuant to subsection (1) of this section shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a separate basis, such as:

(a) Small or sparse population;

(b) Limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome;

(c) Unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations;

(d) The interrelated character of the counties in a multicounty area; and

(e) Other relevant conditions or circumstances.

(3) If the governor finds that a vulnerable area lies only partly within this state and includes territory in another state or territory in a foreign jurisdiction and that it would be desirable to establish an interstate or international relationship or mutual aid or an area organization for disaster, the governor shall take steps to that end as desirable. If this action is taken with jurisdictions that have enacted the interstate civil defense and disaster compact, any resulting agreements may be considered supplemental agreements pursuant to article VI of such compact.

(4) If the other jurisdictions with which the governor proposes to cooperate pursuant to subsection (3) of this section have not enacted the interstate civil defense and disaster compact, the governor may negotiate special agreements with such jurisdictions. Any agreement, if sufficient authority for the making thereof does not otherwise exist, becomes effective only after its text has been communicated to the general assembly and if neither house of the general assembly has disapproved it before adjournment sine die of the next ensuing session competent to consider it or within thirty days of its submission, whichever is longer.

24-33.5-709. Local disaster emergencies. (1) A local disaster may be declared only by the principal executive officer of a political subdivision. It shall not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the county clerk and recorder, city clerk, or other authorized record-keeping agency and with the office of emergency management.

(2) The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local and interjurisdictional

disaster emergency plans and to authorize the furnishing of aid and assistance under such plans.

(3) No interjurisdictional disaster agency or official thereof may declare a local disaster emergency unless expressly authorized by the agreement pursuant to which the agency functions. An interjurisdictional disaster agency shall provide aid and services in accordance with the agreement pursuant to which it functions.

24-33.5-710. Disaster prevention. (1) In addition to disaster prevention measures as included in the state, local, and interjurisdictional disaster emergency plans, the governor shall consider steps that could be taken on a continuing basis to prevent or reduce the harmful consequences of disasters. At the governor's direction, and pursuant to any other authority and competence they have, state agencies, including those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of matters related to disaster prevention. The governor and the executive director, from time to time, shall make recommendations to the general assembly, local governments, and such other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(2) All state departments, in conjunction with the office of emergency management, shall conduct studies and adopt measures to reduce the impact of, and actions contributory to, a disaster. The studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences or the consequences thereof.

(3) If the office of emergency management believes, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the executive director and to the governor. If the governor, upon review of the recommendations, finds after public hearing that the changes are essential, the governor shall so recommend to the agencies or local governments with jurisdictions over the area and subject matter. If no action or insufficient action pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the general assembly and request legislative action appropriate to mitigate the impact of disaster.

(4) The governor, at the same time that the governor makes recommendations pursuant to subsection (3) of this section, may suspend the standard or control which the governor finds to be inadequate to protect the public safety and by regulation place a new

standard or control in effect. The new standard or control shall remain in effect until rejected by joint resolution of both houses of the general assembly or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but shall not be subject to temporary stay pending litigation.

24-33.5-711. Compensation - liability when combating grasshopper infestation. (1) Each person within this state shall conduct himself or herself and keep and manage such person's affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disasters or emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster emergency. This part 7 neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that the obligations recognized in this subsection (1) are exceeded in a particular case and then only to the extent that the claimant has not volunteered such claimant's services or property without compensation.

(2) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute or local law or ordinance.

(3) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the governor or a member of the disaster emergency forces of this state.

(4) The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to eminent domain procedures, as provided in articles 1 to 7 of title 38, C.R.S.

(5) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or applies to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.

(6) The state and its agencies and political subdivisions and the officers and employees of the state and its agencies and political subdivisions shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform an act relating to the combating of grasshopper infestation of this state except for negligence or willful disregard of the rights of others, and then only to the extent of one hundred thousand dollars for any injury to or damage suffered by one person and the sum of three hundred thousand dollars for an injury to or damage suffered by two or more persons in any single occurrence; except that, in such latter instance, no person may recover in

excess of one hundred thousand dollars. This subsection (6) is the total extent of liability of the state and its agencies and political subdivisions and the officers and employees of the state and its agencies and political subdivisions with regard to the combating of grasshopper infestation of the state and abrogates any common-law cause of action thereto. Except to the extent of insurance coverage, no person acting as a contractor with the state or any of its political subdivisions, or any officer or employee of such contractor, shall be liable on any claim alleging strict liability on contract or tort for actions taken relating to combating grasshopper infestation of the state under this part 7 or under House Bill No. 1001, enacted at the second extraordinary session of the fifty-first general assembly in 1978.

24-33.5-711.5. Governor's expert emergency epidemic response committee - compensation - liability. (1) Neither the state nor the members of the expert emergency epidemic response committee designated or appointed pursuant to section 24-33.5-704 (8) are liable for any claim based upon the committee's advice to the governor or the alleged negligent exercise or performance of, or failure to exercise or perform an act relating to an emergency epidemic. Liability against a member of the committee may be found only for wanton or willful misconduct or willful disregard of the best interests of protecting and maintaining the public health. Damages awarded on the basis of such liability shall not exceed one hundred thousand dollars for any injury to or damage suffered by one person or three hundred thousand dollars for an injury to or damage suffered by three or more persons in the course of an emergency epidemic.

(2) The conduct and management of the affairs and property of each hospital, physician, health insurer or managed health care organization, health care provider, public health worker, or emergency medical service provider shall be such that they will reasonably assist and not unreasonably detract from the ability of the state and the public to successfully control emergency epidemics that are declared a disaster emergency. Such persons and entities that in good faith comply completely with board of health rules regarding the emergency epidemic and with executive orders regarding the disaster emergency shall be immune from civil or criminal liability for any action taken to comply with the executive order or rule.

(3) No personal services may be compensated by the state or any subdivision or agency of the state, except pursuant to statute or local law or ordinance.

(4) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with an emergency epidemic that is declared by the governor or a member of the disaster emergency forces of this state.

(5) The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to eminent domain procedures, as provided in articles 1 to 7 of title 38, C.R.S.

24-33.5-712. Telecommunications - intent. The state telecommunications director, working in coordination with the division of homeland security and emergency management, shall ascertain what means exist for rapid and efficient telecommunications in times of disaster emergencies. Operational characteristics of the available systems of telecommunications shall be evaluated by the office, and recommendations for modifications shall be made to the state telecommunications director. It is the intent of this section that adequate means of telecommunications be available for use during disaster emergencies.

24-33.5-713. Mutual aid. (1) Political subdivisions not participating in interjurisdictional arrangements pursuant to this part 7 nevertheless shall be encouraged and assisted by the office of emergency management to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(2) In passing upon local disaster plans, the governor shall consider whether such plans contain adequate provisions for the rendering and receipt of mutual aid.

(3) It is a sufficient reason for the governor to require an interjurisdictional agreement or arrangement pursuant to section 24-33.5-708 that the area involved and political subdivisions therein have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid; except that, in requiring the making of an interjurisdictional arrangement to accomplish the purpose of this section, the governor need not require establishment and maintenance of an interjurisdictional agency or arrangement for any other disaster purposes.

24-33.5-714. Weather modification. The office of emergency management shall keep continuously apprised of weather conditions that present danger of precipitation or other climatic activity severe enough to constitute a disaster. If the office of emergency management determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall recommend to the executive director of the department of natural resources, empowered to issue permits for weather modification operations under article 20 of title 36, C.R.S., to warn those organizations or agencies engaged in weather modification to suspend their operations until the danger has passed or recommend that said executive director modify the terms of any permit as may be necessary.

24-33.5-715. Merit system. In accordance with section 13 (4) of article XII of the state constitution, the state personnel board may provide personnel services pursuant to contract to civil defense employees of the political subdivisions of the state, except where such employees are covered by another federally approved merit system.

24-33.5-716. Interoperable communications among public safety radio systems - statewide plan - regional plans - governmental immunity - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Interoperable communications" means the ability of public safety agencies in various disciplines and jurisdictions to communicate on demand and in real time by voice or data using compatible radio communication systems or other technology.

(b) "Public safety agency" means an agency providing law enforcement, fire protection, emergency medical, or emergency response services.

(c) "Region" means an all-hazards emergency management region established by executive order of the governor.

(2) The executive director of the department of local affairs shall transfer to the executive director the tactical and long-term interoperable communications plan developed pursuant to former section 24-32-1116, as said section existed on June 30, 2012, to improve the ability of the public safety agencies of state government to communicate with public safety agencies of the federal government, regions, local governments, and other states. The executive director shall update and revise the plan no less than once every three years. The plan shall include measures to create and periodically test interoperability interfaces, provisions for training on communications systems and exercises on the implementation of the plan, and deadlines for implementation.

(3) (a) The executive director of the department of local affairs shall transfer to the executive director the tactical and long-term interoperable communications plan, adopted by each region pursuant to former section 24-32-1116, as said section existed on June 30, 2012, to improve communications among public safety agencies in the region and with public safety agencies of other regions, the state and federal governments, and other states. The plans shall include measures to create and periodically test interoperability interfaces, provisions for training on communications systems and exercises on the implementation of the plan, a strategy for integrating with the state digital trunked radio system, deadlines for implementation, and other elements required by the executive director. Each region shall submit to the executive director revised plans as such are updated.

(b) Each local government agency or private entity that operates a public safety radio system shall collaborate in the development and, as necessary, periodic revision of the tactical and long-term interoperable communications plan of the region in which it is

located. Such tactical plans, and revisions thereto, shall be submitted to the executive director.

(c) A region that timely fails to submit a tactical and long-term interoperable communications plan or revisions thereto, or a local government agency that fails to collaborate in the development of or timely submit the plan, or a region or local government agency that fails to maintain current plans, shall be ineligible to receive homeland security or public safety grant moneys administered by the department of local affairs, department of public safety, or department of public health and environment until the region submits a plan to the executive director.

(4) A public safety agency shall not expend moneys received through the department on a mobile data communication system unless the system is capable of interoperable communications.

(5) The executive director shall not require a public safety agency to acquire the communications equipment of a particular manufacturer or provider as a condition of awarding grant moneys administered by the department.

(6) A public safety agency or an employee of a public safety agency acting in collaboration with another agency or person to create and operate an interoperable communications system shall have the same degree of immunity under the "Colorado Governmental Immunity Act", article 10 of this title, as the public safety agency or employee would have if not acting in collaboration with another agency or person.

PART 8

COMPENSATION BENEFITS TO VOLUNTEER CIVIL DEFENSE WORKERS

24-33.5-801. Legislative declaration. It is the policy and purpose of this part 8 to provide a means of compensating volunteer civil defense workers who may suffer any injury as defined in section 24-33.5-802 (6) as a result of participation in civil defense service.

24-33.5-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Accredited local organization for civil defense" means a local organization for civil defense that is certified by the office of emergency management as conforming with the "Plan and Program for the Civil Defense of this State" prepared by the governor of Colorado or under the governor's direction. A local organization for civil defense remains accredited only while the certificate of the Colorado state civil defense agency is in effect and is not revoked.

(1.5) "Adjusting agent" means the third-party workers' compensation insurer with which the office of emergency management contracts, in accordance with section 24-33.5-809, for the adjustment and disposition of claims and provision of compensation pursuant to this part 8.

(2) "Civil defense service" means all activities authorized by and carried on pursuant to the provisions of the "Colorado Disaster Emergency Act", part 7 of this article, including training necessary or proper to engage in such activities.

(3) "Civil defense worker" means any natural person who is registered with the office of emergency management or with a local organization for civil defense for the purpose of engaging in civil defense service pursuant to the provisions of this part 8 without pay or other consideration or is a physician, health care provider, public health worker, or emergency medical service provider who is ordered by the governor or a member of the disaster emergency forces of this state to provide specific medical or public health services during and related to an emergency epidemic and who complies with such an order without pay or other consideration.

(4) "Disaster" has the meaning set forth in section 24-33.5-703.

(5) "Emergency volunteer service" means all activities authorized and carried out by a volunteer who is a member of a qualified volunteer organization as directed by a county sheriff, local government, local emergency planning committee, or state agency in the event of disaster.

(6) "Injury" means and includes all accidental injuries and all occupational diseases recognized and compensated by the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., as well as any illness that is caused by an emergency epidemic declared to be a disaster emergency.

(7) "Local emergency planning committee" means a committee that meets the criteria specified in section 24-33.5-1504.

(8) "Local organization for civil defense" means a public agency which is empowered to register and direct the activities of civil defense workers within the area of the county or city or any part thereof and is thus, because of such registration and direction, acting as an instrumentality of the state in aid of the carrying out of the general governmental functions and policy of the state and includes a local organization for civil defense established by ordinance.

(9) "Qualified volunteer" means a volunteer who meets the criteria specified in section 24-33.5-824 (1).

(10) "Volunteer" means a volunteer who is a member of a volunteer organization and provides volunteer services through the organization in the event of a disaster.

(11) "Volunteer organization" means an organization that provides emergency services on a state or local level pursuant to this part 22.

24-33.5-803. Compensation for injury limited. Except as provided in this part 8, a civil defense worker and such civil defense worker's dependents have no right to receive compensation from the state, from the office of emergency management, from the local organization for civil defense with which such civil defense worker is registered, or from the county or city which has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities for an injury arising out of and occurring in the course of such civil defense worker's activities as a civil defense worker.

24-33.5-804. Compensation provided is exclusive. Compensation provided by this part 8, as limited by this part 8, is the exclusive remedy of a civil defense worker or such civil defense worker's dependents for injury or death arising out of and in the course of such civil defense worker's activities as a civil defense worker as against the state, the office of emergency management, the local organization for civil defense with which such civil defense worker is registered, and the county or city that has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities. Liability for the compensation provided by this part 8, as limited by this part 8, is in lieu of any other liability whatsoever to a civil defense worker or such civil defense worker's dependents or any other person on the part of the state, the office of emergency management, the local organization for civil defense with which the civil defense worker is registered, and the county or city that has empowered the local organization for civil defense to register such civil defense worker and direct such civil defense worker's activities for injury or death arising out of and in the course of such civil defense worker's activities as a civil defense worker.

24-33.5-805. Compensation for death or injury. (1) Compensation shall be furnished to a civil defense worker either within or without the state for any injury arising out of and occurring in the course of such civil defense worker's activities as a civil defense worker and for the death of any such worker if the injury proximately causes death in those cases where the following conditions occur:

(a) Where, at the time of the injury, the civil defense worker is performing services as a civil defense worker and is acting within the course of such civil defense worker's duties as a civil defense worker;

(b) Where, at the time of the injury, the local organization for civil defense with which the civil defense worker is registered is an accredited local organization for civil defense. If the civil defense worker is registered with the office of emergency management and is at the time of the injury performing services for said office and is acting within the course of such civil defense worker's duties as a civil defense worker for

said office, registration with an accredited local organization for civil defense is not required.

(c) Where the injury is proximately caused by such civil defense worker's service as a civil defense worker, either with or without negligence;

(d) Where the injury is not caused by the intoxication of the injured civil defense worker;

(e) Where the injury is not intentionally self-inflicted.

24-33.5-806. Benefits limited to appropriation. No compensation or benefits shall be paid or furnished to civil defense workers or their dependents pursuant to this part 8 except from moneys appropriated for the purpose of furnishing compensation and benefits to civil defense workers and their dependents. Liability for the payment or furnishing of compensation and benefits is dependent upon and limited to the availability of moneys so appropriated.

24-33.5-807. Benefits depend on reserve. After all moneys appropriated are expended or set aside in bookkeeping reserves for the payment or furnishing of compensation and benefits and reimbursing the adjusting agent for its services, the payment or furnishing of compensation and benefits for an injury to a civil defense worker or such civil defense worker's dependents is dependent upon there having been a reserve set up for the payment or furnishing of compensation and benefits to such civil defense worker or such civil defense worker's dependents for that injury, and liability is limited to the amount of the reserve. The excess in a reserve for the payment or furnishing of compensation and benefits or for reimbursing the adjusting agent for its services may be transferred to reserves of other civil defense workers for the payment or furnishing of compensation and benefits and reimbursing the adjusting agent fund or may be used to set up reserves for other civil defense workers.

24-33.5-808. Workers' compensation law applies. Insofar as not inconsistent with this part 8, the "Workers' Compensation Act of Colorado" applies to civil defense workers and their dependents and to the furnishing of compensation and medical, dental, and funeral benefits to them or their dependents. "Employee", as used in said act, includes a civil defense worker when liability for the furnishing of the compensation and benefits exists pursuant to this part 8 and as limited by this part 8. Where liability for compensation and benefits exists, such compensation and benefits shall be provided in accordance with the applicable provisions of the "Workers' Compensation Act of Colorado" and at the maximum rate provided therein, subject to the limitations set forth in

this part 8.

24-33.5-809. Agreement for disposition of claims. The office of emergency management and the adjusting agent shall enter into an agreement requiring the adjusting agent to adjust and dispose of claims and furnish compensation to civil defense workers and their dependents. The agreement shall authorize the adjusting agent to make all expenditures, including payments to claimants for compensation or for the adjustment or settlement of claims. Nothing in this part 8 means that the adjusting agent or its officers or agents have the final decision with respect to the compensability of any case or the amount of compensation or benefits due. Any civil defense worker or such civil defense worker's dependents have the same right to hearings before the division of labor in the department of labor and employment and its referees and to appeal from awards of said division and referees to the industrial claim appeals panel and to the courts as is provided in the hearing and review procedures of the "Workers' Compensation Act of Colorado" found in article 43 of title 8, C.R.S., subject to the limitations prescribed in this part 8.

24-33.5-810. Reimbursement of fund. The agreement entered into pursuant to section 24-33.5-809 shall provide that the adjusting agent shall be reimbursed for its expenditures made as adjusting agent and for the cost of services rendered, which reimbursement shall be made out of moneys appropriated for the purpose of furnishing compensation to civil defense workers. The reimbursement for cost of services rendered shall not exceed twelve and one-half percent of the total expenditures for medical and dental treatment and disability and death payments made by the adjusting agent in the adjustment of claims arising under this part 8. The agreement shall provide for the setting up of bookkeeping reserves in order that provisions may be made for the reimbursement of the adjusting agent and that liability for the payment or furnishing of compensation may be determined. The agreement shall also provide that the adjusting agent shall be notified promptly by the office of emergency management when a local organization for civil defense is certified as an accredited local organization for civil defense and when the certification is revoked.

24-33.5-811. Parties to agreement. An accredited local organization for civil defense and the county, town, or city which has empowered the local organization for civil defense to register and direct activities of civil defense workers automatically become parties to the agreement entered into pursuant to section 24-33.5-809 upon the local organization for civil defense becoming an accredited local organization for civil defense.

24-33.5-812. Other provisions of agreement. The agreement entered into pursuant to section 24-33.5-809 may also contain any other provision not inconsistent with this part 8 deemed necessary by the office of emergency management and the adjusting agent for the furnishing of compensation to civil defense workers and their dependents in accordance with the provisions of this part 8 and the services provided by the adjusting agent. The agreement may be modified by action of the office of emergency management and the adjusting agent.

24-33.5-813. Power of recovery - use of recovered amounts. The adjusting agent may, in its own name or in the name of the office of emergency management, or both, do any and all things necessary to recover on behalf of the office of emergency management any and all amounts that an employer or insurance carrier might recover under section 8-41-203, C.R.S. All amounts so recovered shall be used for the furnishing of compensation benefits, and the agreement entered into pursuant to section 24-33.5-809 shall provide for the reimbursing of the adjusting agent for expenses incurred in recovering such amounts and the manner in which such amounts shall be applied to the furnishing of compensation.

24-33.5-814. Federal benefits deducted. Should the United States government or any agent thereof, in accordance with any federal statute or rule or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to civil defense workers or their dependents for injuries arising out of and occurring in the course of their activities as civil defense workers, the amount of compensation which any civil defense worker or such civil defense worker's dependents are otherwise entitled to receive from the state of Colorado as provided in this part 8 shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief such civil defense worker or such civil defense worker's dependents have received and will receive from the United States or any agent thereof as a result of the injury.

24-33.5-815. State medical aid denied - when. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States government or any agent thereof furnishes medical, surgical, or hospital treatment or any combination thereof to an injured civil defense worker, such civil defense worker has no right to receive similar medical, surgical, or hospital treatment as provided in this part 8; except that the adjusting agent, as adjusting agent of the office of emergency management, may furnish medical, surgical, or hospital treatment as part of the compensation provided

under this part 8.

24-33.5-816. Medical benefits as part of compensation. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States government or any agent thereof will reimburse a civil defense worker or such civil defense worker's dependents for medical, surgical, or hospital treatment or any combination thereof furnished to such injured civil defense worker, the civil defense worker has no right to receive similar medical, surgical, or hospital treatment as provided in this part 8; except that the adjusting agent, as adjusting agent of the office of emergency management, may furnish medical, surgical, or hospital treatment as part of the compensation provided under this part 8 and apply to the United States government or its agent for the reimbursement that will be made to the civil defense worker or such civil defense worker's dependents. As a condition to the furnishing of such medical, surgical, or hospital treatment, the adjusting agent shall require the civil defense worker and such civil defense worker's dependents to assign to the state of Colorado, for the purpose of reimbursing for any medical, surgical, or hospital treatment furnished or to be furnished by the state, any privilege or right the civil defense worker or such civil defense worker's dependents may have to reimbursement from the United States government or any agent thereof.

24-33.5-817. State benefits barred - when. If the furnishing of compensation under this part 8 and the acts referred to in this part 8 to a civil defense worker or such civil defense worker's dependents prevents such civil defense worker or such civil defense worker's dependents from receiving assistance, benefits, or other temporary or permanent relief under the provisions of a federal statute or rule or regulation, the civil defense worker and such civil defense worker's dependents have no right to and shall not receive any compensation from the state of Colorado under this part 8 and the acts referred to in this part 8 for any injury for which the United States government or any agent thereof will furnish assistance, benefits, or other temporary or permanent relief in the absence of the furnishing of compensation by the state of Colorado.

24-33.5-818. Classes of workers - registration - duties. The division of homeland security and emergency management shall establish by rule various classes of civil defense workers and the scope of the duties of each class. The division of homeland security and emergency management shall also adopt rules prescribing the manner in which civil defense workers of each class are to be registered. All such rules shall be designed to facilitate the paying of workers' compensation.

24-33.5-819. Accrediting local organization. Any local organization for civil defense that both agrees to follow the rules established by the division of homeland security and emergency management pursuant to this part 8 and substantially complies with such rules shall be certified by the division of homeland security and emergency management. Upon making the certification, not before, the local organization for civil defense becomes an accredited local organization for civil defense.

24-33.5-820. Accredited status lost - when. If an accredited local organization for civil defense fails to comply with the rules of the division of homeland security and emergency management in any material degree, the division of homeland security and emergency management may revoke the certification, and upon the act of revocation the local organization for civil defense shall lose its accredited status. It may again become an accredited local organization for civil defense in the same manner as is provided for a local organization for civil defense that has not had its certificate revoked.

24-33.5-821. Transfer of moneys. Not less often than once each ninety days, the treasurer of the state of Colorado, upon the written request of the adjusting agent, shall transfer to the account designated by the adjusting agent, from the sum appropriated by the general assembly for the payment of claims that may arise under this part 8, such sum as may be required to reimburse the adjusting agent in full for any sum theretofore paid by the adjusting agent on any claims arising under this part 8, together with any expense incurred by the adjusting agent in adjusting the same as provided in this part 8, and such amount as may be estimated by the adjusting agent as being necessary to carry said claims to maturity and ensure the full payment thereof. The requests of the adjusting agent from time to time for the transfer of moneys as provided in this section shall cite this part 8 as authority for such transfer and shall be made upon such form as the treasurer of the state of Colorado and the controller may prescribe or, in the absence of the prescribing of special forms, upon a voucher citing this part 8 as authority.

24-33.5-822. County sheriff - local government - local emergency planning committee - memorandum of understanding with volunteer organizations. (1) Any county sheriff, the director of any local government, any local emergency planning committee, or any state agency may develop and enter into a memorandum of understanding with one or more volunteer organizations, including but not limited to the Colorado mounted rangers, to assist the county sheriff, local government, local emergency planning committee, or state agency in providing services as required.

(2) A memorandum of understanding between a county sheriff, a local government, a local emergency planning committee, or a state agency and a volunteer organization may include the following information:

(a) The circumstances under which the county sheriff, local government, local emergency planning committee, or state agency may request the services of the volunteer organization;

(b) The circumstances under which the volunteer organization may accept or refuse the request for assistance by the county sheriff, local government, local emergency planning committee, or state agency;

(c) The party that will be responsible for any costs incurred by the volunteer organization in the course of assisting the county sheriff, local government, local emergency planning committee, or state agency;

(d) The specific training or certification required for volunteers who are members of the volunteer organization to be authorized to assist the county sheriff, local government, local emergency planning committee, or state agency;

(e) The duration of the memorandum of understanding;

(f) Provisions for amending the memorandum of understanding; and

(g) Any other information deemed necessary by the county sheriff, local government, local emergency planning committee, or state agency or by the volunteer organization.

(3) If national or statewide training and certification standards exist for a certain organization or certain type of volunteer, the existing standards shall be used in a memorandum of understanding created pursuant to this section.

(4) The most current version of the state of Colorado intergovernmental agreement for emergency management may be used as the memorandum of understanding pursuant to this section.

(5) A member of the Colorado mounted rangers and any other volunteer organization lending assistance to a county sheriff, local government, local emergency planning committee, or state agency pursuant to this section is an authorized volunteer for the purposes of article 10 of this title.

(6) The executive director of the department of public safety created in section 24-33.5-103, the director of the Colorado bureau of investigation created in section 24-33.5-401, the executive director of the department of corrections created in section 24-1-128.5, the division of emergency management created by part 21 of this article, the division of homeland security created in section 24-33.5-1603, and a county sheriff, police chief, town marshal, or any other law enforcement organization certified pursuant to the provisions of article 2.5 of title 16, C.R.S., who enters into a memorandum of understanding pursuant to this section with the Colorado mounted rangers or a member of the Colorado mounted rangers is solely responsible for, and in direct control of, the performance of any Colorado mounted ranger, including incurring any and all liabilities

for misconduct, and is responsible for addressing any misconduct as if the Colorado mounted ranger was a full-time employee of the organization.

24-33.5-823. Qualified volunteer organization list - creation - nomination of organizations. (1) Any volunteer who is associated with a qualified volunteer organization pursuant to this section may be eligible to receive the protections and benefits specified in this part 8 and in article 10 of this title. The executive director of the department or the executive director's designee shall create and maintain a list of volunteer organizations that shall be known as the "qualified volunteer organization list".

(2) Any county sheriff, local government, local emergency planning committee, or state agency may nominate a volunteer organization with which it enters into a memorandum of understanding pursuant to section 24-33.5-822 to be included on the qualified volunteer organization list created and maintained pursuant to subsection (1) of this section.

24-33.5-824. Volunteers - provision of emergency services - protections - benefits. (1) A volunteer shall be allowed to receive the benefits and protections specified in this part 8 and pursuant to article 10 of this title if the volunteer is determined to be a qualified volunteer pursuant to this section. A volunteer shall be deemed a qualified volunteer if:

(a) The volunteer is a member of a volunteer organization that enters into a memorandum of understanding with a county sheriff, local government, local emergency planning committee, or state agency pursuant to section 24-33.5-822;

(b) The volunteer organization of which the volunteer is a member is included on the qualified volunteer organization list created and maintained by the department pursuant to section 24-33.5-823;

(c) The volunteer is called to service through the volunteer organization under the authority of the county sheriff, local government, local emergency planning committee, or state agency to volunteer in a disaster; and

(d) The volunteer receives the appropriate verification pursuant to subsection (2) of this section.

(2) The executive director of the department or the executive director's designee shall create a system whereby a volunteer may obtain proof to provide to his or her employer that specifies:

(a) The volunteer was called to service by a volunteer organization for the purpose of assisting in a disaster;

(b) The volunteer reported for service and performed the activities required of him or her by the volunteer organization; and

(c) The number of days of service that the volunteer provided.

24-33.5-825. Qualified volunteers - leave of absence - public employees. (1) Any qualified volunteer who is an officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state and who is called into service by a volunteer organization is entitled to a leave of absence from the qualified volunteer's employment for the time when the qualified volunteer is serving, without loss of pay, seniority, status, efficiency rating, vacation, sick leave, or other benefits. The leave without loss of pay that is allowed pursuant to this section shall not exceed a total of fifteen work days in any calendar year; except that such leave without loss of pay shall be allowed only if the required volunteer service is satisfactorily performed, which shall be presumed unless the contrary is established.

(2) The leave allowed pursuant to subsection (1) of this section shall be allowed only if the qualified volunteer returns to his or her public position the next scheduled work day after being relieved from emergency volunteer service; except that leave shall be allowed pursuant to subsection (1) of this section if the employee is unable to return to work due to injury or circumstances beyond the employee's control and the employee notifies the employer as soon as practicable, but prior to the next scheduled work day.

(3) A state agency or any political subdivision, municipal corporation, or other public agency of the state may hire a temporary employee to fill a vacancy created by a leave of absence allowed pursuant to subsection (1) of this section.

(4) Upon returning from a leave of absence allowed pursuant to this section, a qualified volunteer is entitled to return to the same position and classification held by the qualified volunteer before the leave of absence for the emergency volunteer service or to the position, including the geographic location of the position, and classification that the qualified volunteer would have been entitled to if the qualified volunteer did not take a leave of absence for the emergency volunteer service.

(5) A qualified volunteer who is an officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state, receiving a leave of absence pursuant to this section, and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all of the rights accrued up to the time of taking the leave and shall have all rights subsequently accruing under such system as if the qualified volunteer did not take the leave. Any increase in the amount of money benefits accruing with respect to the time of the leave is dependent upon the payment of any contributions or assessments, and the right to the increase is dependent upon the payment of contributions or assessments within a reasonable time after the termination of the leave and upon such terms as the authorities in charge of the system may prescribe.

(6) Notwithstanding this section, an employer shall not be required to provide

leave pursuant to this section to more than twenty percent of the employer's employees on any work day.

(7) Notwithstanding this section, an employer shall not be required to allow leave pursuant to this section for any employee designated as an essential employee. For the purposes of this subsection (7), "essential employee" means an employee who the employer deems to be essential to the operation of the employer's daily enterprise and whose absence would likely cause the employer to suffer economic injury.

24-33.5-826. Qualified volunteers - leave of absence - private employees. (1) Any qualified volunteer who is employed by a private employer and who is called into service by a volunteer organization for a disaster is entitled to a leave of absence from the qualified volunteer's employment, other than employment of a temporary nature, for the time when the qualified volunteer is serving. The leave allowed for a qualified volunteer pursuant to this section shall not exceed a total of fifteen work days in any calendar year, and the leave shall be allowed only if the volunteer is called into service for a disaster and provides proof that he or she is a qualified volunteer pursuant to section 24-33.5-824 (2).

(2) The leave of absence allowed pursuant to this section shall be construed as an absence with leave and without pay and shall not affect the qualified volunteer's rights to vacation, sick leave, bonus, advancement, or other employment benefits or advantages relating to and normally to be expected for the qualified volunteer's particular employment.

(3) The leave of absence pursuant to subsection (1) of this section shall be allowed only if the qualified volunteer returns to his or her employment as soon as practicable after being relieved from emergency volunteer service.

(4) The employer of a qualified volunteer who takes a leave of absence from employment to engage in emergency volunteer service shall, upon the qualified volunteer's completion of the emergency volunteer service, restore the qualified volunteer to the position the volunteer held prior to the leave of absence or to a similar position.

(5) Notwithstanding this section, an employer shall not be required to provide leave pursuant to this section to more than twenty percent of the employer's employees on any work day.

(6) Notwithstanding this section, an employer shall not be required to allow leave pursuant to this section for any employee designated as an essential employee. For the purposes of this subsection (6), "essential employee" means an employee who the employer deems to be essential to the operation of the employer's daily enterprise, whose absence would likely cause the employer to suffer economic injury, or whose duties include assisting in disaster recovery for the employer.

24-33.5-827. Procedures. (1) The office of emergency management shall create procedures for the administration of this part 8. The procedures shall include:

(a) A process for a county sheriff, local government, local emergency planning committee, or state agency to nominate a volunteer organization to be included on the qualified volunteer organization list pursuant to section 24-33.5-823; and

(b) A process to verify that a qualified volunteer provided volunteer services during a disaster and a method to allow the volunteer to provide proof of such service to his or her employer pursuant to section 24-33.5-824 (2).

24-33.5-828. Interpretation. (1) Nothing in this part 8 amends, suspends, supercedes, or otherwise modifies the protections provided to volunteer firefighters pursuant to section 31-30-1131, C.R.S.

(2) Nothing in this part 8 affects any preexisting intergovernmental agreement regarding emergency management or any other issue.

PART 9

CIVIL DEFENSE LIABILITY - PUBLIC OR PRIVATE

24-33.5-901. Short title. This part 9 shall be known and may be cited as the "Civil Defense Liability Act".

24-33.5-902. Legislative declaration - no private liability. (1) It is declared to be the policy of the general assembly to encourage the owners of any building, mine, structure, or other real estate to make such property available, without compensation, for civil defense, and for that purpose this section is enacted.

(2) No person, limited liability company, partnership, corporation, or association shall be civilly liable, except for willful and wanton acts, for the death or injury of any person or the injury to or loss of any property which may occur in or on the property of such person, limited liability company, partnership, corporation, or association resulting from any preparation, drill, exercise, use in an official alert, or inspection incidental to a civil defense activity. This exemption from liability extends to any owner, tenant, lessee, assignee, or successor in interest of any property used for civil defense purposes, together with his or her personal representatives, heirs, successors, and assigns.

24-33.5-903. State liability. All legal liabilities for damages, not only to property under the constitution of the state of Colorado but also for death or injury to any person,

except a civil defense worker regularly enrolled and acting as such, caused by acts done or attempted under the color of the "Colorado Disaster Emergency Act", part 7 of this article, in a bona fide attempt to comply therewith, shall be the obligation of the state of Colorado. Permission is given for suits against the state for recovery of compensation in that behalf, and for the indemnification of any person appointed and regularly enrolled as a civilian defense worker while actually engaged in civil defense duties or as a member of any agency of the state or political subdivision thereof engaged in civilian defense activity, or such person's dependents, as an aspect of damage done to such person's private property, or judgment against such person for acts done in good faith attempts in compliance with this part 9. The foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any agent of civilian defense. Should the United States government or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property or for death or injury as provided for in this section, then and in that event, there shall be no liability or obligation whatsoever upon the part of the state of Colorado for any such damage, death, or injury for which the United States government assumes liability.

24-33.5-904. Recovery for personal injury. (1) Recovery for the injury or death of persons appointed and regularly enrolled in a civil defense organization as contemplated by the "Colorado Disaster Emergency Act", part 7 of this article, while actually engaged in civil defense duties shall be limited to the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S. If such persons are regularly employed by the state of Colorado or its political subdivisions, and, if such persons are volunteer civil defense workers, shall be limited as otherwise provided by statute.

(2) Subsection (1) of this section shall not affect the right of any person to receive benefits or compensation to which such person might be entitled under any workers' compensation or pension law or any act of congress.

PART 10

EVACUATION OF SCHOOL BUILDINGS FOR CIVIL DEFENSE

24-33.5-1001. Evacuation plan agreements. Any board of education of any school district in the state of Colorado may enter into an agreement with the appropriate local civil defense agency or authorities for the purpose of establishing an orderly plan for the evacuation of any or all school buildings within the jurisdiction of said school district.

24-33.5-1002. Evacuation drill - district liability. In the event that such school district and the respective local civil defense agency or authorities desire to perform an evacuation drill for any or all school buildings, the board of education of such school district and its officers, employees, and agents participating therein shall be relieved of all liability, except as otherwise provided by article 10 of this title, with regard to the accidental injury of any pupil during school hours from the time that the pupil leaves the school building until such pupil's return to the building at the conclusion of the evacuation drill.

24-33.5-1003. Buses used. For drill or other evacuation purposes as described in this part 10, buses and such other modes of transport as are operated by the respective school district for the transportation of pupils may be operated by the district outside the boundaries of the district.

24-33.5-1004. Liability insurance. For purposes of this part 10, a school district may expend available funds to utilize the services of its employees or properties and may, if the board of education so desires, pay premiums from available funds to procure liability and property damage insurance covering such district, its governing body, officers, and employees, and, if deemed necessary or desirable, volunteer workers while participating in such civil defense activity, but there shall be no right of contribution on the part of such district to the insurance carrier.

24-33.5-1005. Extraterritorial powers. When the officers, employees, or agents of any school district participating in any civil defense exercise in connection with this part 10 are required to go beyond the territorial limits of such political subdivision, such persons shall nevertheless have the same powers, duties, rights, privileges, and immunities while beyond the territorial limits of the school district as if they were performing their duties within the territorial limits of such district.

PART 11

DISASTER RELIEF

24-33.5-1101. Power to make rules. The governor is authorized to make rules necessary to carry out the purposes of this part 11, including standards of eligibility for persons applying for benefits; procedures for applying and administration; methods of investigating, filing, and approving applications; and formation of local or statewide

boards to pass upon applications and procedures for appeal.

24-33.5-1102. Emergency relief. (1) In an emergency, the governor may provide assistance to save lives and to protect property and public health and safety.

(2) The governor may provide such emergency assistance by directing state agencies to provide technical assistance and advisory personnel to the affected state and local governments in giving:

(a) Aid in the performance of essential community services, warning of further risks and hazards, public information and assistance in health and safety measures, technical advice on management and control, and reduction of immediate threats to public health and safety; and

(b) Assistance in the distribution of medicine, food, and other consumable supplies or emergency assistance.

(3) In addition, in any emergency, the governor is authorized to provide such other assistance under this part 11 as the governor deems appropriate.

24-33.5-1103. False claims - penalties. Any person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under this part 11 and who thereby receives assistance to which such person is not entitled commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-33.5-1104. Temporary housing for disaster victims. (1) Whenever the governor has proclaimed a disaster emergency under the laws of this state or the president of the United States has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) To enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state;

(b) To assist any political subdivision of the state which is the locus of temporary housing for disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units by:

(I) Advancing or lending funds available to the governor from any appropriation made by the general assembly or from any other source;

(II) Passing through funds made available by any agency, public or private; or

(III) Becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for disaster victims; and

(c) Under such rules as the governor shall prescribe, to temporarily suspend or modify for not to exceed sixty days any public health, safety, zoning, transportation within or across the state, or other requirement of law or regulation within this state when by proclamation the governor deems such suspension or modification essential to provide temporary housing for disaster victims.

(2) Any political subdivision of the state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

24-33.5-1105. Debris removal. (1) Whenever the governor has declared a disaster emergency to exist under the laws of this state or the president of the United States, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) Notwithstanding any other law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water debris and wreckage which may threaten public health or safety or public or private property; and

(b) To accept funds from the federal government and to utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) Authority under this part 11 shall not be exercised unless the affected local government, corporation, organization, or individual first presents an unconditional authorization for removal of such debris or wreckage from public or private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against any claim arising from such removal.

(3) Whenever the governor provides for clearance of debris or wreckage pursuant to subsections (1) and (2) of this section, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or water and perform any tasks necessary to removal or clearance operations.

24-33.5-1106. Grants to individuals. (1) Whenever the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the governor is authorized, upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot be otherwise adequately met

from other means of assistance, to accept a grant from the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant.

(2) Notwithstanding any other law or rule, the governor is authorized to make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which grants shall not exceed five thousand dollars in the aggregate to an individual or family in any single major disaster declared by the president.

24-33.5-1107. Community loans. (1) Whenever, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, the governor is authorized:

(a) Upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the local government, for a loan and to receive and disburse the proceeds of any approved loan to any local government making application therefor;

(b) To determine the amount needed by any local government making application therefor to restore or resume its governmental functions and to certify the same to the federal government; except that no application shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs; and

(c) To recommend to the federal government, based upon the governor's review, the cancellation of all or any part of repayment when, in the first period of three full fiscal years following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal character.

24-33.5-1108. Bar against suits. Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under this part 11 shall not be liable for death of or injury to persons or damage to property.

24-33.5-1109. Interstate compacts. The governor is authorized to enter into interstate compacts for prevention of disasters and for carrying out the purposes of this

part 11.

PART 12

DIVISION OF FIRE PREVENTION AND CONTROL

24-33.5-1201. Division of fire prevention and control - creation - public school construction and inspection section - health facility construction and inspection section - legislative declaration. (1) (a) There is hereby created within the department the division of fire prevention and control. The head of the division is the director of the division of fire prevention and control. The executive director shall appoint the director pursuant to section 13 of article XII of the state constitution. Only those persons meeting the qualifications described in paragraph (b) of this subsection (1) are eligible for appointment.

(b) Pursuant to this part 12, the director is responsible for the delivery, management, and administration of fire protection and life safety-related codes and standards, fire investigations, fire safety education for the public, and fire prevention services for the state. In order to be eligible for appointment as director, a person must be qualified in both structural and wildland fire suppression, mitigation, and prevention, have at least ten years of experience in an organized career fire department, and meet, or will meet within one year of hire, the job performance requirements specified in the national fire protection association's standard 1037 as the professional qualifications for fire marshal.

(c) (I) Whenever the division of fire safety is referred to or designated by any contract or other document, the reference or designation applies to the division of fire prevention and control.

(II) (A) Whenever any law refers to the division of fire safety, that law shall be construed as referring to the division of fire prevention and control.

(B) The revisor of statutes is authorized to change all references in the Colorado Revised Statutes to the division of fire safety from such reference to the division of fire prevention and control. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to this article.

(2) The division, the office of the director, the advisory board created by section 24-33.5-1204, and the board of appeals created by section 24-33.5-1213.7 shall exercise their powers and perform their duties and functions under the department of public safety 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 this title.

(3) (a) There is hereby created within the division the public school construction and inspection section to implement the provisions of sections 22-32-124 (2) and 23-71-122 (1) (v), C.R.S., and to administer and enforce the codes in accordance with sections 24-33.5-1213 and 24-33.5-1213.3. The public school construction and inspection section shall perform its duties and functions under the division 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 this title.

(b) The executive director shall appoint such employees as are necessary to carry out the duties and exercise the powers specified in sections 22-32-124 and 23-71-122 (1) (v), C.R.S., and in this part 12. The executive director may delegate appointing authority as appropriate.

(c) and (d) Repealed.

(4) (a) (I) Effective July 1, 2012, the division of fire prevention and control shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations relating to fire and wildfire preparedness, response, suppression, coordination, or management vested previously in the board of governors of the Colorado state university system or the state forest service thereunder, as those rights, powers, duties, functions, and obligations existed on June 30, 2012.

(II) There is hereby created in the division of fire prevention and control the wildland fire management section to implement the provisions of this subsection (4) and sections 24-33.5-1217 to 24-33.5-1226. The wildland fire management section shall perform its duties and functions under the division of fire prevention and control as if the same were transferred by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(b) (I) On July 1, 2012, all positions of employment in the state forest service of the board of governors of the Colorado state university system that are principally related to fire and wildfire preparedness, response, suppression, coordination, or management shall be transferred to the division of fire prevention and control in the department of public safety and shall become employment positions in the wildland fire management section therein.

(II) On July 1, 2012, all employees of the board of governors of the Colorado state university system or the state forest service thereunder who are employed in a capacity principally related to and wildfire preparedness, response, suppression, coordination, or management shall be considered employees of the wildland fire management section in the division of fire prevention and control in the department of public safety. Such employees shall retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous.

(III) On July 1, 2012, all moneys previously received or appropriated to the board of governors of the Colorado state university system relating principally to fire and

wildfire preparedness, response, suppression, coordination, and management, including office furniture and fixtures, books, documents, and records of the board, are transferred to the wildland fire management section in the division of fire prevention and control and shall become the property thereof.

(IV) On July 1, 2012, all items of personal property of the board of governors of the Colorado state university system relating principally to fire and wildfire preparedness, response, suppression, coordination, and management, including office furniture and fixtures, books, documents, and records of the board, are transferred to the wildland fire management section in the division of fire prevention and control and shall become the property thereof.

(V) Any and all claims and liabilities, including costs and attorneys' fees, relating in any way to the performance of any fire and wildfire preparedness, response, suppression, coordination, or management duties that were performed by the board or its employees on or before June 30, 2012, are transferred to and assumed by the state exclusively through the division, and such claims or liabilities, if any, are the sole responsibility of the state by and through the department of public safety, and no other public entity or agency, including the board and its employees, shall be responsible or liable for any such claims, liabilities, or damages.

(5) (a) There is hereby created within the division the health facility construction and inspection section to implement section 24-33.5-1212.5 and to administer and enforce the codes in accordance with sections 24-33.5-1212.5 and 24-33.5-1213. The health facility construction and inspection section shall perform its duties and functions under the division 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 this title.

(b) On and after July 1, 2013, all positions of employment in the department of public health and environment for which principal duties are concerned with life safety inspection and that are determined by the director to be necessary to carry out the purposes of the health facility construction and inspection section are transferred to the division and are employment positions therein. The executive director shall appoint such employees as are necessary to carry out the duties and exercise the powers specified in this part 12. The executive director may delegate appointing authority as appropriate.

(c) On and after July 1, 2013, all employees of the department of public health and environment carrying out the duties principally relating to life safety code compliance are employees of the health facility construction and inspection section in the division. The employees retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services are deemed to have been continuous.

(d) On July 1, 2013, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of public health and environment used in carrying out the duties principally relating to life safety code

compliance are transferred to the health facility construction and inspection section in the division and become the property of that section.

(e) On December 10, 2012, the division and the governor received approval from the secretary of the United States department of health and human services, pursuant to section F3 of the revised agreement, dated October 1, 1985, entered into between the secretary and the state of Colorado pursuant to section 1864 of the federal "Social Security Act", 42 U.S.C. sec. 1395aa, dated October 1, 1985, and pursuant to section 4006A of the related state operation manual, for the division of fire prevention and control in the department of public safety to fulfill the duties under that law associated with the assessment of compliance with the federal fire safety code requirements for health facilities, and a modification to waivers for residential medicaid provider types to allow the division to conduct construction plans and inspections.

(f) The general assembly hereby finds, determines, and declares that, in discharging its duties under this article, as they pertain to health facility buildings and structures, the health facility construction and inspection section is encouraged to cooperate with local authorities, especially in regard to plan reviews and whether such plans comport with local requirements.

24-33.5-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Administrator" means the state fire suppression administrator, who is the director of the division of fire prevention and control under the department of public safety, or the director's designee.

(1.2) "Advisory board" means the fire service training and certification advisory board created in section 24-33.5-1204.

(1.4) "Agent" means a person licensed by the department of revenue to purchase and affix adhesive or meter stamps on packages of cigarettes.

(1.7) "ASTM international" means the American society for testing and materials or its successor organization.

(2) "Certification" means the issuance to a firefighter, by the advisory board, of a signed instrument evidencing satisfactory completion by such firefighter of the requirements of the fire service education and training program.

(2.5) "Certified fire inspector" means a person with fire safety plan review or inspection responsibilities who is employed by or volunteers services to the state or a governing body as a fire inspector and who is certified by the division to conduct fire safety plan reviews and inspections pursuant to section 24-33.5-1211.

(3) "Certified fire suppression systems inspector" means a person certified as provided in section 24-33.5-1206.4.

(3.1) "Certified prescribed burn manager" means an individual who successfully

completes the division's certified burner training and certification program and possesses a valid certification number.

(3.2) "Cigarette" means any roll for smoking, whether made wholly or partly of tobacco or any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3.3) "Controlled agricultural burn" means a technique used in farming or livestock production on a parcel of land that meets the definition of agricultural land, as that term is defined in section 39-1-102 (1.6) (a), C.R.S., to clear the land of any existing native vegetation or crop residue or kill weeds and weed seeds.

(3.4) "Controlled ditch burn" means a technique using fire to clear and remove vegetation, debris, or other material from ditches, canals, and other water transportation structures, including banks and access roads.

(3.5) "Cross-connection control device" means an installation, device, or assembly located between the water supply and fire suppression piping to prevent the undesirable reversal in the flow of water from a real or potential source of contamination back to the potable water supply. A cross-connection control device is also referred to as a back flow preventer.

(3.6) "Director" means the director of the division.

(3.7) "Division" means the division of fire prevention and control in the department of public safety created in this article.

(3.8) "Emergency fire fund" means the emergency fire fund created in section 24-33.5-1220 that was first established in 1967 with voluntary contributions from counties and the Denver water board; administered by a nine-person committee composed of county commissioners, sheriffs, fire chiefs, and the director; and used for the purpose of paying costs incurred as a result of controlling a wildfire by any of the parties contributing moneys to the fund, in accordance with the intergovernmental agreement for participation in the emergency fire fund.

(3.9) "Fire department" means the duly authorized fire protection organization of a town, city, county, or city and county, a fire protection district, or a metropolitan district or county improvement district that provides fire protection.

(4) "Firefighter" means any person, whether paid or a volunteer, who is actively participating in or employed by a public or private fire service unit in this state.

(5) "Fire suppression contractor" means any individual, firm, corporation, association, or organized group of persons, that, individually or through others, offers to undertake, represents itself as being able to undertake, or does undertake to sell, layout, fabricate, install, modify, alter, repair, maintain, or perform maintenance inspections of any fire suppression system.

(6) "Fire suppression system" means an assembly of any or all of the following:

Piping valves, conduits, dispersal openings, sprinkler heads, orifices, and other similar devices that convey extinguishing agents for the purpose of controlling, confining, or extinguishing fire, with the exception of multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply, pre-engineered range hoods, duct systems, and portable fire extinguishers.

(6.5) "First responder" means a designated level of emergency medical care provider as described by the national highway traffic safety administration or successor agency.

(7) "First responder program" means the program developed by the national highway traffic safety administration to train emergency response personnel to deal with an emergency incident upon first arrival at the scene.

(7.5) "Governing body" means:

(a) The city council, town council, board of trustees, or other governing body of a city, town, or city and county;

(b) The board of directors of a fire protection district organized pursuant to part 1 of article 1 of title 32, C.R.S.;

(c) The governing body of an improvement district that provides fire protection services organized pursuant to part 5 of article 20 of title 30, C.R.S.; or

(d) The board of county commissioners with respect to the area within a county outside the corporate limits of a city or town and outside the boundaries of a fire protection district.

(7.6) "Hazardous materials responder" means any person, whether such person is paid or a volunteer, actively participating in or employed by a public or private agency whose duties include response to hazardous materials incidents in this state.

(7.7) "Health facility" means a general hospital, hospital unit as defined in section 25-3-101 (2), C.R.S., psychiatric hospital, community clinic, rehabilitation center, convalescent center, community mental health center, acute treatment unit, facility for persons with developmental disabilities, habilitation center for children with brain damage, chiropractic center and hospital, maternity hospital, nursing care facility, rehabilitative nursing facility, hospice care facility, dialysis treatment clinic, ambulatory surgical center, birthing center, home care agency, assisted living residence, or other facility of a like nature; except that "health facility" does not include a facility at which health services are not provided to individuals.

(7.9) "Manufacturer" means any one or more of the following:

(a) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured with the intent that such cigarettes be sold in Colorado, regardless of where the cigarettes are manufactured or produced and regardless of whether they are imported from outside the United States;

(b) The first purchaser anywhere that intends to resell, in the United States, cigarettes manufactured anywhere that the original manufacturer or producer does not

intend to be sold in the United States; or

(c) An entity that becomes a successor to an entity described in paragraph (a) or (b) of this subsection (7.9).

(8) "Masticated fuels" means fuels, such as brush, small-diameter trees, and slash, that have been ground or chewed into small pieces of woody material through a mechanical wildland fuels treatment process, and generally left to carpet the ground.

(8.3) "Prescribed burning" means the application of fire, in accordance with a written prescription for vegetative fuels, under specified environmental conditions while following appropriate precautionary measures that ensure public safety and that is confined to a predetermined area to accomplish public safety or land management objectives. The term excludes controlled agricultural burns and controlled ditch burns.

(8.4) "Principal" means an individual having a position of responsibility in any entity acting as a fire suppression contractor, including any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stocks of any such entity.

(8.5) "Qualified volunteer firefighter" means a volunteer firefighter as defined in section 31-30-1102 (9), C.R.S., in active service and maintaining the minimum amount of training in a fire department of thirty-six hours each year.

(9) "Quality control and quality assurance program" means a set of laboratory procedures implemented to ensure that:

(a) Operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of cigarette testing; and

(b) The testing repeatability remains within the required repeatability values stated in section 24-33.5-1214 (2) (a) (II) (F) for all test trials used to certify cigarettes in accordance with section 24-33.5-1214 (3).

(10) "Repeatability", with respect to a cigarette test trial, refers to the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

(10.5) "Rescuer" means any person seeking certification under this part 12, whether such person is paid or a volunteer, actively participating in or employed by a public or private agency whose duties include response incidents in this state relating to nationally recognized fire service standards.

(11) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(12) "Sale" means any transfer of title, possession, or both, or exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money, are considered sales.

(13) "Sell" means to sell or to offer or agree to sell.

(13.3) "Sprinkler fitter" means a person other than an apprentice who is registered

with the administrator and who installs fire suppression systems. "Sprinkler fitter" does not include a person who performs maintenance and repair on fire suppression systems as a part of his or her employment. A sprinkler fitter does not include a person who performs work exclusively on cross-connection control devices or a person who performs work exclusively on an underground system. "Sprinkler fitter" does not include a person performing work on his or her own home.

(13.7) "Sprinkler fitter apprenticeship program" means an apprenticeship training program that is registered with either the office of apprenticeship training, employer and labor services in the employment and training administration in the United States department of labor or a state apprenticeship agency in accordance with the requirements of 29 CFR 29.1 et seq., or other similar apprentice program approved by the administrator, and consists of a minimum of eight thousand hours of documented practical work experience on fire suppression systems, combined with a minimum of seven hundred hours of related instruction, including classroom or shop instruction, in the sprinkler fitter trade.

(13.9) "Underground system" means the system of below-ground piping, valves, appliances, and appurtenances that physically connect the water supply to a fire suppression system.

(14) "UPC symbol" means the symbol signifying the universal product code.

(15) "Wholesale dealer" means:

(a) Any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale; and

(b) Any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

24-33.5-1203. Duties of division. (1) The division shall perform the following duties:

(a) Assist units of local government charged with fire prevention, fire protection, fire investigation, and emergency medical services in coordinating their activities with state departments and agencies which have similar responsibilities;

(a.5) Assist units of local government charged with the construction, maintenance, and inspection of public school and junior college buildings in coordinating their activities with state departments and agencies that have similar responsibilities;

(b) Advise the governor and the general assembly regarding the problems of fire safety;

(b.5) Advise the governor and the general assembly regarding implementation of the public school construction and inspection program and the health facility construction and inspection program;

(c) Regarding problems of fire safety which are common to local, state, and federal governmental units, including but not limited to hazardous waste, protective equipment for firefighters, flammable and toxic characteristics of materials during combustion, fire incident reporting, emergency medical incident reporting, and investigation of fires, be available to assist in the solution of those problems, serve as an information clearinghouse, and collect and disseminate to local governments, the general assembly, and the general public statistical and research reports which are of interest to them;

(d) Refer local fire departments to appropriate state and federal agencies for advice, assistance, and services regarding their specific problems;

(e) Perform such research as is necessary to carry out the functions of the division;

(f) Encourage and, when so requested, assist in cooperative efforts among the officials of various local fire departments to solve common problems;

(g) Encourage the conduct of and participate in training institutes, conferences, and programs for local government officials and employees in the area of fire services;

(h) Upon the request of local government officials, provide technical assistance in defining and developing solutions to local fire safety problems including, but not limited to, fireworks statutes; electrical hazards; public education programs; regulations concerning explosives; inspection of facilities when the performance of the inspections is the statutory duty of another state agency; certification of emergency medical service providers and paramedics; hazardous materials storage, handling, and transportation; and volatile, flammable, and carcinogenic materials;

(i) Coordinate fire service education and training programs, hazardous materials responder training programs, and firefighter, first responder, and hazardous materials responder certification programs, which shall be available statewide;

(j) Administer the certification programs for firefighters, first responders, and hazardous materials responders, providing office space, equipment, and the services of a clerical staff as necessary for the carrying out of the intent of this part 12;

(k) Train and instruct firefighters and first responders in subjects relating to the fire service; coordinate fire service-related education and training classes, programs, conferences, and seminars; and train and instruct, or coordinate the training of, hazardous materials responders; except that all training related to terrorism shall be coordinated with the division of homeland security and emergency management created in part 16 of this article;

(l) Receive and accept gifts, funds, grants, bequests, and services for use in the function of the division;

(m) To help ensure that communities and firefighters have sufficient resources, technical support, and training to adequately assess wildfire risks, increase upgrades on federal excess property fire engines on loan to local fire departments; increase technical assistance in wildland fire preparedness to counties and fire protection districts; and, in

conjunction with the wildfire preparedness plan created pursuant to section 24-33.5-1227, ensure that state fire-fighting equipment such as fire engines and air tankers is fully operational and available to and coordinated with the equipment capacities of local fire departments and fire protection districts, and that personnel are fully trained in its use;

(n) Administer a uniform statewide reporting system for fires, hazardous materials incidents, emergency medical service incidents, and other incidents to which fire departments respond;

(o) Repealed.

(p) Conduct construction plan reviews and inspect public school and junior college buildings and structures and enforce the codes adopted in accordance with sections 22-32-124 (2) and 23-71-122 (1) (v), C.R.S., and sections 24-33.5-1213 and 24-33.5-1213.3;

(p.5) When there is no local building department or fire department, or when necessary for facilities certified or seeking certification by the federal centers for medicare and medicaid services, conduct construction plan reviews and inspections of health facility buildings and structures, enforce the codes in accordance with sections 24-33.5-1212.5 and 24-33.5-1213, and issue certificates of compliance for such buildings and structures;

(q) Provide training in accordance with section 24-33.5-1212 to directors of certain fire protection districts created pursuant to part 1 of article 1 of title 32, C.R.S.;

(r) Certify building inspectors to conduct building inspections for public school and junior college buildings;

(s) Pursuant to section 24-33.5-1213.4, assist school districts and schools in implementing the school response framework set forth in section 22-32-109.1 (4), C.R.S., advise school districts and schools concerning all-hazard exercises and drills for school buildings and the interoperability of school communications systems with state and local emergency personnel, and, in collaboration with the office of information technology created in section 24-37.5-103, the school safety resource center created in section 24-33.5-1803, and other government entities and community partners, provide information to school districts and schools concerning emergency preparedness;

(t) Implement a prescribed burning program, including conducting prescribed burning on any area in the state pursuant to section 24-33.5-1217. The division shall conduct such prescribed burning program in cooperation with local, state, or federal agencies, private persons, or concerns.

(u) Establish and maintain the Colorado firefighting air corps established under section 24-33.5-1228.

(2) The duties and functions of the division set forth in this part 12, including duties and functions pertaining to fire service education, training, and certification, apply to prescribed fires, wildfires, and wildland fire-related activities.

24-33.5-1203.5. Powers and duties of director. (1) In addition to any other duties prescribed by law, the director of the division shall perform the following duties:

(a) Exercise general supervisory control over and coordinate the activities, functions, and employees of the division; and

(b) Adopt such rules as the director of the division deems necessary to carry out the purposes and provisions of this part 12 and amend such rules from time to time as necessary. Such rules and amendments shall be adopted in accordance with article 4 of this title.

(2) In order to carry out the purposes and provisions of this part 12 and section 25-17-206, C.R.S., the director of the division shall promulgate rules in accordance with article 4 of this title:

(a) Adopting codes, which shall be identical to or modeled on the international codes published by the international code council; and

(b) Adopting nationally recognized standards that the director of the division reasonably finds necessary to carry out the purposes and provisions of this part 12 and sections 12-28-108, 12-47.1-516, and 25-17-206, C.R.S.

24-33.5-1204. Voluntary education and training program - voluntary certification of firefighters, first responders, and hazardous materials responders - advisory board. (1) For the purposes of advising the director on the administration of the voluntary fire service education and training program within the division of fire prevention and control and the voluntary firefighter, first responder, and hazardous materials responder certification programs, there is hereby created in the division of fire prevention and control the fire service training and certification advisory board, referred to in this part 12 as the "advisory board", to serve as an advisory board to the director.

(2) (a) The advisory board consists of fourteen members, eleven of whom are voting members appointed by the governor as follows:

(I) Four of the eleven members appointed by the governor shall represent each of the following organizations:

(A) Colorado state fire fighters association;

(B) Colorado state fire chiefs association;

(C) Colorado fire training officers association; and

(D) Colorado professional fire fighters association;

(II) The other seven members appointed by the governor are:

(A) A fire chief or training officer from a volunteer fire department participating in the certification program;

(B) A fire chief or training officer from a career fire department participating in the certification program;

(C) A representative of the property and casualty insurance industry;

(D) A hazardous materials responder team leader;

(E) A person experienced in the transportation industry;

(F) A representative of local law enforcement; and

(G) A representative of a fixed facility dealing with hazardous materials.

(b) The remaining three ex officio nonvoting members are the following persons or their designees:

(I) The president of the Colorado community college and occupational education system;

(II) The chief of the emergency medical and trauma services section within the health facilities and emergency medical services division in the department of public health and environment; and

(III) The chief of the state patrol.

(c) The eleven advisory board members appointed by the governor shall be geographically apportioned, and at least one of those members must have wildland fire expertise.

(d) At least three members of the advisory board shall be from a community or communities with a resident population of fifteen thousand persons or less.

(e) The governor shall initially appoint six members described in paragraph (a) of this subsection (2) for terms of four years each and the remaining five members for terms of two years each. Thereafter, the governor shall appoint their successors for terms of four years each. If any appointee vacates his or her office during the term for which appointed to the advisory board, the governor shall, by appointment, fill the vacancy for the unexpired term. The advisory board shall annually elect from its members a chairperson and a secretary.

(3) The advisory board shall meet as determined necessary by the chairperson or the director. The members of the advisory board shall receive no compensation but shall be reimbursed for necessary travel and other expenses actually incurred in the performance of their official duties. The expenses shall be paid from the firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund created in section 24-33.5-1207.

24-33.5-1204.5. Powers and duties of administrator - rules. (1) In addition to any other duties and powers granted by this section or sections 24-33.5-1206.2 and 24-33.5-1206.4, the administrator has the following duties and powers:

(a) To establish a program for registration of fire suppression contractors and to adopt such rules and regulations as may be necessary to administer the fire suppression program for the registration of fire suppression contractors and the inspection and maintenance of fire suppression systems pursuant to article 4 of this title;

(b) To establish fees and charges in amounts necessary to defray the anticipated

costs of administration of this article. The fees and charges may be adjusted by the administrator from time to time as necessary or appropriate.

(c) In the discretion of the administrator, to receive, investigate, and act upon complaints against those persons who violate any of the provisions of section 24-33.5-1206.6 or any rule or regulation adopted by the administrator pursuant to this section;

(d) To maintain records of all applications, complaints, investigations, disciplinary or other actions, and registrants;

(e) To conduct hearings upon charges for discipline of a fire suppression contractor or a certified fire suppression systems inspector, issue subpoenas, compel attendance of witnesses, compel the production of books, records, papers, and documents, administer oaths to persons giving testimony at hearings, and recommend prosecution of persons violating this article;

(f) To establish and adopt such rules as may be necessary to administer the public school construction and inspection program for the inspection of public school and junior college buildings and a program for certification of public school and junior college building inspectors;

(f.5) To establish and adopt rules necessary to administer the health facility construction and inspection program for:

(I) Where there is no local building department or fire department, the inspection of health facility buildings and structures and performance of plan reviews; and

(II) The development of a program for certification of health facility life safety inspectors;

(g) To conduct hearings upon charges for discipline of a school building inspector, health facility life safety code inspector, or third-party inspector; issue subpoenas; compel attendance of witnesses; compel the production of books, records, papers, and documents; administer oaths to persons giving testimony at hearings; and recommend prosecution of persons violating this part 12.

(2) (a) The administrator shall implement a tracking system, separate from the individual records of fire suppression contractors and inspectors, regarding the disposition of complaints.

(b) The administrator shall provide an online complaint form and internet access to the tracking system implemented pursuant to paragraph (a) of this subsection (2).

24-33.5-1205. Duties of the director and the advisory board. (1) The director has the following duties relating to the voluntary firefighter, first responder, and hazardous materials responder certification programs and the fire service education and training program:

(a) To establish a fire service education and training program, setting forth minimum standards for training and instructors;

(b) To promulgate rules establishing standards for the firefighter, first responder, and hazardous materials responder certification programs and for determining whether a firefighter or an applicant for first responder or hazardous materials responder certification meets the established standards;

(c) (Deleted by amendment, L. 99, p. 332, 2, effective April 15, 1999.)

(d) To certify firefighters and applicants for first responder and hazardous materials responder certification or withhold or revoke certification in the manner provided for by rules adopted by the director pursuant to the provisions of article 4 of this title;

(e) To issue a certificate to any firefighter or rescuer who presents evidence that the minimum firefighter certification standards have been met and to issue a certificate to any applicant who presents evidence that the minimum standards of the first responder or hazardous materials responder certification program have been met;

(f) (Deleted by amendment, L. 99, p. 332, 2, effective April 15, 1999.)

(g) To establish fees for the actual direct and indirect costs of the administration of the firefighter, first responder, and hazardous materials responder certification programs, which fees shall be assessed against any person participating in such programs. All fees collected shall be credited to the firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund created in section 24-33.5-1207.

(h) To establish fees for the actual direct and indirect costs of the administration of the fire service education and training program, which fees shall be assessed against any person participating in such program. All fees collected shall be credited to the fire service education and training fund created in section 24-33.5-1207.5.

(2) The advisory board has the following duties relating to the voluntary firefighter, first responder, and hazardous materials responder certification programs and the fire service education and training program:

(a) To advise the director on the promulgation of rules enacting standards for the certification of firefighters and rescuers and procedures for determining whether a firefighter or rescuer meets the established standards;

(b) To advise the director on the promulgation of rules enacting standards for the certification of first responders and hazardous materials responders and procedures for determining whether an applicant meets such standards;

(c) To advise the director on the promulgation of rules enacting standards for fire service education and training for volunteer firefighters, the qualification of instructors, and procedures to ensure that the quality of the program is adequate to meet the minimum training requirements for volunteer firefighters as set forth in section 31-30-1122, C.R.S.;

(d) To advise the director on the establishment of fees for the actual direct and indirect costs of the administration of the firefighter, first responder, and hazardous materials responder certification programs;

(e) To advise the director on the establishment of fees for the actual direct and indirect costs of the administration of the fire service education and training program.

(3) (Deleted by amendment, L. 99, p. 332, 2, effective April 15, 1999.)

(4) Nothing in this section shall be construed as creating mandatory certification programs for firefighters, first responders, or hazardous materials responders, or creating a mandatory fire service education and training program. All fire departments in the state shall have the option of whether or not to participate in the firefighter, first responder, or hazardous materials responder certification programs or the fire service education and training program.

24-33.5-1206. Education and training programs - certification programs - supervision and control. (1) The fire service education and training programs and the certification programs established pursuant to this part 12 shall be under the supervision and control of the director with the advice of the advisory board.

(2) The public school construction and inspection program, the health facility construction and inspection program, and the certification programs for public school and junior college building inspectors and life safety code inspectors established pursuant to this part 12 are under the supervision and control of the director with the advice of the board of appeals created in section 24-33.5-1213.7.

24-33.5-1206.1. Registration required. (1) No person shall act, assume to act, or advertise as a fire suppression contractor who is not registered as a fire suppression contractor with the administrator.

(2) Any registered fire suppression contractor shall obtain any locally required licenses or permits and comply with local building and fire codes.

(3) Any registered fire suppression contractor shall be responsible for the acts of its agents and employees while acting on behalf of the contractor to sell, advertise, layout, fabricate, install, add to, alter, service, repair, or inspect fire suppression systems of any kind.

(4) Every registered fire suppression contractor shall be responsible to assure that:

(a) A responsible person in the management or employment of the contractor is qualified in the layout, fabrication, installation, alteration, servicing, repair, and inspection of fire suppression systems;

(b) Each job is supervised by an on-site installer who is qualified in the layout, fabrication, installation, alteration, servicing, repair, and inspection of fire suppression systems;

(c) Any layout, fabrication, installation, alteration, servicing, repair, or inspection of fire suppression systems is done according to applicable standards adopted by the

administrator by rule and regulation or applicable local codes and ordinances. In adopting standards pursuant to this paragraph (c), the administrator may consider the standards of the national fire protection association.

(d) Actual fabrication, installation, alteration, servicing, or repair of any fire suppression system is done in accordance with approved plans, layout, or design;

(e) All interim and final inspections and system tests are completed according to standards adopted by the administrator or requirements laid out by local fire safety inspectors and the administrator and that any required logs, reports, or results of said inspections and system tests are accurately kept and conveyed to the appropriate fire safety inspectors.

(5) No registration shall be granted to any fire suppression contractor who has as a principal any person who, within the past two years, has violated any provision of this part 12 or any rule or regulation of the administrator pursuant thereto.

24-33.5-1206.2. Job registration and plan review. (1) Except for minor alterations, modifications, repairs, or maintenance work which does not affect the integrity of the system, no installation, modification, alteration, or repair of a fire suppression system shall be started until:

(a) Any required local permits have been obtained;

(b) (I) The job, including the name and registration number of the contractor, the address and description of the premises where the job will be done, and the name and address of the general contractor or the name and address of the owner if no general contractor is involved, has been registered with the administrator.

(II) If the local fire safety agency requests job registration and plan review authority, and the administrator determines that said local fire safety agency has the capability and qualifications to conduct plan review, then the administrator shall accept job registration with local fire safety officials in satisfaction of the job registration requirement imposed by subparagraph (I) of this paragraph (b).

(c) (I) The working plans and hydraulic calculations for the job have been reviewed and approved by the administrator.

(II) The administrator shall establish standards of review and approval and shall, where appropriate, accept review and approval by certified local fire suppression inspectors in satisfaction of the requirements of this paragraph (c).

(2) Any working plans and hydraulic calculations submitted for review by the administrator shall bear the signature and certification number of either a licensed professional engineer or a level three or higher engineering technician (fire suppression engineering technology - automatic sprinkler design or fire suppression engineering technology - special hazards system layout), whichever is relevant to the particular job or design, certified by the national institute for the certification of engineering technologists.

Such licensed professional engineer or engineering technician shall certify that he or she has reviewed the plan and design and finds that it meets the applicable standards adopted by the administrator for fire safety, and that it is adequately designed to meet the system requirements.

24-33.5-1206.3. Requirements for installation, inspection, and maintenance of fire suppression systems. (1) Fire suppression systems shall be designed and installed in accordance with the applicable standards adopted by the administrator by rule, manufacturer's specifications, and applicable local codes and ordinances. In adopting standards, the administrator may consider and adopt the standards of the national fire protection association.

(2) The contractor shall furnish the user with operating instructions for all equipment installed, together with as-built diagrams of the final installation.

(3) Contractor inspections and tests, where required, shall be conducted by qualified personnel or certified fire safety inspectors and in compliance with applicable standards adopted by the administrator. Complete records shall be kept of the tests and operations of each system. The records shall be available for examination by the local certified fire safety inspector or the fire suppression administrator.

24-33.5-1206.4. System approval, inspection, and inspectors. (1) No installation, modification, alteration, or repair of a fire suppression system shall be completed and cleared for use, and no structure or partial structure in which such fire suppression system is installed, modified, altered, or repaired shall be cleared for occupancy, until such fire suppression system has been approved by a certified fire suppression systems inspector. Approval shall include review of approved working plans and hydraulic calculations, installation inspections, and final tests.

(2) (a) Each county, municipality, and special district that has fire suppression systems enforcement responsibilities shall, as needed, provide a certified fire suppression systems inspector. Such inspector shall conduct all fire suppression systems inspections that are required by this part 12. The governing body of the county, municipality, or special district that has fire suppression systems enforcement responsibilities may provide a schedule of fees to pay the costs of plan review and inspections conducted pursuant to this subsection (2) and related administrative expenses, and collect said fees from the fire suppression contractor.

(b) Two or more counties, municipalities, or special districts that have fire safety enforcement responsibilities may jointly employ or contract with a fire safety inspector.

(c) The administrator or his agent shall be available to provide such fire safety inspections to any county, municipality, or special district on a contractual or job-by-job

basis. The county, municipality, or special district shall pay the actual costs of such inspections by the administrator or his agents.

(3) Every inspection of a fire suppression system conducted pursuant to this part 12 shall be by a person certified as having met the inspection training requirements set by the administrator. Such person shall:

(a) Be at least eighteen years of age;

(b) Not have been engaged in any of the activities specified in section 24-33.5-1206.6 (2); and

(c) (I) Have satisfactorily completed the fire suppression systems inspector certification examination as prescribed by the administrator; or

(II) Have demonstrated to the administrator that the applicant has met such other equivalent qualifications, including but not limited to education and experience, as may be prescribed by rule and regulation. If the head of a county, municipality, or special district that has fire suppression system enforcement responsibility determines that the applicant has met the qualifications adopted pursuant to this subparagraph (II), then he shall notify the administrator, who shall certify the applicant; or

(III) Have received in another state training which is determined by the administrator to be at least equivalent to that required by the administrator for approved certified fire safety inspector education and training programs in this state.

(4) Every certificate issued by the administrator is valid for a period of three years from the date of issuance. Renewal of certification shall require the affected person to complete a proper application for renewal and meet any other requirements for renewal as prescribed by the administrator, including successful passage of an examination as established by the administrator.

24-33.5-1206.5. Unlawful acts - criminal penalties. (1) Any person who violates any of the provisions of section 24-33.5-1206.1 commits a class 3 misdemeanor and, if a natural person, shall, upon conviction thereof, be punished as provided in section 18-1.3-501, C.R.S., and, if a corporation, shall be punished by a fine of not more than five thousand dollars. Any natural person who violates any provision of section 24-33.5-1206.1 subsequent to a prior conviction for such a violation commits a class 2 misdemeanor and shall, upon conviction thereof, be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who knowingly and willfully makes any false statement whatsoever or who conceals a material fact in any application, form, claim, advertisement, contract, warranty, guarantee, or statement, either written or oral, with the intent to influence the actions or decisions of any owner or contractor negotiating or contracting for the installation, alteration, or repair of any fire suppression system, or to any bonding agent, commits a class 1 misdemeanor and shall, upon conviction thereof, be

punished as provided in section 18-1.3-501, C.R.S.

24-33.5-1206.6. Unlawful acts - civil penalties - disciplinary actions. (1) Any person, firm, association, or corporation which violates any of the provisions of sections 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation promulgated by the administrator pursuant to this part 12 may be punished upon a finding of such violation by the administrator as follows:

(a) In any first administrative proceeding against a licensee, a fine of not less than one hundred dollars nor more than one thousand dollars;

(b) In any subsequent administrative proceeding against a licensee for transactions occurring after a final agency action determining that any violation of sections 24-33.5-1206.1 to 24-33.5-1206.3 or any rule or regulation of the administrator has occurred, a fine of not less than one thousand dollars nor more than ten thousand dollars.

(2) In addition to the penalties provided in subsection (1) of this section, the administrator may withhold, deny, suspend, or revoke the registration or certification of any registered fire suppression contractor or certified fire safety inspector or applicant therefor if the administrator finds, upon proof, that any such person has committed any of the following:

(a) Fraud or material deception in the obtaining or renewing of a registration;

(b) Professional incompetence as manifested by poor, faulty, or dangerous workmanship;

(c) Engaging in conduct that is likely to deceive, defraud, or harm the public in the course of professional services or activities;

(d) Performing any services in a negligent manner or permitting any of his agents or employees to perform services in a grossly negligent manner, regardless of whether actual damage or damages to the public is established;

(e) Directly or indirectly, willfully receiving compensation for any professional services not actually rendered;

(f) Failing to comply with any provision of this part 12 or the standards or rules promulgated by the administrator pursuant thereto;

(g) Contracting or assisting unregistered persons to perform services for which registration is required under this part 12.

(3) All fines imposed by the administrator pursuant to this section shall be credited to the general fund.

(4) A person acting as a fire suppression contractor may not bring any legal action to collect compensation due for performing any act for which registration is required pursuant to section 24-33.5-1206.1 unless such contractor alleges and proves that he was duly registered under said section at the time the alleged cause of action arose.

(5) (a) Any person who provides testimony with respect to a disciplinary matter

and any person who lodges a complaint pursuant to this section shall be immune from liability in any civil action brought against such person for acts occurring while acting in his or her capacity as a witness or complainant.

(b) The immunity provided in paragraph (a) of this subsection (5) shall apply to a person only if the person made a reasonable effort to obtain the facts of the matter and acted in the reasonable belief that the action taken was warranted by the facts.

(6) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the administrator, does not warrant formal action but that should not be dismissed as being without merit, the administrator may issue a letter of admonition by certified mail to the fire suppression contractor or inspector.

(b) The letter of admonition shall notify the fire suppression contractor or inspector of the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

24-33.5-1206.7. Sprinkler fitters - registration required - rules. (1) No person shall act, assume to act, or advertise as a sprinkler fitter who is not registered with the administrator.

(2) A registered sprinkler fitter shall obtain any locally required licenses or permits and comply with local building codes.

(3) In order to register with the administrator, a sprinkler fitter shall pay a fee as determined by the administrator and shall:

(a) Provide evidence demonstrating that he or she successfully completed a sprinkler fitter apprenticeship program and take and pass an examination established and approved by the administrator;

(b) Complete an application for registration by reciprocity established by rules of the administrator that demonstrates competent evidence that the applicant is currently authorized to practice as a sprinkler fitter in another state that has established qualification requirements substantially similar to, or greater than, the requirements established in this section or by rule of the administrator;

(c) Provide evidence demonstrating that he or she performed at least eight thousand hours of documented practical work experience on fire suppression systems within the past five years; or

(d) Otherwise demonstrate competency as a sprinkler fitter as determined by the administrator.

(4) Notwithstanding the provisions of subsection (3) of this section, a person who is enrolled in a sprinkler fitter apprenticeship program may perform work on a fire

suppression system under the direct supervision of and in the immediate presence of a sprinkler fitter.

(5) (a) A registered sprinkler fitter shall complete continuing education requirements established by rule of the administrator.

(b) A sprinkler fitter shall apply to renew his or her registration annually. The administrator shall renew, for a period of one year, a sprinkler fitter registration upon receipt of a completed renewal application and a renewal fee as determined by the administrator. In years that the fire and safety code is revised, a sprinkler fitter shall also successfully complete a revised examination in order to renew his or her registration.

(6) The administrator may promulgate rules as necessary for the implementation of this section.

24-33.5-1207. Firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund - created. (1) All moneys received by the director pursuant to the coordination and administration of the firefighter, first responder, hazardous materials responder, and prescribed fire training and certification programs and all interest earned on the moneys shall be deposited in the state treasury in the firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund, which fund is hereby created, and the moneys shall be used, subject to annual appropriations by the general assembly, for the purposes set forth in this part 12 and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(2) (Deleted by amendment, L. 2011, (SB 11-251), ch. 240, p. 1050, § 13, effective June 30, 2011.)

24-33.5-1207.5. Fire service education and training fund - created. (1) All moneys received by the director pursuant to the administration of the fire service education and training programs and all interest earned on the moneys shall be deposited in the state treasury in the fire service education and training fund, which fund is hereby created, and the moneys shall be used, subject to annual appropriations by the general assembly, for the purposes set forth in this part 12 and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(2) The moneys in the fire service training fund, which fund was repealed, shall be deposited in and consolidated with the fire service education and training fund.

24-33.5-1207.6. Fire suppression cash fund - created. (1) All moneys collected by the administrator pursuant to the administration of the fire suppression program and

pursuant to subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the fire suppression cash fund, which fund is hereby created. All moneys credited to said fund and all interest earned thereon are subject to annual appropriation by the general assembly for paying the expenses of the fire suppression program, and said moneys shall remain in such fund for such purposes and shall not revert or be credited to the general fund.

(2) The administrator may be reimbursed by a unit of local government for the actual, reasonable, and necessary expenses of the division incurred in providing technical assistance in circumstances when the unit of local government collects a fee for technical assistance provided by the division. Nothing in this subsection (2) shall be construed to require a unit of local government to collect a fee for technical assistance provided by the division, and payment of reimbursement shall be at the discretion of the unit of local government.

24-33.5-1207.7. Public school construction and inspection cash fund - created. All moneys collected by the division pursuant to sections 22-32-124 (2) and 23-71-122 (1) (v), C.R.S., or section 24-33.5-1213.3 shall be transmitted to the state treasurer, who shall credit the same to the public school construction and inspection cash fund, which is hereby created. All moneys credited to the fund and all interest earned thereon are subject to annual appropriation by the general assembly for paying the expenses of the public school construction and inspection program. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-33.5-1207.8. Health facility construction and inspection cash fund - created. All moneys collected by the division pursuant to section 24-33.5-1212.5 shall be transmitted to the state treasurer, who shall credit the same to the health facility construction and inspection cash fund, which is hereby created. All moneys credited to the fund and all interest earned thereon are subject to annual appropriation by the general assembly for paying the expenses of the health facility construction and inspection program. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-33.5-1208. Limitation of authority. Nothing in this part 12 shall be construed to give the division, director, or administrator any power of control or supervision over any unit of local government.

24-33.5-1209. Repeal of sections.

(1) Repealed.

(2) Sections 24-33.5-1204.5, 24-33.5-1206.1, 24-33.5-1206.2, 24-33.5-1206.3, 24-33.5-1206.4, 24-33.5-1206.5, 24-33.5-1206.6, and 24-33.5-1207.6, concerning programs for fire suppression administered by the division of fire prevention and control and scheduled for termination in accordance with section 24-34-104, are repealed, effective July 1, 2014.

24-33.5-1210. Resource mobilization plan - fire - emergency medical services - search and rescue. (Repealed)

24-33.5-1211. Inspector certification. (1) The division shall certify a person with fire safety responsibilities who is employed by, under contract to, or volunteers services to the state or a governing body as a fire inspector if the person files an application with the division for certification on forms provided by the division, pays the required certification fee, is at least eighteen years of age, and:

(a) Passes the fire code certification examination as prescribed by the director of the division; or

(b) Holds a valid and current fire code certification from the international code council; or

(c) Demonstrates to the director of the division that the person meets other equivalent qualifications, including, but not limited to, the education and experience prescribed by rules adopted by the director of the division in accordance with article 4 of this title and obtains an attestation on a form provided by the division from the head of the governing body or a designee that the person has the knowledge, skills, and ability to conduct fire safety plan reviews and inspections using the rules and codes adopted pursuant to sections 8-1-107 (2) (p) and 24-33.5-1203.5 (2) (b), C.R.S.

(2) An inspector certification issued pursuant to subsection (1) of this section shall be valid for a period of three years; except that such certification shall become invalid if:

(a) The certified inspector's employment relationship or contract with the state or governing body is terminated; or

(b) The certified inspector ceases to provide volunteer fire safety plan review or inspection services to the state or governing body.

(3) The requirements and process for renewal of an inspector certification shall be the same as for initial certification.

(4) The director of the division shall establish a fee to cover the actual direct and indirect costs of processing applications and issuing and renewing certifications pursuant to this section. Certification fees collected by the division shall be credited to the

firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund created in section 24-33.5-1207.

24-33.5-1212. Training for directors of fire protection districts - pilot program - advisory board - training fund - repeal. (1) The division shall establish a pilot program to offer training courses to directors of fire protection districts whose territory includes wildland-urban interface areas, as defined by the Colorado state forest service.

(2) The division shall offer courses pursuant to this section on subjects including but not necessarily limited to:

(a) Strategic planning; and

(b) Community outreach on wildland-urban interface issues.

(3) (a) The wildland-urban interface training advisory board is hereby created in the division for the purpose of advising the division on the content of the courses offered pursuant to this section and the implementation of the pilot program established pursuant to this section.

(b) The wildland-urban interface training advisory board shall consist of five members, to be appointed by the director as follows:

(I) One employee of the Colorado state forest service;

(II) One member of an association representing the county sheriffs of the state;

(III) One member of an association representing the fire chiefs of the state;

(IV) One representative of an association representing the special districts of the state; and

(V) One employee of the division of emergency management.

(c) The members of the wildland-urban interface training advisory board shall serve without compensation or reimbursement of expenses.

(d) This subsection (3) is repealed, effective July 1, 2018.

(4) The division shall issue a certificate of wildland-urban interface fire safety to a director who successfully completes the courses offered pursuant to this section.

(5) (a) The division shall offer courses to directors of fire protection districts in accordance with this section at no charge and shall seek gifts, grants, and donations to fund the pilot program created pursuant to this section. No general fund moneys shall be expended for the implementation of the program. Notwithstanding any other provision of this section, the division shall not implement the program until the division receives sufficient appropriations, gifts, grants, or donations to cover the costs of implementing the program. The division shall transmit gifts, grants, and donations received in accordance with this subsection (5) to the state treasurer, who shall credit the moneys, along with any moneys appropriated by the general assembly, to the wildland-urban interface training fund, which fund is hereby created in the state treasury. Any moneys in the fund in excess

of those needed for the training of directors of fire protection districts shall be used for the purpose of providing firefighters with basic wildland firefighting and wildland-urban interface firefighting training through existing wildland fire training programs. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Moneys not expended at the end of a fiscal year shall remain in the fund and shall not be transferred or revert to the general fund.

(b) and (c) Repealed.

(6) The director shall report to the general assembly on the results of the pilot program established pursuant to this section no later than July 1, 2010.

24-33.5-1212.5. Health facility fire and building codes - third-party inspections authorized - temporary certificate of occupancy - fees - rules - board of appeals. (1) (a) This section applies to health facility buildings or structures, including the construction or substantial remodeling and ongoing compliance with this article thereof, when there is no local building department or fire department to perform such functions. The division shall conduct the necessary plan reviews and inspections and issue certificates of compliance to certify that such buildings or structures are constructed or maintained in conformity with the codes adopted by the director.

(b) On and after July 1, 2013, health facility buildings and structures shall be maintained in accordance with their local building and fire codes or, if no such local building and fire codes exist, with the building and fire codes adopted by the director pursuant to section 24-33.5-1203.5.

(c) Notwithstanding paragraph (a) of this subsection (1), upon request of the local fire authority, the director of the division shall provide technical assistance in the review of health facility plans and, if appropriate, conduct inspections on behalf of the local fire authority.

(2) Except as specified in subsection (3) of this section, in the absence of a local building department or fire department, the division shall conduct the necessary plan reviews, issue building permits, cause the necessary inspections to be performed, perform final inspections, and issue certificates of occupancy to assure that a health facility building or structure has been constructed in conformity with the building and fire codes adopted by the director and that the health facility has complied with this section.

(3) **Third-party inspectors.** (a) The division may contract with third-party inspectors who are certified in accordance with section 24-33.5-1213.5 to perform inspections.

(b) (I) A health facility may hire and compensate third-party inspectors under contract with the division or hire and compensate other third-party inspectors who are certified in accordance with section 24-33.5-1213.5 to perform inspections.

(II) If a third-party inspector is used, the division shall require a sufficient number

of third-party inspection reports to be submitted by the inspector to the division based upon the scope of the project to ensure quality inspections are performed. Except as specified in subsection (4) of this section, the third-party inspector shall attest that inspections are complete and all violations are corrected before the health facility is issued a certificate of occupancy. Inspection records shall be retained by the third-party inspector for two years after the certificate of occupancy is issued. If the division finds that inspections are not completed satisfactorily, as determined by rule of the division, or that all violations are not corrected, the division shall take enforcement action against the appropriate health facility pursuant to section 24-33.5-1213.

(4) **Temporary certificate of occupancy.** If inspections are not completed and a building or structure requires immediate occupancy, and if the health facility has passed the appropriate inspections that indicate there are no life safety issues, the division may issue a temporary certificate of occupancy. The temporary certificate of occupancy expires ninety days after the date of occupancy. If no renewal of the temporary certificate of occupancy is issued or a permanent certificate of occupancy is not issued, the building or structure shall be vacated upon expiration of the temporary certificate. The division shall enforce this subsection (4) pursuant to section 24-33.5-1213.

(5) **Division fees.** If the division conducts the necessary plan reviews and performs the necessary inspections to determine that a building or structure has been constructed in conformity with the building and fire codes adopted by the director, the division shall charge fees as established by the director by rule, based on the direct and indirect cost of providing the service. The fees shall cover the actual, reasonable, and necessary expenses of the division. The director, by rule or as otherwise provided by law, may increase or reduce the amount of the fees as necessary to cover the actual, reasonable, and necessary costs of the division. Any fees collected by the division pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit the same to the health facility construction and inspection cash fund created in section 24-33.5-1207.8.

(6) **Rules.** Rules promulgated pursuant to this section shall be adopted in accordance with article 4 of this title.

(7) **Board of appeals.** (a) (I) There is hereby created in the division the health facility construction and inspection program board of appeals, referred to in this section as the "board of appeals". The board of appeals consists of seven members appointed by the executive director and one ex officio nonvoting member appointed in accordance with sub-subparagraph (C) of subparagraph (II) of this paragraph (a).

(II) The members of the board of appeals shall be persons who are qualified by experience and training to pass upon matters pertaining to health facility building construction, including one member with experience and knowledge of the life safety code, and shall include:

(A) The four members of the board of appeals created in section 24-33.5-1213.7

who represent the Colorado chapter of the international code council, the fire marshal's association of Colorado, the Colorado state fire chiefs' association, and Colorado counties, incorporated, or any member appointed from a successor to any of these organizations representing comparable interests;

(B) One representative from each of the following organizations or a successor to any of such organizations representing comparable interests: The Colorado association of healthcare engineers and directors; the American society for healthcare engineering; and the Colorado chapter of the American institute of architects; and

(C) One ex officio nonvoting member, appointed by the executive director of the department of public health and environment, who is employed by that department as a health surveyor.

(III) The members of the board of appeals serve at the pleasure of the executive director.

(IV) For the initial appointments to the board of appeals:

(A) The members serving pursuant to sub-subparagraph (A) of subparagraph (II) of this paragraph (a) serve terms coextensive with the terms to which they were appointed under section 24-33.5-1213.7; and

(B) For the members appointed pursuant to sub-subparagraph (B) of subparagraph (II) of this paragraph (a), the executive director shall appoint one member for a one-year term, one member for a two-year term, and one member for a three-year term. Each term for the member appointed pursuant to sub-subparagraph (C) of subparagraph (II) of this paragraph (a) is two years. All subsequent appointments are for three-year terms; except that an appointment to fill a vacancy on the board shall be for the remainder of the predecessor's term.

(V) The members of the board of appeals shall not be compensated for their service on the board and shall not be reimbursed for expenses.

(b) The board of appeals shall select a chair from among its members and shall adopt reasonable procedures for conducting its deliberations.

(c) (I) A health facility representative may appeal to the board of appeals a final written decision of a division inspector or third-party inspector that conducts a plan review or inspection pursuant to this section. The appeal shall be filed with the division within thirty days after the date of the decision. The division shall specify the form on which an appeal shall be made and shall provide the form to a health facility representative upon request.

(II) Upon receipt of an appeal, the division shall notify the chair of the board of appeals and schedule a hearing no more than fifteen days after the date on which the appeal was filed.

(III) The board of appeals may review a final written decision by an inspecting entity that is based on the codes or standards adopted by the director. The board of appeals shall not waive any requirement of the codes or standards. The board of appeals

may recommend alternative materials as provided in the codes or standards. The final written decision of the board is final agency action for purposes of section 24-4-106.

(d) In addition to hearing appeals as provided in this section, the board of appeals shall advise the director in promulgating rules and enacting standards for the health facility construction and inspection program.

24-33.5-1213. Fire and building code - violations - enforcement - inspections. (1) The director shall enforce sections 22-32-124 (2), 23-71-122 (1) (v), 24-33.5-1212.5, 24-33.5-1213.3, and 24-33.5-1213.5, C.R.S., by appropriate actions in courts of competent jurisdiction.

(2) (a) The director may issue a notice of violation to a person who is believed to have violated the codes as determined by an inspection pursuant to section 22-32-124 (2), 23-71-122 (1) (v), 24-33.5-1212.5, or 24-33.5-1213.3, C.R.S. The notice shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(b) The notice of violation shall allege the facts that constitute a violation.

(c) The notice of violation may require the alleged violator to act to correct the alleged violation.

(d) Within ten working days after delivery of the notice of violation, the alleged violator may request in writing an informal conference with the director concerning the notice of violation. If the alleged violator fails to request the conference within ten days, the notice of violation is final and not subject to further review by the director, and any requirement to correct the alleged violation pursuant to paragraph (c) of this subsection (2) becomes a binding enforcement order.

(e) Upon receipt of a request for an informal conference, the director shall set a reasonable time and place for the conference and shall notify the alleged violator of the time and place of the conference. At the conference, the alleged violator may present evidence and arguments concerning the allegations in the notice of violation.

(f) Within twenty working days after the informal conference, the director shall uphold, modify, or strike the allegations within the notice of violation and may issue an enforcement order. The decision and, if applicable, enforcement order shall be delivered to the alleged violator by certified mail, return receipt requested, or by any means that verifies receipt as reliably as certified mail, return receipt requested.

(3) (a) A person who is the subject of and is adversely affected by a notice of violation or an enforcement order issued pursuant to subsection (2) of this section may appeal such action to the executive director. The executive director shall hold a hearing to review such notice or order and take final action in accordance with article 4 of this title and may either conduct the hearing personally or appoint an administrative law judge from the department of personnel.

(b) Final agency action shall be subject to judicial review pursuant to article 4 of this title.

(c) An alleged violator who is required to correct an action pursuant to paragraph (c) of subsection (2) of this section shall be afforded the procedures set forth in section 24-4-104 (3), to the extent applicable.

(4) (a) An enforcement order issued pursuant to this section may impose a civil penalty, depending on the severity of the alleged violation, not to exceed five hundred dollars per violation for each day of violation; except that the director may impose a civil penalty not to exceed one thousand dollars per violation for each day of violation that results in, or may reasonably be expected to result in, serious bodily injury.

(b) A civil penalty collected pursuant to this subsection (4) shall be deposited in the public school construction and inspection cash fund created in section 24-33.5-1207.7 or the health facility construction and inspection cash fund created in section 24-33.5-1207.8, as appropriate.

(5) The director may file suit in the district court in the judicial district in which a violation is alleged to have occurred to judicially enforce an enforcement order issued pursuant to this section.

(6) In addition to the remedies provided in this section, the director is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary or permanent injunction to restrain any person from violating any provision of section 22-32-124 (2) or 23-71-122 (1) (v), C.R.S., or section 24-33.5-1213.3 or 24-33.5-1213.5 regardless of whether there is an adequate remedy at law.

24-33.5-1213.3. Building and structure fire code maintenance - rules. (1) This section shall apply to building and structure maintenance for fire safety. The fire department providing fire protection service for the buildings and structures of a school district or of a junior college district or for a charter school may inspect the buildings and structures when deemed necessary to ensure that they are maintained in accordance with the fire code adopted by the director of the division. If the local fire department does not perform the inspections authorized by this section, the division shall have the authority and duty to conduct the inspections.

(2) The division is authorized to charge a fee for inspections conducted by the division to cover the actual, reasonable, and necessary costs of the inspections. The amount of the fee shall be determined by the director of the division by rule. In accordance with section 24-33.5-1213, the division shall enforce the fire code adopted by the director of the division.

(3) A fire department that chooses to conduct fire code inspections pursuant to this section may refer notices of deficiencies to the division for evaluation or enforcement in accordance with section 24-33.5-1213. The division shall promulgate rules to establish

procedures for fire departments to refer notices of deficiencies for evaluation or enforcement to the division.

(4) Nothing in this section shall prohibit the fire department from correcting violations that pose an immediate threat to life safety. Nothing in this section shall prohibit the fire department from seeking enforcement action in a court of competent jurisdiction.

24-33.5-1213.4. School all-hazard emergency planning and response. (1) The school response framework created in section 22-32-109.1 (4), C.R.S., sets forth the framework for school emergency incident response and emergency preparedness, including emergency communications and the responsibilities of school resource officers. Pursuant to the school response framework, emergency response personnel are community partners with schools. As part of its duty to regularly inspect school buildings to ensure compliance with the fire code, the division, local fire departments, and certified fire inspectors may partner with schools in assessing each school's implementation of NIMS, the interoperability of the school's emergency communications equipment with state and local emergency response agencies, and the implementation of a school resource officer program.

(2) (a) As part of the division's duty, as set forth in section 24-33.5-1213, to enforce the provisions of section 22-32-124 (2), C.R.S., and section 24-33.5-1213.3, the division:

(I) Shall inquire of each school as to the number and type of any all-hazard drills conducted by the school, in addition to regular fire drills; and

(II) May inquire concerning:

(A) The school safety, readiness, and incident management plan developed pursuant to section 22-32-109.1 (4) (d), C.R.S.;

(B) The school's progress toward implementing NIMS and the incident command system pursuant to section 22-32-109.1, C.R.S., and in achieving communications interoperability with state and local emergency personnel;

(C) The nature and location of the school's emergency equipment, including communications equipment, and whether the communications equipment's interoperability with state and local emergency personnel has been tested separately or as part of an all-hazard drill; and

(D) Any other issues related to the school response framework, including but not limited to NIMS implementation, incident management, and communications interoperability with state and local emergency personnel.

(b) Inquiries made by the division pursuant to paragraph (a) of this subsection (2) that do not relate to the fire code shall not be the basis for a notice of deficiency or enforcement action.

(3) (a) Pursuant to its role as a community partner with schools, the division may, as part of its regular correspondence with schools, provide information to school safety personnel in school districts and schools, including but not limited to information related to NIMS and interoperable communications, courses and training on NIMS and interoperable communications, representation of schools at meetings held by community partners, best practices in incident management, and funding or grant opportunities related to emergency preparedness.

(b) The division shall collaborate with the office of information technology, created in section 24-37.5-103, the school safety resource center created in section 24-33.5-1803, and any other government entities and community partners as determined by the division to collect and disseminate information to school districts and schools as described in paragraph (a) of this subsection (3).

24-33.5-1213.5. Certification for building inspectors - rules. (1) The director of the division shall implement a building inspector and plans examiner certification program to comply with the provisions of sections 22-32-124 (2) and 23-71-122 (1) (v), C.R.S., that evaluates the education, training, and experience of each inspector and ensures that the inspectors hold current national certifications that require continuing education. The director of the division shall require that each inspector be recertified every three years.

(2) Plans examiners for plan review and building inspectors for construction inspections shall be certified in their respective fields by the international code council, or another similar national organization, and have demonstrated education, training, and experience in their respective fields.

(3) If a plans examiner or building inspector is not certified in his or her respective field, the plans examiner or building inspector shall have at least five years of demonstrated education, training, and experience in his or her respective field and receive national certification within one year after the date of hire.

(4) The director of the division shall outline, by rule, the criteria for the revocation of inspector certifications. If the division finds that inspections are not complete or that all violations are not corrected, the division shall take enforcement action against the third-party inspector pursuant to section 24-33.5-1213.

24-33.5-1213.7. Board of appeals. (1) (a) There is hereby created in the division a board of appeals, referred to in this section as the "board of appeals". The board of appeals shall consist of seven members appointed by the executive director.

(b) The members of the board of appeals shall be persons who are qualified by experience and training to pass upon matters pertaining to building construction and shall

include one representative nominated by each of the Colorado association of school boards, the Colorado association of school executives, the Colorado chapter of the international code council, the fire marshal's association of Colorado, the Colorado state fire chiefs' association, the rocky mountain chapter of the council for educational facilities planners international, and Colorado counties, incorporated, or from a successor to any of these organizations representing comparable interests.

(c) The members of the board of appeals shall serve at the pleasure of the executive director. For the initial board, the executive director shall appoint one member for a one-year term, two members for two-year terms, and three members for three-year terms. Subsequent appointments shall be for three-year terms; except that an appointment to fill a vacancy on the board shall be for the remainder of the predecessor's term.

(d) The members of the board of appeals shall not be compensated for their service on the board and shall not be reimbursed for expenses.

(e) The board of appeals shall adopt reasonable procedures for conducting its deliberations.

(2) A board of education, the state charter school institute, a charter school, or a junior college board of trustees may appeal to the board of appeals a final written decision of an entity that conducts a plan review or inspection pursuant to section 22-32-124 or 23-71-122 (1) (v), C.R.S. The appeal shall be filed with the division within thirty days after the date of the decision. The division shall specify the form on which an appeal shall be made and shall provide the form to a board of education, a charter school, the state charter school institute, or a junior college board of trustees upon request.

(3) Upon receipt of an appeal, the division shall notify the chair of the board of appeals and schedule a hearing no more than fifteen days after the date on which the appeal was filed.

(4) The board of appeals may review a final written decision by an inspecting entity that is based on the provisions of the codes or standards adopted by the director of the division. The board shall not waive any requirement of the codes or standards. The board may recommend alternative materials as provided in the codes or standards. The final written decision of the board is final agency action for purposes of section 24-4-106.

(5) In addition to hearing appeals as provided in this section, the board of appeals shall advise the director in promulgating rules and enacting standards for the public school construction and inspection program.

(6) This section only applies to matters related to school reviews and inspections.

24-33.5-1214. Cigarettes - reduced ignition propensity standards - repeal. (1) **Short title.** This section shall be known and may be cited as the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act".

(2) **Testing - performance standard.** (a) (I) Except as otherwise provided in

paragraph (g) of this subsection (2), no cigarettes shall be sold or offered for sale in this state, or offered for sale or sold to persons located in this state, after July 31, 2009, unless:

(A) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection (2);

(B) A written certification has been filed by the manufacturer with the director in accordance with subsection (3) of this section; and

(C) The cigarettes have been marked in accordance with subsection (4) of this section.

(II) The following conditions shall apply to testing and certification:

(A) Testing of cigarettes shall be conducted in accordance with ASTM international standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".

(B) Testing shall be conducted on ten layers of filter paper.

(C) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection (2) shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested.

(D) The performance standard required by this subsection (2) shall be applied only to a complete test trial.

(E) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard specified by the division.

(F) A laboratory conducting testing in accordance with this subsection (2) shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results and limit the repeatability value to no greater than nineteen percent.

(G) This subsection (2) shall not require additional testing of cigarettes that have been tested for other purposes in a manner consistent with this section.

(H) Testing performed or sponsored by the division in order to determine a cigarette's compliance with the performance standard required by this subsection (2) shall be conducted in accordance with this subsection (2).

(b) Each cigarette listed in a certification submitted pursuant to subsection (3) of this section that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this subsection (2) shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(c) A manufacturer of a cigarette that the division determines cannot be tested in accordance with the test method prescribed in paragraph (a) of this subsection (2) shall propose a test method and performance standard for the cigarette to the division. Upon approval of the proposed test method and a determination by the division that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subparagraph (II) of paragraph (a) of this subsection (2), the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to this subsection (2). If the division determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are substantially similar to those contained in this subsection (2), and the division finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the reduced cigarette ignition propensity standards of such state's laws or rules under a legal provision comparable to this subsection (2), then the division shall authorize the manufacturer to employ the alternative test method and performance standard to certify such cigarette for sale in Colorado unless the division demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this subsection (2) shall apply to the manufacturer.

(d) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the division and the attorney general upon written request. Any manufacturer who fails to make copies of such reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make such copies available.

(e) The division may adopt a subsequent ASTM international standard test method for measuring the ignition strength of cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM international standard E2187-04 and the performance standard in subparagraph (II) of paragraph (a) of this subsection (2).

(f) On or before June 30, 2012, and on or before June 30 of every third year thereafter, the division shall review the effectiveness of this subsection (2) and report to the general assembly the division's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section.

(g) The requirements of paragraph (a) of this subsection (2) shall not be construed to prohibit:

(I) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after July 31, 2009, if a wholesale or retailer dealer can establish that state tax stamps

were affixed to the cigarettes before said date and that the inventory was purchased before said date in comparable quantity to the inventory purchased during the same period of the immediately preceding year; or

(II) The sale of cigarettes solely for the purpose of consumer testing. As used in this subparagraph (II), "consumer testing" means an assessment of cigarettes that is conducted by, or under the control and direction of, a manufacturer for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(h) The division shall implement this section in accordance with the implementation in New York of the New York fire safety standards for cigarettes.

(3) **Certification.** (a) Each manufacturer shall submit to the director a written certification attesting that each cigarette listed in the certification:

(I) Has been tested in accordance with subsection (2) of this section; and

(II) Meets the performance standard set forth in subsection (2) of this section.

(b) Each cigarette listed in the certification submitted pursuant to paragraph (a) of this subsection (3) shall be described with the following information:

(I) Brand or trade name on the package;

(II) Style, such as light or ultra light;

(III) Length in millimeters;

(IV) Circumference in millimeters;

(V) Flavor, such as menthol or chocolate if applicable;

(VI) Filter or nonfilter;

(VII) Package description, such as soft pack or box;

(VIII) Marking pursuant to subsection (4) of this section;

(IX) The name, address, and telephone number of the laboratory that conducted the tests, if different from that of the manufacturer; and

(X) The date that the testing occurred.

(c) Certifications under this subsection (3) shall be made available to the attorney general for purposes consistent with this section and to the department of revenue for the purpose of ensuring compliance with this subsection (3).

(d) Each cigarette certified under this subsection (3) shall be subject to recertification every three years.

(e) At the time it submits a written certification under this subsection (3), a manufacturer shall pay to the department of public safety a fee of one thousand dollars for each brand family of cigarettes listed in the certification. The fee paid shall apply to all cigarettes within the brand family certified and shall include any new cigarette certified within the brand family during the three-year certification period.

(f) There is hereby established, in the state treasury, the reduced cigarette ignition propensity standards and firefighter protection act enforcement fund, also referred to in this section as the "fund". The fund shall consist of all certification fees and civil

penalties collected pursuant to this section and shall, in addition to any other moneys made available for such purpose, be available to the division to support processing, testing, enforcement, and oversight activities under this section. Any moneys in the fund in excess of the amounts needed for such purposes may be used by the division, subject to annual appropriation, for fire safety and prevention programs, including without limitation firefighter training and certification.

(g) If a manufacturer has certified a cigarette pursuant to this subsection (3), and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standard required by this section, such cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in subsection (2) of this section and maintains records of the retesting as required by said subsection (2). Any altered cigarette that does not meet the performance standard set forth in said subsection (2) may not be sold in this state.

(4) **Labeling.** (a) Effective July 31, 2009, cigarettes that are certified by a manufacturer in accordance with subsection (3) of this section shall be marked to indicate compliance with the requirements of this section. Such marking shall be in eight-point type or larger and shall consist of one or more of the following:

(I) Modification of the package's UPC symbol to include a visible mark printed at or around the area of the UPC symbol. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the UPC symbol.

(II) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed on the cigarette package or cellophane wrap; or

(III) Stamped, engraved, embossed, or printed text that indicates that the cigarettes meet the standards of this section.

(b) A manufacturer shall use only one marking and shall apply the marking uniformly to all brands and packages, including but not limited to packs, cartons, and cases, marketed by the manufacturer.

(c) The manufacturer shall notify the division as to the marking selected by the manufacturer.

(d) Prior to the certification of any cigarette, the manufacturer shall present its proposed marking to the division, which shall have discretion to approve or disapprove the marking; except that:

(I) The division shall approve:

(A) Any marking in use and approved for sale in New York pursuant to the New York fire safety standards for cigarettes; or

(B) The letters "FSC", signifying "fire standards compliant", appearing in eight-point type or larger and permanently stamped, engraved, embossed, or printed on the package at or near the UPC symbol; and

(II) Proposed markings shall be deemed approved if the division fails to act within ten business days after receiving a request for approval.

(e) A manufacturer shall not modify its approved marking unless the modification has been approved by the division in accordance with this subsection (4).

(f) Manufacturers certifying cigarettes in accordance with subsection (3) of this section shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this subsection (4) for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide copies of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the director, the department of revenue, the attorney general, and employees thereof to inspect markings of cigarette packaging marked in accordance with this subsection (4).

(5) **Penalties - forfeiture.** Effective July 31, 2009:

(a) A manufacturer, wholesale dealer, agent, or other person or entity who knowingly sells or offers to sell cigarettes, other than at retail, in violation of subsection (2) of this section shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of subsection (2) of this section shall be subject to a civil penalty not to exceed one hundred dollars for each pack of such cigarettes sold or offered for sale; except that the penalty against any such retail dealer shall not exceed twenty-five thousand dollars for sales or offers to sell during any thirty-day period.

(c) In addition to any other penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subsection (3) of this section shall be subject to a civil penalty of at least seventy-five thousand dollars, not to exceed two hundred fifty thousand dollars for each such false certification.

(d) A person who violates any provision of this section for which a penalty is not specifically provided shall be subject to a civil penalty of up to one thousand dollars for a first violation and up to five thousand dollars for a second or subsequent violation.

(e) Cigarettes that have been sold or offered for sale and that do not comply with the performance standard required by subsection (2) of this section shall be subject to forfeiture as provided in the "Colorado Contraband Forfeiture Act", part 5 of article 13 of title 16, C.R.S. Cigarettes forfeited pursuant to this paragraph (e) shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.

(f) In addition to any other remedy provided by law, the director or the attorney general may file an action in district court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the state and enforcement costs, including attorney fees, relating to the specific violation. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the director or attorney general may obtain relief under this paragraph (f).

(g) Whenever a law enforcement officer or duly authorized agent of the director discovers cigarettes that have not been marked as required by subsection (4) of this section, such officer or agent is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the department of revenue and shall be forfeited to the state. Cigarettes seized pursuant to this paragraph (g) shall be destroyed; except that, before such destruction, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes if desired.

(6) **Rules.** (a) The director may promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title, as necessary to administer this section.

(b) The department of revenue, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers as authorized by law, may inspect cigarettes to determine whether the cigarettes are marked as required by subsection (4) of this section. If the cigarettes are not marked as required, the department of revenue shall notify the division.

(7) **Enforcement.** To enforce this section, the attorney general, the department of revenue, the division, all duly authorized employees and agents thereof, and all law enforcement personnel are hereby authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as any cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale is hereby directed and required to give the attorney general, the department of revenue, the division, all duly authorized employees and agents thereof, and all law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this subsection (7).

(8) **Exceptions.** Nothing in this section shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of subsection (2) of this section if:

(a) The cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and

(b) The person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in Colorado.

(9) **Repeal.** (a) The general assembly intends that this section shall cease to be

effective upon the effective date of a federal reduced cigarette ignition propensity standard that preempts this section. The division, upon receiving notice of the effectiveness of such federal standard, shall forward such notice to the revisor of statutes.

(b) This section is repealed, effective 12:01 a.m. the day after the revisor of statutes receives notice from the division as described in paragraph (a) of this subsection (9).

(c) Notwithstanding any other provision of law, the local governmental units of this state may neither enact nor enforce any ordinance or other local law or rule conflicting with, or preempted by, any provision of this section or with any policy of this state expressed by this section.

24-33.5-1215. Volunteer firefighter tuition voucher fund - created. There is hereby created in the state treasury the volunteer firefighter tuition voucher fund, which shall be administered by the division and shall consist of any gifts, grants, or donations from private or public sources that the division is hereby required to seek and accept. All moneys in the fund are continuously appropriated to the division to be used for the purposes set forth in section 24-33.5-1216. All moneys in the fund at the end of each fiscal year shall be retained in the fund and shall not revert to the general fund or any other fund.

24-33.5-1216. Volunteer firefighters - tuition vouchers - community and technical colleges. (1) The division shall collaborate with the state board for community colleges and occupational education created in section 23-60-104 (1) (b), C.R.S., and the board of the trustees for each local community college as specified in section 23-71-122, C.R.S., to develop a system to provide a tuition voucher for three credits per academic year to a qualified volunteer firefighter who is a full-time or part-time student at an institution in the state system of community and technical colleges or a local community college and who agrees to serve as a volunteer firefighter for no less than four years after completing his or her education at the institution.

(2) For purposes of this section, "local community college" includes Aims community college and Colorado mountain college.

(3) The division shall fund the tuition vouchers specified in subsection (1) of this section from the volunteer firefighter tuition voucher fund created in section 24-33.5-1215; except that, if the volunteer firefighter tuition voucher fund does not have sufficient moneys to fund the tuition vouchers, the division may use any existing appropriation.

24-33.5-1217. Prescribed burning program - training and certification of

prescribed burn managers - rules - fees. (1) The director shall establish training and certification standards for users of prescribed fire in consultation with the Colorado prescribed fire council or an analogous successor organization. The director may also consult with local fire jurisdictions.

(2) The training and certification standards adopted under this section shall:

(a) Create certified burner and noncertified burner designations for users of prescribed fire on private and nonfederal land;

(b) Establish requirements for certified burners to conduct lawful activities pursuant to authorization under section 18-13-109 (2) (b) (IV), C.R.S., regarding firing of woods or prairie;

(c) Identify processes and procedures for certified burners to conduct a prescribed fire;

(d) Recommend organizational structures for prescribed burn operations;

(e) Establish training standards for certified burners and utilize all means available to make the certified burner training as accessible as possible; and

(f) Clearly identify preexisting fees, permit requirements, liabilities, liability exemptions, and penalties for prescribed burn personnel and landowners, including those specified in sections 25-7-106 (7) and (8) and 25-7-123, C.R.S.

(3) (a) Except as otherwise provided in this section, on and after December 1, 2013, a prescribed fire must be attended by a person certified by the division pursuant to this section and rules promulgated thereto or otherwise authorized under section 24-33.5-1217.5 (1) (c).

(b) (I) Nothing in this section requires a private landowner to be certified by the division as a prescribed burn manager or qualified by national wildfire coordinating group standards as a prescribed burn boss to conduct prescribed fire on their own property.

(II) A private landowner or the landowner's designee who is certified by the division as a prescribed burn manager or qualified by national wildfire coordinating group standards as a prescribed burn boss is not liable for any civil damages for acts or omissions made in good faith resulting in damage or injury caused by fire or smoke resulting from prescribed burns they conduct on their own property and in compliance with applicable state laws and local ordinances, unless such private landowner's or designee's acts or omissions are grossly negligent or willful and wanton.

(III) Nothing in this section exempts private landowners from complying with any other applicable local, state, or federal requirements pertaining to open burning.

(4) The director, by rule, may establish a fee at an amount not to exceed the amount required to recover all direct costs that the division incurs in providing training to and processing applications for persons seeking certification as certified prescribed burn managers pursuant to this section. Any fees so collected shall be deposited into the firefighter, first responder, hazardous materials responder, and prescribed fire training and certification fund created in section 24-33.5-1207.

(5) (a) The director, in consultation with the Colorado state forest service as described in part 3 of article 31 of title 23, C.R.S., and in accordance with article 4 of this title:

(I) May adopt any such rules as the director deems necessary to administer the prescribed burning program within the division; and

(II) Shall adopt rules and standards:

(A) Pertaining to the training and certification of prescribed burn managers, including training components; application processes; qualification for and terms and durations of certification; types of certification, if applicable; grounds and processes for renewal, suspension, and revocation of certifications; and training, certification, and renewal fees; and

(B) For the use of prescribed burning occurring on state lands or conducted by state agencies on private lands, pursuant to section 24-33.5-1217.5.

(b) The rules and standards promulgated pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of this subsection (5) constitute the minimum standards for all prescribed burning conducted in the state, except for prescribed burning conducted by an agency of the federal government. To be exempt from these standards, other users of prescribed fire, including local governments and nongovernmental organizations must adopt or have already adopted guidelines or standards that are in substantial compliance with the intent of section 24-33.5-1217.5 for prescribed burning under their control.

(6) (a) Subject to the provisions of paragraph (c) of this subsection (6), the director may enter into an agreement with an owner or other person having legal control of property, including a public agency with regulatory or natural resource management authority over any such property, for the use of prescribed burning consistent with this article to prevent high-intensity wildland fires by reducing the volume and continuity of wildland fuels or to achieve other goals, including forest improvement, consistent with this article.

(b) The director shall not enter into an agreement for prescribed burning pursuant to paragraph (a) of this subsection (6) unless the director first determines that the property owner or other person having legal control of the property has both evaluated all alternatives to prescribed burning and concluded that prescribed burning is an appropriate hazardous fuel reduction method for the property.

(c) Nothing in this section compels any person to enter into an agreement with the director.

(d) (I) Where an agency of the federal government assumes primary responsibility for conducting a prescribed burn in the state, neither the agency nor any other agency of the federal government is required to comply with the rules and standards promulgated pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of subsection (5) of this section.

(II) If the director has entered into an agreement with an agency of the federal

government as of the effective date of this section of the type described in paragraph (a) of this subsection (6), nothing in this section shall be construed to require a new agreement or modification of an existing agreement.

(7) (a) The division shall cooperate with and provide advisory services to any person desiring to use prescribed burning, the objective of which is the prevention of high-intensity wildland fires, watershed management, vegetation management, forest improvement, wildlife habitat improvement, or any other objective that is deemed to be in the public interest, or any combination of such objectives.

(b) The division shall provide information and technical assistance to units of local government, upon request from the local government, concerning prescribed burning.

(c) The division may provide standby fire protection to any person using prescribed burning in a manner deemed to be in the public interest, to such extent as personnel, fire crews, and firefighting equipment are requested and available.

(8) The division shall, subject to sufficient funding, institute a public information campaign to promote to the general public the benefits of prescribed burning.

(9) Nothing in this article grants the division authority over any hazardous fuel reduction other than prescribed burning. Forest health, forest improvement, vegetation and watershed management, and hazardous fuel reduction other than prescribed burning remain responsibilities vested in the state forest service.

(10) Notwithstanding any other provision of law:

(a) In performing the duties assigned to him or her under subsections (5) and (6) of this section, the director shall consult with the Colorado state forest service as described in part 3 of article 31 of title 23, C.R.S.

(b) The prescribed burning standards adopted by the director pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (a) of subsection (5) of this section shall be consistent with existing laws and processes that ban, regulate, or have developed recommendations concerning open burning, including sections 18-13-109, 18-13-109.5, 23-31-312, 23-31-313 (6) (a) (II) and (6) (a) (III), 25-7-106 (7) and (8), 25-7-123, 29-20-105.5, and 30-11-124, C.R.S.

(c) Nothing in this section or section 24-33.5-1217.5 or 24-33.5-1217.7 shall be construed to affect the authority of a county government to develop or administer an open burning permit system for the purpose of safely disposing of slash in accordance with the provisions of section 30-15-401 (1) (n.5), C.R.S.

(11) Except as otherwise provided for the fees established and collected pursuant to subsection (4) of this section, all moneys received by the division pursuant to this section shall be credited to the wildland fire cost recovery fund created in section 24-33.5-1220 (4).

24-33.5-1217.3. Authority to permit controlled burns during drought conditions - civil - criminal. The division may provide written authority to persons seeking to conduct prescribed or controlled fires, such as grassland, forest, or habitat management activities, during drought conditions as specified in section 13-21-105 (2) or 18-13-109 (2) (b) (III), C.R.S. In issuing written authority for prescribed or controlled fires, the division shall conform to and shall not supersede any state or local bans on fires.

24-33.5-1217.5. Minimum prescribed burning standards. (1) The prescribed burning standards adopted by the director pursuant to section 24-33.5-1217 (5) (a) (II) (B) must, at a minimum:

(a) Ensure that prescribed burning is the controlled application of fire to vegetative fuels under specified environmental conditions in accordance with a written prescription plan, which plan:

(I) Is designed to confine the fire to a predetermined area;

(II) Is designed to accomplish planned land management objectives, as those objectives are determined by the property owner or natural resource management authority; and

(III) Conforms to this article and the rules and standards adopted in accordance with this article;

(b) Include information on planning, preparing, and implementing safe, effective prescribed burning, which information:

(I) Is based on the "interagency prescribed fire planning and implementation procedures guide", as amended, published by the national wildfire coordinating group, or by any successor group; and

(II) Contains specific criteria with respect to masticated fuels;

(c) Require at least one person, who must be either certified by the division as a prescribed burn manager or qualified by national wildfire coordinating group standards as a prescribed burn boss at the level commensurate with the complexity of the burn, to be present on site:

(I) During the conduct of the prescribed burn; and

(II) (A) Until the fire is adequately confined to reasonably prevent escape of the fire from the area intended to be burned; or

(B) Until the prescribed burning is completed and all fire is declared to be out;

(d) Establish appropriate guidelines sufficient to:

(I) Conduct the burn in accordance with the prescription plan; and

(II) Provide adequate protection for the safety of persons and of adjacent property;

(e) Evaluate alternatives to prescribed burning, such as mechanical treatment, and guide the user through the safe and prudent application of prescribed burning, when it is determined to be an appropriate method; and

(f) Set forth requirements for recordkeeping; public information campaigns; and timely notice of prescribed burning to adjacent landowners, local authorities, and, to the extent practicable, potentially affected neighbors.

(2) All users of prescribed fire shall comply with the applicable provisions of the "Colorado Air Pollution Prevention and Control Act", part 1 of article 7 of title 25, C.R.S., and its implementing regulations, and shall obtain a permit for prescribed fire pursuant to section 25-7-123, C.R.S.

(3) The rules and standards adopted by the director must be promulgated in consultation with the Colorado state forest service as described in part 3 of article 31 of title 23, C.R.S., the Colorado prescribed fire council, or an analogous successor organization, and other subject matter experts as the director deems appropriate. In promulgating such rules and standards, the director shall consider the current state of research and best management practices for prescribed burning.

24-33.5-1217.7. Escaped prescribed fires. (1) If a prescribed fire exceeds the control capability of on-site resources, the fire is deemed to be escaped and contingency actions shall be taken immediately to bring the escape under control.

(2) The division shall conduct or cause to be conducted a formal review following escape of a prescribed fire. The purpose of the review is to identify the factors that contributed to the escape, including compliance with policy requirements, in an effort to reduce the occurrence or prevent future escapes.

(3) Wildfires burning uncontrolled on forested, brush, or grassland areas that pose a hazard to life and property constitute a public nuisance. Employees or agents of the division have the right to enter land to control, suppress, or investigate wildfires without liability for trespass.

(4) In order to prevent high-intensity or catastrophic wildland fires, local, state, or federal firefighters may enter lands and construct fire lines or fire breaks to prevent further spread of wildfires, without liability for trespass.

24-33.5-1218. Cooperation with governmental units. In connection with its powers and duties concerning the protection of the forest lands of the state from fire, the division may cooperate and coordinate with the United States forest service, the United States secretary of the interior, the United States secretary of agriculture, the state board of land commissioners, and the counties for such protection and may advise and aid in preventing forest fires on state and private lands in the national forests in the state, including coordinating with the United States secretary of the interior and the United States secretary of agriculture to develop management plans for federal lands within the state of Colorado pursuant to 16 U.S.C. sec. 530, 16 U.S.C. sec. 1604, and 43 U.S.C. sec.

1712; but nothing contained in this section shall be construed as transferring to the division the duties or responsibilities of the sheriffs of the various counties with respect to forest fire control laws.

24-33.5-1219. Wildland fires - duty of sheriff to report. It is the duty of the sheriffs of the various counties of the state to report as soon as practicable the occurrence of any fire in any forest in the state, either on private or public lands, to the division or its authorized agent, and, upon receiving notice from any source of a fire in any forest, it is the duty of the agent of the division to aid and assist in controlling or extinguishing the same, if necessary.

24-33.5-1220. Funds available - emergency fire fund - wildland fire equipment repair fund - wildland fire cost recovery fund - creation - gifts, grants, and donations authorized. (1) The governor's emergency fund may be used for the purpose of preventing and suppressing forest and wildland fires, in accordance with part 7 of this article.

(2) (a) There is hereby created in the state treasury the emergency fire fund, which fund shall be administered by the division, in accordance with paragraph (b) of this subsection (2), to fund emergency responses to wildfires. The division is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this section. The fund consists of all moneys that may be appropriated thereto by the general assembly and all private and public funds, including from counties and the Denver water board, received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund. All interest earned from the investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes indicated in this section. Any moneys not expended at the end of the fiscal year shall remain in the fund and shall not be transferred to or revert to the general fund.

(b) The division shall use the moneys in the emergency fire fund to provide funding or reimbursement for wildfires in accordance with memoranda of understanding with participating public entities.

(3) There is hereby created in the state treasury the wildland fire equipment repair cash fund, which fund shall be administered by the division to fund the costs of fire equipment maintenance and repair. The division is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this section. The fund consists of all moneys that may be appropriated thereto by the general assembly and all private and public funds, including from counties and the Denver water board, received through gifts, grants, reimbursements, or donations that are

transmitted to the state treasurer and credited to the fund. All interest earned from the investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes set forth in this section. Any moneys not expended at the end of the fiscal year shall remain in the fund and shall not be transferred to or revert to the general fund.

(4) (a) There is hereby created in the state treasury the wildland fire cost recovery fund, to be administered by the division for personnel and operating expenses associated with wildland fire suppression activities. The division is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this subsection (4). The fund consists of all moneys recovered for the division's expenditures for wildland fire suppression, moneys that may be appropriated thereto by the general assembly, and all private and public funds, including from counties and the Denver water board, received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund. The fund is noninterest-bearing. The moneys in the fund are hereby continuously appropriated for the purposes set forth in this subsection (4). Any moneys not expended at the end of the fiscal year shall remain in the fund and shall not be transferred to or revert to the general fund.

(b) Notwithstanding any limitation on the amount of advances set forth in section 24-75-203 (2), the controller may authorize an advance without interest in any amount to be made to the division to provide it with working capital for the operation of wildland fire suppression activities to which wildland fire cost recovery fund moneys are allocated pursuant to this subsection (4).

(5) Notwithstanding any provision of law to the contrary, the funds established under subsections (2), (3), and (4) of this section are exempt from the limitations set forth in section 24-75-402.

24-33.5-1221. State responsibility determined. The director shall determine, in consultation with local authorities and with the approval of the governor, geographic areas of the state, including wildland-urban interface areas, in which the state has a financial responsibility for managing forest and wildland fires. The management of fires in all other areas is primarily the responsibility of local or federal agencies, as the case may be. The director may exclude all lands owned or controlled by the federal government or any agency thereof, and the director shall exclude all lands within the exterior boundaries of incorporated cities or towns.

24-33.5-1222. Cooperation by counties. The boards of county commissioners may, in their discretion, cooperate and coordinate with the governing bodies of organized fire districts, fire departments, and municipal corporations; with private parties; with

other counties; with the director; with the United States secretary of the interior; with the United States secretary of agriculture; and with an agency of the United States government in the management and prevention of forest fires. Such boards of county commissioners are authorized to participate in the organization and training of rural fire-fighting groups, in the payment for the operation and maintenance of fire-fighting equipment, and in sharing the cost of managing fires.

24-33.5-1223. Sheriffs to enforce. The county sheriff, assisted by the director, shall enforce sections 24-33.5-1217 to 24-33.5-1228 and of all state forest fire laws, and such persons shall not be liable to civil action for trespass committed in the discharge of their duties.

24-33.5-1224. Limitation of state responsibility. Nothing in sections 24-33.5-1217 to 24-33.5-1228 authorizes any county fire warden, firefighter, or county officer to obligate the state for payment of any money.

24-33.5-1225. Emergencies. When the governor finds that conditions of extreme fire hazard exist, he or she may by proclamation close such land as he or she may find to be in such condition of extreme hazard to the general public and prohibit or limit burning thereon to such a degree and in such ways as he or she deems necessary to reduce the danger of forest fire. The governor shall declare the end of any such emergency only upon a finding that the conditions of extreme fire hazard no longer exist.

24-33.5-1226. Wildfire emergency response fund - creation - gifts, grants, and donations authorized. (1) (a) There is hereby created in the state treasury the wildfire emergency response fund, which fund shall be administered by the division. The division is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this section. The fund consists of all moneys that may be appropriated thereto by the general assembly, any moneys transferred to the fund by the state treasurer pursuant to section 24-33.5-706 (4.5) or transferred pursuant to section 10-3-209 (4), C.R.S., and all private and public funds received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund. All interest earned from the investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes indicated in this section. Any moneys not expended at the end of the fiscal year remain in the fund and do not transfer or revert to the general fund.

(b) The general assembly finds that the implementation of this section does not rely on the receipt of adequate funding through gifts, grants, or donations. Therefore, the notice requirements specified in section 24-75-1303 (3) are inapplicable to the wildfire emergency response fund.

(2) At a minimum, the division shall use the moneys in the wildfire emergency response fund to provide funding or reimbursement for:

(a) The first aerial tanker flight or the first hour of a firefighting helicopter operating on a wildfire at the request of any county sheriff, municipal fire department, or fire protection district; and

(b) The employment of wildfire hand crews to fight a wildfire for the first two days of a wildfire at the request of any county sheriff, municipal fire department, or fire protection district, with a preference for the use of wildfire hand crews from the inmate disaster relief program created in section 17-24-124, C.R.S.

(3) On an annual basis, the governor may authorize the division to increase the use of the wildfire emergency response fund to provide funding or reimbursement for additional aerial tanker flights or additional usage of wildfire hand crews to fight a wildfire. The director shall include a request for such authorization in, and in accordance with, the annual wildfire preparedness plan recommendations developed pursuant to section 24-33.5-1227 (2).

(4) Nothing in this section precludes or prevents the governor, in his or her discretion, from authorizing additional increases or decreasing the use of the wildfire emergency response fund if the actual wildfire situation is more or less severe than anticipated at the time the wildfire preparedness plan required under section 24-33.5-1227 (2) was prepared.

(5) (Deleted by amendment, L. 2013.)

24-33.5-1227. Wildfire preparedness fund - creation - gifts, grants, and donations authorized - wildfire preparedness plan. (1) (a) There is hereby created in the state treasury the wildfire preparedness fund. The fund consists of all moneys that may be appropriated thereto by the general assembly, all private and public moneys received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund, and all moneys transferred to the fund pursuant to section 34-63-102 (5.4) (b) (II), C.R.S. All interest earned from the investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes indicated in this section. Any moneys not expended at the end of the fiscal year shall remain in the fund and shall not be transferred to or revert to the general fund.

(b) By executive order or proclamation, the governor may access and designate moneys in the wildfire preparedness fund for wildfire preparedness activities. The

division shall implement the directives set forth in such executive order or proclamation.

(c) The division may use the moneys in the wildfire preparedness fund to provide funding or reimbursement for the purchase of fire shelters by volunteer fire departments in order to comply with applicable federal requirements.

(d) The general assembly finds that the implementation of this section does not rely on the receipt of adequate funding through gifts, grants, or donations. Therefore, the notice requirements specified in section 24-75-1303 (3) are inapplicable to the wildfire preparedness fund.

(2) (a) To effectively implement section 24-33.5-1226 and to provide recommendations to the governor related to use of the disaster emergency fund pursuant to section 24-33.5-706 and the wildfire preparedness fund created in section 24-33.5-1227, the director, a representative of the county sheriffs of Colorado, a representative of the Colorado state fire chiefs' association, the director of the office of emergency management created in part 7 of this article, and the adjutant general or his or her designee shall collaborate to develop a wildfire preparedness plan designed to address the following:

(I) The amount of aerial firefighting resources necessary for the state of Colorado at times of high and low wildfire risk;

(II) The availability of appropriate aerial firefighting equipment and personnel at times of high fire risk to respond to a wildfire;

(III) The availability of state wildfire engines and staffing of the engines at different levels of wildfire risk;

(IV) The availability of wildfire hand crews, including state inmate wildfire hand crews, at different levels of wildfire risk; and

(V) A process for ordering and dispatching aerial firefighting equipment and personnel that is consistent with, and supportive of, the statewide all-hazards resource mobilization plan prepared pursuant to section 24-33.5-705.4.

(b) The wildfire preparedness plan recommendations developed pursuant to paragraph (a) of this subsection (2) shall be updated each March 15. Notwithstanding section 24-1-136 (11), the director shall submit a written report of the wildfire preparedness plan to the governor and the members of the general assembly no later than each April 1.

(c) The director, the representative of the county sheriffs of Colorado, the representative of the Colorado state fire chiefs' association, the director of the office of emergency management created in part 7 of this article, and the adjutant general or his or her designee shall not receive additional compensation for the collaboration required by this subsection (2) for the development of the wildfire preparedness plan.

(3) The director may enter into agreements to provide firefighting services, including personnel or firefighting aircraft, engines, or other vehicles to federal, state, or local agencies. Any moneys received pursuant to such agreements shall be credited to the

wildland fire cost recovery fund created in section 24-33.5-1220 (4).

(4) Procedures governing the development, adoption, and implementation of community wildfire protection plans by county governments are specified in section 30-15-401.7, C.R.S. Nothing in this section affects section 30-15-401.7, C.R.S.

24-33.5-1228. Colorado firefighting air corps - creation - powers - Colorado firefighting air corps fund - creation - report - legislative declaration. (1) There is hereby created in the division the Colorado firefighting air corps, also referred to in this section as the "C-FAC".

(2) (a) The division may:

(I) Purchase, acquire, lease, or contract for the provision of firefighting aircraft, facilities, equipment, and supplies for aerial firefighting; and

(II) Retrofit, maintain, staff, operate, and support the firefighting aircraft or contract for the provision of those services.

(b) (I) The director may enter into agreements with federal agencies or other states for the provision of the C-FAC's firefighting aircraft when the aircraft are not being utilized for fires or other emergencies in Colorado.

(II) The director shall establish reimbursement rates for the direct and indirect costs of providing aircraft from the C-FAC that are requested through the interagency dispatch system or pursuant to an agreement described in subparagraph (I) of this paragraph (b). All reimbursements shall be credited to the Colorado firefighting air corps fund created in subsection (3) of this section.

(c) The director may fulfill any of the duties contained in paragraph (a) of this subsection (2) through the use of public-private partnerships with one or more private or public entities.

(3) (a) The division shall administer the Colorado firefighting air corps fund, which fund is hereby created in the state treasury. The division is authorized to seek and accept gifts, grants, reimbursements, or donations from private or public sources for the purposes of this section. The fund consists of all moneys that may be appropriated to the fund by the general assembly, and all private and public funds received through gifts, grants, reimbursements, or donations that are transmitted to the state treasurer and credited to the fund. All interest earned from the investment of moneys in the fund are credited to the fund. The moneys in the fund are hereby continuously appropriated for the purposes indicated in paragraph (c) of this subsection (3). Any moneys not expended at the end of the fiscal year remain in the fund.

(b) The general assembly finds that the implementation of this section does not rely entirely or in any part on the receipt of adequate funding through gifts, grants, or donations. Therefore, the division is not subject to the notice requirements specified in section 24-75-1303 (3).

(c) The division shall use the moneys in the Colorado firefighting air corps fund for the direct and indirect costs of maintaining the Colorado firefighting air corps, including expenses associated with acquisition, retrofitting, labor, equipment, supply, transportation, air, mobilization, repair, maintenance, and demobilization.

(4) During the second regular session of the sixty-ninth general assembly, but prior to April 1, 2014, the division shall submit a report to the joint budget committee and to the members of the general assembly that sets forth the division's analysis of the feasibility of continuing the C-FAC and whether more efficacious firefighting alternatives to the C-FAC exist. The report shall include the division's recommendations, if any, to enhance the state's ability to conduct aerial firefighting through the C-FAC, including budget requests for direct and indirect costs related to the activities described in paragraph (a) of subsection (2) of this section.

PART 13

COLORADO SAFETY INSTITUTE

24-33.5-1301 to 24-33.5-1304. (Repealed)

PART 14

HAZARDOUS MATERIALS RESPONDER
VOLUNTARY CERTIFICATION PROGRAM

24-33.5-1401 to 24-33.5-1406. (Repealed)

PART 15

COLORADO EMERGENCY PLANNING COMMISSION

24-33.5-1501. Implementation of Title III of superfund act. (1) The general assembly hereby finds and declares that the implementation of the federal "Emergency Planning and Community Right-to-Know Act of 1986", 42 U.S.C. sec. 11001 et seq., Title III of the federal "Superfund Amendments and Reauthorization Act of 1986", Pub.L. 99-499, is a matter of statewide concern.

(2) The department of public safety is the state agency responsible for the implementation of the federal "Emergency Planning and Community Right-to-Know Act of 1986", 42 U.S.C. sec. 11001 et seq., Title III of the federal "Superfund Amendments and Reauthorization Act of 1986", Pub.L. 99-499, and regulations thereunder, as amended.

24-33.5-1502. Definitions. All terms used in this part 15 have the same meaning as defined under the federal "Emergency Planning and Community Right-to-Know Act of 1986", 42 U.S.C. sec. 11001 et seq., Pub.L. 99-499, and regulations thereunder, referred to in this part 15 as the "federal act".

24-33.5-1503. Colorado emergency planning commission - creation - duties. (1) (a) (I) There is hereby created in the department of public safety the Colorado emergency planning commission, which shall exercise its powers and perform its duties and functions under the department as if the same were transferred to the department by a **type 2** transfer.

(II) (A) The commission consists of twelve members.

(B) Five of the twelve members shall be the following representatives of state government or their designees: The director of the division of fire prevention and control in the department of public safety, the director of the division of local government in the department of local affairs, the director of the division of homeland security and emergency management in the department of public safety, who shall be a cochairperson, the director of the division in the department of public health and environment responsible for hazardous materials and waste management, who shall also be a cochairperson, and a representative of the Colorado state patrol in the department of public safety.

(C) The remaining seven members of the commission shall be appointed by the governor for two-year terms. Of those seven members, two shall represent local governments, two shall be from either public interest groups or community groups, one shall represent a local emergency planning committee, and two shall represent affected industries.

(D) The governor shall fill any vacancy by appointment.

(b) The members of the Colorado emergency planning commission, as such existed on June 30, 2012, are the initial members of the commission on July 1, 2012. The terms of such initial members of the Colorado emergency planning commission, as of that date, continue and expire according to the dates for which such members were originally appointed.

(2) Members of the commission shall receive no compensation or per diem for their services on the commission; except that members may be reimbursed for travel expenses incurred in connection with activities other than attending meetings of the commission.

(3) The commission shall also assist in the appropriate training of personnel to react to emergency response situations.

24-33.5-1503.5. Powers and duties of the commission - intent. (1) It is the intent of the general assembly that the commission promulgate rules pursuant to this part 15 that encourage:

(a) Consistency between information requested by the commission and the purposes of implementation of the federal act; and

(b) Cost-effective reporting and the consideration of reasonable reporting threshold levels and reporting formats.

(2) Consistent with the powers and duties imposed upon it by the federal act, or granted to it in this part 15, the commission has the following powers and duties:

(a) To adopt all reasonable rules necessary for the administration of this part 15. Such rules shall be promulgated in accordance with article 4 of this title.

(b) To establish a uniform system for reporting and management of information required by the federal act;

(c) To create and adopt such forms as are necessary for the uniform reporting and management of information required by the federal act, including:

(I) A standardized tier II reporting form to replace the tier II form which is required under the federal act, and which shall be accepted by local emergency planning committees in reporting the information contained therein; and

(II) A standardized facility contingency plan form as an addendum to the form required in subparagraph (I) of this paragraph (c), which shall be used for the collection of emergency planning information from facilities by local emergency planning committees. This form shall include space in which local emergency planning committees may require additional information of local concern.

(d) To coordinate its activities with those of the Colorado state patrol relating to the transportation of hazardous materials.

24-33.5-1504. Local emergency planning committees - creation and duties. (1) The commission shall designate local emergency planning districts to develop emergency response and preparedness capabilities in accordance with the federal act. The boundaries of such districts shall be the same as the boundaries of either a county, municipality, or a combination thereof.

(2) Upon the request of the commission, the primary governing body having jurisdiction over the local emergency planning district, the county commissioners, or the city council, as the case may be, shall provide nominations for membership on the local emergency planning committee. The commission shall appoint members of a local emergency planning committee for each emergency planning district in accordance with the federal act. For local emergency planning districts for which no nominations have been submitted by the governing body, the commission may designate either the county commissioners or city council, as the case may be, to serve as the local emergency

planning committee.

(3) Local emergency planning committees shall perform the duties described under the federal act.

24-33.5-1505. Immunity. (1) No state commission or agency or county or municipal agency, including local emergency planning committees, citizen corps councils, fire protection districts, and volunteer fire, ambulance, or emergency service and rescue groups, nor their officers, officials, directors, employees, or volunteers, when engaged in emergency planning, service, or response activities regarding a hazardous material release, threat of release, or act of terrorism, shall be liable for the death of or injury to any person or for the loss of or damage to property or the environment resulting from the hazardous material release, threat of release, or act of terrorism, except for willful and wanton acts or omissions.

(1.5) No private organization or any of its officers, officials, directors, employees, or volunteers, when working under the direction of a local emergency planning committee or state or local fire or law enforcement agency and when engaged in emergency planning, training, or response activities regarding a hazardous material release, threat of release, or act of terrorism, shall be liable for the death of or injury to any person or for the loss of or damage to property or the environment resulting from the hazardous material release, threat of release, or act of terrorism, except for willful and wanton acts or omissions.

(2) (a) No state commission or agency or county or municipal agency, including local emergency planning committees, incident management teams, citizen corps councils, citizen emergency response teams, medical reserve corps, fire protection districts, and volunteer fire, ambulance, or emergency service and rescue groups, nor their officers, officials, directors, employees, trainees, or volunteers, when engaged in planning, training, or response activities regarding a natural disaster, hazardous material release, public health emergency, or act of terrorism or the threat of any such disaster, release, emergency, or act, shall be liable for the death of or injury to any person or for the loss of or damage to property or the environment except for gross negligence or willful and wanton acts or omissions.

(b) Notwithstanding paragraph (a) of this subsection (2), a plaintiff may sue and recover civil damages from a person or entity specified in said paragraph (a) based upon a negligent act or omission involving the operation of a motor vehicle; except that the amount recovered from such person or entity shall not exceed the limits of applicable insurance coverage maintained by or on behalf of such person or entity with respect to the negligent operation of a motor vehicle in such circumstances. However, nothing in this section shall be construed to limit the right of a plaintiff to recover from a policy of uninsured or underinsured motorist coverage available to the plaintiff as a result of a

motor vehicle accident.

(c) The general assembly intends that the provisions of this subsection (2) and of the "Colorado Governmental Immunity Act", article 10 of this title, be read together and harmonized. If any provision of this subsection (2) is construed to conflict with a provision of the "Colorado Governmental Immunity Act", the provision that grants the greatest immunity shall prevail.

(3) No member of the commission or any local emergency planning committee shall be liable for the death of or any injury to persons or loss or damage to property or the environment or any civil damages resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the commission or local emergency planning committee, except for acts or omissions which constitute willful misconduct.

(4) Nothing in this section abrogates or limits the immunity or exemption from civil liability of any agency, entity, or person under any statute, including the "Colorado Governmental Immunity Act", article 10 of this title, or section 13-21-108.5, C.R.S.

24-33.5-1506. SARA Title III fund - creation - acceptance of gifts, grants, and donations. (1) There is hereby created in the state treasury a fund to be known as the SARA Title III fund, also referred to in this part 15 as the "fund", which shall be administered by the commission. The moneys in the fund are subject to annual appropriation by the general assembly for the purposes of this part 15, including the disbursement of grants pursuant to section 24-33.5-1507.

(2) The commission is hereby authorized to accept all moneys received from the federal government and from public or private grants, gifts, bequests, donations, and other contributions for any purpose consistent with the provisions of this part 15. Such moneys shall be credited to the SARA Title III fund created by subsection (1) of this section.

(3) In accordance with section 24-36-114, all interest derived from the deposit and investment of this fund shall be credited to the general fund.

24-33.5-1507. Application for grants - disbursements from fund - regulations. (1) The department of public safety shall administer all grants from the fund. The department shall accept applications from local emergency planning committees and from first responder organizations who have coordinated their request with their local emergency planning committee and shall direct those applications to the commission. The commission shall evaluate the applications and shall recommend to the department of public safety which grants should be made for the purposes of emergency planning and emergency response, including training and planning programs and training

and planning equipment as needed to carry out the purposes of this part 15.

(2) The commission shall promulgate rules prescribing the procedures to be followed in the making, filing, and evaluation of grant applications, and any other regulations necessary for administering the SARA Title III fund.

PART 16

DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

24-33.5-1601. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The threat of terrorism in Colorado is a matter of great concern to the people of the state and affects the public interest. Therefore, this part 16 is enacted for the purpose of protecting the health, peace, safety, and welfare of the people of this state.

(b) The terrorist attacks of September 11, 2001, in New York, Washington, D.C., and Pennsylvania, along with the subsequent sending of anthrax through the mail, the previous attempt to destroy the world trade center, and the bombing of the Alfred P. Murrah federal building in Oklahoma City, and the arson attacks in Vail, Colorado, demonstrate that no part of the United States is immune from the threat of terrorism;

(c) Responsible public agencies must anticipate and protect against new forms of terrorism, including suicide hijacking, use of biological toxins and hazardous materials, arson, and sabotage of telecommunications networks, the food and water supply, and other critical infrastructure;

(d) In response to the threat of terrorism, the federal government and several state governments are creating specialized agencies to coordinate efforts to prevent, protect against, respond to, recover from, and prosecute acts of terrorism. Colorado currently has no such agency, and few of Colorado's criminal laws address terrorism specifically.

(e) In 2005, hurricane Katrina emphasized and reinforced the importance of robust emergency management systems and the need for an all-hazards approach to homeland security, increased autonomy, and responsibility for emergency management;

(f) Coordination across disciplines, among levels of government, and with private and nongovernmental sectors is the best way to ensure that government can deliver, to the best of its collective ability, the most effective and efficient services regardless of the cause of any disaster;

(g) A state agency should be established to coordinate Colorado's response to the threat of terrorism and other threats; facilitate tribal, state, local, and regional homeland security activities; direct homeland security-related federal funding to local governments; and share homeland security information among entities participating in homeland

security activities.

24-33.5-1602. Definitions. As used in this part 16, unless the context otherwise requires:

(1) "Act of terrorism" has the same meaning set forth in 18 U.S.C. sec. 3077 (1) and 28 CFR 0.85 (l).

(2) "Biological agent" has the same meaning set forth in 18 U.S.C. secs. 178 (1) and 175 (b).

(3) "Chemical weapon" has the same meaning set forth in 18 U.S.C. sec. 229F (1).

(4) "Critical infrastructure" means those systems and assets, whether physical or virtual, that are vital to the state of Colorado so that the incapacity or destruction of such systems and assets would have a debilitating impact on public safety, public health, or economic security.

(5) "Destructive device" has the same meaning set forth in 18 U.S.C. sec. 921 (a) (4).

(6) "Director" means the director of the division.

(7) "Division" means the division of homeland security and emergency management created in section 24-33.5-1603.

(8) "Fusion center" means the program administered by the office of prevention and security, created in section 24-33.5-1606, that serves as the primary focal point within the state for receiving, analyzing, gathering, and sharing threat-related information among federal, state, local, tribal, nongovernmental, and private sector partners.

(9) "Homeland security advisor" means a person appointed by the governor to serve as counsel to the governor on homeland security issues and who may also serve as a liaison between the governor's office, the department of homeland security, and other homeland security and related organizations both inside and outside of the state.

(10) "Radioactive material" means a material that produces radiation at a level that is dangerous to human health or life.

(11) "Toxin" has the same meaning set forth in 18 U.S.C. secs. 178 (2) and 175 (b).

24-33.5-1603. Division of homeland security and emergency management - creation - director. (1) There is hereby created within the department the division of homeland security and emergency management, the head of which is the director of the division. The executive director shall appoint the director pursuant to section 13 of article XII of the state constitution.

(2) The division includes the following agencies, which shall exercise their

powers and perform their duties and functions under the department as if the same were transferred thereto by a **type 2** transfer:

(a) The office of emergency management, created in section 24-33.5-705;

(b) The office of prevention and security, created in section 24-33.5-1606; and

(c) The office of preparedness, created in section 24-33.5-1606.5.

24-33.5-1604. Duties and powers of the division. (1) The division has the following duties and powers:

(a) To inquire into the threat of terrorism in Colorado and the state of preparedness to respond to that threat and to make recommendations to the governor and the general assembly;

(b) To cooperate with the United States department of homeland security and other agencies of the federal government and other states in matters related to terrorism;

(c) To do all things necessary for the implementation of this part 16, including but not limited to the power:

(I) To hire personnel;

(II) To contract with federal, state, local, and private entities; and

(III) To accept and expend federal and private funds.

(2) (a) The division shall create and implement terrorism preparedness plans. The plans shall include the following:

(I) State protocols and procedures concerning the prevention of, preparation for, response to, and recovery from any terrorist threat, terrorist act, or other terrorist-related activity;

(II) Establishment and issuance of protocols to guide state and local law enforcement and emergency response officials in responding to any case involving a suspected terrorist training activity described in section 18-9-120, C.R.S.;

(III) Coordination with appropriate governmental agencies, educational institutions, and private sector entities to develop protocols concerning access and security measures at biotechnology laboratories and facilities;

(IV) Coordination with appropriate state agencies to develop protocols concerning the handling, storage, and disposal of biological agents, chemical weapons, destructive devices, radioactive materials, and toxins when any such materials are obtained as evidence of a suspected terrorist training activity as described in section 18-9-120, C.R.S., act of terrorism, suspected act of terrorism, threat to commit an act of terrorism, or conspiracy to commit an act of terrorism.

(b) (I) In creating the terrorism preparedness plans, the division shall seek the advice and assistance of other federal, state, and local government agencies; business, labor, industrial, agricultural, civic, and volunteer organizations; and community leaders.

(II) The terrorism preparedness plans constitute specialized details of security arrangements for purposes of section 24-72-204 (2) (a) (VIII).

(3) (a) The division shall provide advice, assistance, and training to state and local government agencies in the development and implementation of terrorism preparedness plans and in conducting periodic exercises related to the plans.

(b) The division shall provide oversight of terrorism preparedness plans developed and implemented by state and local government agencies. The oversight does not usurp the authority of state and local government agencies, but will only provide peer review and comment in order to promote standardized methods of operation and to facilitate integration with plans adopted by other state and local government agencies throughout the state.

(c) State and local government agencies that develop terrorism preparedness plans shall submit copies of current, new, or amended plans to the division.

(4) The division may distribute to local government agencies any federal or other funds that become available for distribution.

(5) The division shall also:

(a) Build partnerships with first responders, agencies, and citizens in the public and private sectors;

(b) Coordinate activities with other state agencies and the all-hazards emergency management regions created by executive order of the governor;

(c) Develop and update a state strategy for homeland security;

(d) Facilitate, coordinate, and conduct capabilities assessments as necessary;

(e) Facilitate improvements in overall preparedness by developing coordinating mechanisms among Colorado's emergency management, homeland security, public safety, and public health agencies in order to deliver the capabilities necessary for all domestic disasters, whether natural or man-made, including acts of terror; and

(f) Coordinate protection activities among owners and operators of critical infrastructure and other tribal, state, local, regional, and federal agencies in order to help secure and protect critical infrastructure within the state.

24-33.5-1605. Director - duties and powers - rules. (1) The director shall perform duties in connection with:

(a) The creation and implementation of the terrorism preparedness plan described in section 24-33.5-1604; and

(b) The prevention and detection of terrorist training activities described in section 18-9-120, C.R.S.

(2) The director may promulgate, in accordance with article 4 of this title, any rules necessary to implement sections 24-33.5-1604 (2) (a), 24-33.5-1608, and 24-33.5-1609.

(3) The powers vested in the director in this part 16 do not usurp or supersede the powers of fire chiefs, sheriffs, chiefs of police, or other law enforcement or fire protection agencies.

(4) The director is entitled to all protections, defenses, and immunities provided by statute to safeguard a peace officer in the performance of official acts.

24-33.5-1606. Office of prevention and security - creation - duties. (1) There is hereby created within the division an office of prevention and security, the head of which is the manager of the office of prevention and security. The director shall appoint the manager of the office of prevention and security pursuant to section 13 of article XII of the state constitution.

(2) The duties of the office of prevention and security include:

(a) Enhancing interagency cooperation through information sharing;

(b) Operating the state's fusion center; and

(c) Developing and maintaining, through cooperation with other tribal, state, local, regional, and federal agencies, a standardized crisis communication and information-sharing process.

24-33.5-1606.5. Office of preparedness - creation - duties - posting of notice of NIMS classes - definition. (1) There is hereby created within the division the office of preparedness, the head of which is the manager of the office of preparedness. The director shall appoint the manager of the office of preparedness pursuant to section 13 of article XII of the state constitution. The office of preparedness is responsible for creating and implementing a state preparedness goal and system to improve state capabilities to prevent, mitigate the effects of, respond to, and recover from threats to Colorado.

(2) The duties of the office of preparedness include:

(a) Improving community preparedness and citizen involvement through external outreach;

(b) Identifying and reducing duplicative homeland security-related training needs and efforts, coordinating homeland security-related training among tribal, state, local, and regional agencies, and creating a single training and exercise calendar with identified points of contact that is accessible via the internet;

(c) Coordinating and updating homeland security plans;

(d) Coordinating all-hazard public risk communication products among state agencies; and

(e) Administering federal homeland security grants, in accordance with subsection (3) of this section, providing technical assistance to grantees, and coordinating grant funding opportunities with other state agencies.

(3) (a) Unless otherwise authorized under this article 33.5, the grant programs for which the office of preparedness has authority to administer are limited to:

(I) The state homeland security program, or its successor program;

(II) The Denver urban areas security initiative, or its successor program;

(III) The metropolitan medical response system, or its successor program;

(IV) The citizens corp program, or its successor program;

(V) The urban areas security initiative nonprofit security grant program, or its successor program;

(VI) The buffer zone protection program, or its successor program;

(VII) The interoperable emergency communications grant program, or its successor program;

(VIII) Any grant programs previously administered by the former division of emergency management in the department of local affairs, as of June 30, 2012; and

(IX) Any other grant programs authorized by the governor, which programs shall not be inconsistent with the division's purposes.

(b) As used in this subsection (3), "successor program" means a federal homeland security grant program that the manager of the office of preparedness reasonably determines is similar in purpose and scope to its predecessor program, regardless of the particular name of the successor program.

(4) The office of preparedness shall place on its web site a description of the national incident management system, developed by the federal emergency management agency and referred to in this section as "NIMS", and a listing, with any applicable links, of on-line courses required to become NIMS-certified and courses related to NIMS at institutions within the state system of community and technical colleges.

24-33.5-1607. Funding. The general assembly recognizes that federal legislation enacted in the aftermath of the terrorist attacks of September 11, 2001, including but not limited to the "USA Patriot Act of 2001", has created federal grants to assist states in creating and implementing plans to deal with terrorism. It is the intent of the general assembly that all such grants and any other available resources, including federal and private funds, grants, and donations, be pursued to help defray the costs incurred in implementing this part 16.

24-33.5-1608. Building security and occupant protection. (1) The director shall adopt rules concerning safety and security to protect state personnel and property owned or leased by the state, including, but not limited to, facilities, buildings, and grounds. Unless under a state of emergency or alert as defined by the rules, such facilities, buildings, and grounds shall remain open to the public.

(2) In adopting such rules, the director shall use as general guidelines the building security and occupant protection standards in federal statutes, presidential directives, and the rules promulgated thereunder, as amended from time to time.

24-33.5-1609. Continuity of state government operations. (1) The director shall adopt rules concerning the continuity of state government operations to provide guidance to state departments and agencies in developing viable and executable contingency plans for continuity of operations.

(2) In adopting such rules, the director shall use as general guidelines the plans published by the federal emergency management agency in federal preparedness circulars 65, 66, and 67, and in the rules promulgated thereunder, as amended from time to time.

(3) The rules adopted pursuant to this section shall be incorporated as part of the state emergency operations plan.

24-33.5-1610. Compliance with standards. (1) The executive director of each state department and agency shall ensure compliance with the rules adopted pursuant to sections 24-33.5-1608 and 24-33.5-1609.

(2) (a) State departments and agencies shall be required to comply with any such rule that requires funding only if funds are available in the state facility security fund created pursuant to section 24-33.5-1613.

(b) If adequate funding is not available to fund compliance with any such rule by a state department or agency, the department or agency shall take appropriate measures to provide alternate interim solutions to protect the safety and security of persons and property and to ensure the continuity of the department or agency's critical functions during a state of emergency. Any alternate interim solution shall be approved by the division.

24-33.5-1611. Assistance to state agencies - security assessment. (1) Upon request from any state agency, the division shall provide advice and assistance to the agency related to the agency's compliance with rules adopted pursuant to sections 24-33.5-1608 and 24-33.5-1609.

(2) The division shall conduct security assessments as needed to evaluate threats, risks, and compliance with security rules at state facilities.

24-33.5-1612. Cooperation from other state agencies. (1) Upon request, other agencies of state government, including the department of personnel and the department

of local affairs, shall provide advice and assistance to the division related to rules adopted pursuant to section 24-33.5-1608 or 24-33.5-1609.

(2) Executive departments and agencies of state government shall coordinate their homeland security efforts through the division as necessary.

24-33.5-1613. State facility security fund. (1) There is hereby created in the state treasury the state facility security fund, which shall contain:

(a) Moneys appropriated thereto by the general assembly from time to time; and

(b) Gifts or donations made to the state or any agency or department of state government specifically for the purpose of implementing rules adopted pursuant to section 24-33.5-1608 or 24-33.5-1609.

(2) The moneys in the state facility security fund shall be continuously available to the department of personnel for disbursement to executive branch departments and agencies for the implementation of rules adopted pursuant to sections 24-33.5-1608 and 24-33.5-1609. All moneys in the fund at the end of any fiscal year shall not be transferred or revert to the general fund at the end of any fiscal year.

(3) A state department or agency may apply to the director of the department of personnel for the allocation of moneys necessary to implement rules adopted pursuant to section 24-33.5-1608 or 24-33.5-1609.

(4) The department of personnel shall allocate available moneys based on critical need, as determined based on an evaluation of the mission and essential functions of a department or agency. Available moneys shall be allocated first to those departments and agencies where even a minimal disruption of service would seriously affect the state's economy or the ability of the state government to protect the safety, security, and welfare of the people of the state.

24-33.5-1614. Homeland security and all-hazards senior advisory committee - creation - composition - duties - repeal. (1) To help develop and guide the division's efforts and advise the homeland security advisor, there is hereby created the homeland security and all-hazards senior advisory committee, referred to in this section as the "advisory committee". The advisory committee shall assist the state in becoming better able to predict, prevent, mitigate the effects of, respond to, and recover from those threats posing the greatest risk to Colorado.

(2) (a) The advisory committee consists of at least the director of the division, who is a nonvoting member, and the following twenty-one voting members:

(I) The executive director, who is the chair of the advisory committee;

(II) The director of the division of fire prevention and control created in part 12 of this article, or his or her designee;

(III) One member with specialized knowledge in local government assistance who

represents the department of local affairs, created in section 24-1-125, to be appointed by the executive director of the department of local affairs;

(IV) One member with specialized knowledge in emergency preparedness and response who represents the department of public health and environment, created in section 25-1-102, C.R.S., to be appointed by the executive director of the department of public health and environment;

(V) One member with specialized knowledge in homeland defense who represents the department of military and veterans affairs created in section 24-1-127 to be appointed by the adjutant general;

(VI) One member with specialized knowledge in emergency communications systems who represents the governor's office of information technology created in section 24-37.5-103, to be appointed by the chief information officer;

(VII) The chief of the Colorado state patrol appointed pursuant to section 24-33.5-205, or his or her designee;

(VIII) The following fourteen members, to be appointed by the executive director in consultation with the adjutant general of the department of military and veterans affairs and the executive directors of the department of local affairs and the department of public health and environment:

(A) A representative of Colorado counties, incorporated, or its successor entity;

(B) A representative of the Colorado emergency management association, or its successor entity;

(C) A representative of private industry;

(D) A representative of the Colorado municipal league, or its successor entity;

(E) A representative of the county sheriffs of Colorado, incorporated, or a successor sheriffs' organization;

(F) A representative of the emergency medical services association of Colorado, or its successor organization;

(G) A representative of the Colorado state fire chiefs' association, or its successor organization;

(H) A representative of the Colorado association of chiefs of police, or its successor organization;

(I) A representative of tribal government;

(J) A representative of Colorado voluntary organizations active in disaster;

(K) A regional state homeland security coordinator, representing an all-hazards emergency management region established by executive order of the governor;

(L) A representative of the special districts association of Colorado, or its successor organization;

(M) A representative from the state all-hazards advisory committee formed under the department, or any successor entity; and

(N) A representative of the Denver urban area security initiative, as recognized by

the United States department of homeland security.

(b) Additional advisory committee members may be added to the advisory committee as necessary upon:

(I) Approval by the executive director; and

(II) A majority vote of approval by the advisory committee members serving pursuant to paragraph (a) of this subsection (2).

(c) The advisory committee shall select annually a vice-chairperson and secretary from among its members.

(d) (I) Except as otherwise provided in subparagraph (II) of this paragraph (d), advisory committee member terms are for two years each.

(II) One-half of the initial members of the advisory committee shall be appointed to one-year terms, and the other half of the initial members shall be appointed to two-year terms.

(e) If a member of the advisory committee appointed under paragraph (a) of this subsection (2) vacates his or her office prior to the expiration of his or her term, the executive director or, for those members described under subparagraph (VII) of paragraph (a) of this subsection (2), the appropriate appointing authority shall fill the vacancy by appointment for the unexpired term.

(f) (I) (A) The advisory committee shall meet as necessary, as determined by the executive director.

(B) Advisory committee members may attend meetings and vote via teleconference.

(II) The advisory committee shall establish by-laws as appropriate for its effective operation.

(III) The members of the advisory committee shall receive no compensation.

(3) The advisory committee shall:

(a) Provide policy guidance to the division;

(b) Annually review the state strategy for homeland security developed by the division pursuant to section 24-33.5-1604 (2) (a) (VII) and make recommendations on the strategy's goals, policies, and priorities;

(c) Advise the governor, through his or her homeland security advisor, regarding the planning and implementation of tasks and objectives to achieve goals contained in the Colorado homeland security strategy;

(d) Review homeland security grant applications and make recommendations to the homeland security advisor regarding grant distributions;

(e) Identify opportunities to consolidate existing state-level advisory boards, while ensuring that local and tribal entities have latitude in determining their needs in program areas; and

(f) Establish subcommittees, as necessary, that focus on specific issues or subject matters and make recommendations to the full advisory committee. The executive

director shall select the chairpersons for any subcommittees as well as the advisory committee members to serve on the subcommittees. The chairperson of a subcommittee may select nonadvisory committee members from interested members of the community to serve on the subcommittee. Each subcommittee shall make findings and recommendations for consideration by the full advisory committee. Nonadvisory committee members of a subcommittee serve without compensation and without reimbursement for expenses.

(4) (a) This section is repealed, effective September 1, 2021.

(b) Prior to repeal, the department of regulatory agencies shall review the advisory committee in accordance with section 2-3-1203, C.R.S.

24-33.5-1615. Report - repeal. (1) Notwithstanding section 24-1-136 (11) (a), on or before February 1, 2013, and on or before each February 1 thereafter, the department shall submit an annual report to the general assembly describing any changes, issues, problems, and efficiencies realized as a result of the creation of the division.

(2) This section is repealed, effective September 1, 2017.

PART 17

IDENTITY THEFT AND FINANCIAL FRAUD

24-33.5-1701. Short title. This part 17 shall be known and may be cited as the "Identity Theft and Financial Fraud Deterrence Act".

24-33.5-1702. Legislative declaration. (1) The general assembly recognizes the significant consequences of identity theft and financial fraud crimes on Colorado citizens and businesses. The consequences suffered by Colorado citizens and businesses include the trauma of recovering stolen identities and repairing related damage to personal finances; the direct and indirect financial costs to various victims, consumers, and businesses; the time dedicated to guarding against and resolving such crimes; and the overall economic impact of such crimes.

(2) The general assembly recognizes the limited resources of local law enforcement agencies, district attorneys, and the attorney general. It is the intent of the Colorado general assembly to protect Colorado citizens and businesses by enhancing the investigation and prosecution of identity theft and financial fraud crimes by establishing a statewide resource in the form of a unit comprised of attorneys, investigators, and support staff to assist the attorney general, sheriffs, police, and district attorneys in investigating

and prosecuting criminals who commit identity theft and financial fraud crimes.

(3) It is the intent of the general assembly to supplement the existing law enforcement and prosecution system and provide greater flexibility to respond to the shifting aspects of identity theft and financial fraud crimes and priorities among such crimes. The unit will also provide to the public and relevant groups appropriate information about financial fraud and the unit's activities and results. It is further the intent of the general assembly that the unit will focus its attention on criminal activity involving financial transactions, including but not limited to the types of crime covered under article 5 of title 18, C.R.S.; modifications to these and other relevant crimes; new crimes as they evolve from time to time; and suspicious activity reports required by federal law to be filed by depository institutions.

24-33.5-1703. Identity theft and financial fraud board - creation - rules. (1) (a) There is hereby created in the department of public safety the identity theft and financial fraud board, referred to in this part 17 as the "board". The board shall have the powers and duties specified in this part 17, including but not limited to oversight of the Colorado fraud investigators unit, created in section 24-33.5-1704.

(b) The board shall exercise its powers and perform its duties and functions as if the same were transferred to the department of public safety by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(2) The board shall consist of ten members, as follows:

(a) The executive director of the department of public safety or his or her designee;

(b) The attorney general or his or her designee;

(c) The executive director of the Colorado district attorneys council or his or her designee; and

(d) Seven members appointed by the governor, as follows:

(I) A representative of a police department;

(II) A representative of a sheriff's department;

(III) Three representatives of the depository institutions operating within the state, at least two of whom shall be from a state or national bank;

(IV) A representative of a payment processor; and

(V) A representative of a consumer or victim advocacy organization.

(3) (a) The seven appointed members of the board shall serve terms of three years; except that, of the members first appointed, the representative of a local police department, the representative of a payment processor, and one of the three representatives of the depository institutions, as designated by the governor, shall each serve a two-year term.

(b) The governor shall appoint members of the board within thirty days after May

30, 2006; except that the governor shall appoint the representative of a consumer or victim advocacy organization pursuant to subparagraph (V) of paragraph (d) of subsection (2) of this section on or before July 1, 2011. An appointed member shall not serve more than two consecutive full terms, in addition to any partial term. In the event of a vacancy in an appointed position by death, resignation, removal for misconduct, incompetence, or neglect of duty, or otherwise, the governor shall appoint a member to fill the position for the remainder of the unexpired term.

(4) (a) The chairman of the board shall be selected by the board from among its members.

(b) The members of the board shall serve without compensation; except that the members of the board may be reimbursed from moneys in the Colorado identity theft and financial fraud cash fund created in section 24-33.5-1707 (1) for their actual and necessary expenses incurred in the performance of their duties pursuant to this part 17.

(5) Board members shall routinely interact and communicate with local authorities and constituent groups to increase awareness of the board and the unit and to further its purposes and those of law enforcement and prosecutors.

(6) The board, in its discretion, may create an advisory committee of any size comprised of interested parties to provide input on the board's activities. Members of an advisory committee shall serve without compensation and without reimbursement for expenses.

(7) Members of the board, employees, and consultants shall be immune from suit in any civil action based upon any official act performed in good faith pursuant to this part 17.

(8) On or before October 1, 2012, and on or before October 1 of each even-numbered year thereafter, the board shall report to the judiciary committees of the senate and the house of representatives, or any successor committees, on the implementation of this part 17 and the results achieved. The report shall include, but need not be limited to, the items listed in section 24-33.5-1706 (2).

24-33.5-1704. Colorado fraud investigators unit - creation - duties. (1) There is hereby created in the Colorado bureau of investigation in the department of public safety a unit for the investigation and prosecution of identity theft and financial fraud, referred to in this part 17 as the "unit". The unit shall be known in the department as the "Colorado fraud investigators unit".

(2) The purpose of the unit shall be to assist the attorney general, sheriffs, police, and district attorneys in investigating identity theft and financial fraud crimes and in prosecuting persons who commit those crimes. The unit shall also serve as an educational resource for law enforcement agencies, members of the financial industry, and the public regarding identity theft and financial fraud crimes and strategies for protection from and

deterrence of these crimes. The unit shall operate pursuant to the comprehensive plan prepared by the unit and approved by the board pursuant to section 24-33.5-1706. The board shall have the oversight and direction of the unit in all of its operations.

(3) The unit shall:

(a) Gather information concerning identity theft and financial fraud and to analyze the information and identify relevant criminal activities, patterns, and trends throughout the state or regions thereof, whether multijurisdictional or not;

(b) Target specific forms of identity theft and financial fraud, as such forms change, on which to concentrate unit resources and effort;

(c) Disseminate information to the public, local law enforcement agencies, prosecutors, depository institutions, and other businesses concerning current and anticipated identity theft and financial fraud crimes, recommended steps to prevent such crimes, and patterns and trends in such crimes;

(d) Prepare and present classes, briefings, and materials, in printed or electronic format, to assist local law enforcement agencies, district attorneys, and the attorney general in their investigations and prosecutions; and

(e) Provide consultation on an individual case, but only upon the request of a local law enforcement agency, a local district attorney, or the attorney general.

(4) All unit resources shall be used to supplement and not replace existing law enforcement and prosecution efforts against identity theft and financial fraud crimes.

(5) The unit shall be responsive to shifting aspects of identity theft and financial fraud crimes and priorities among such crimes.

(6) The unit shall provide such clerical and technical assistance as the board may require.

24-33.5-1705. Board powers. (1) In addition to any other powers specifically granted to the board in this part 17, the board shall have the following powers:

(a) To approve the plan prepared by the unit as provided in section 24-33.5-1706;

(b) To establish the general criminal activities on which the unit should focus its efforts, priorities among those crimes and among regions of the state, general categories of information to be disseminated by the unit to various groups, and guidelines for consultation provided by the unit on requested local investigations;

(c) To review the quarterly reports submitted pursuant to section 24-33.5-1706 (2) and to provide input thereon to the unit;

(d) To review and comment on the preliminary budget draft for the unit prior to its submission to the department of public safety;

(e) To specify the information to be contained in periodic public disclosures of performance data on the unit's work and results so that the attorney general, sheriffs, police, district attorneys, and depository institutions and the public can review the effect

of the resources used and the unit's efforts;

(f) To determine procedures for reviewing the success of the unit;

(g) To set the time, manner, and place for regular and special meetings of the board;

(h) To adopt and, as necessary, amend or repeal procedural rules and practices of the board not in conflict with the constitution and laws of the state;

(i) Repealed.

(j) To exercise all powers necessary and requisite for the implementation of this part 17; and

(k) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part 17.

24-33.5-1706. Unit - comprehensive plan - report to board. (1) (a) The unit shall submit to the board a comprehensive plan of operations as described in paragraph (b) of this subsection (1) within six months after creation of the unit. The board shall provide a copy of the plan to the attorney general, sheriffs, police, district attorneys, depository institutions, and any advisory committee the board may create and shall solicit comments and suggestions from said parties concerning the plan. The unit shall revise the plan as recommended by the board, and the board shall approve the plan.

(b) The unit's comprehensive plan of operations, at a minimum, shall describe or address:

(I) The manner in which the unit will accomplish the tasks specified in section 24-33.5-1704 (3);

(II) The unit, the unit's organization, the focus of unit efforts on criminal activity intended to be addressed by this part 17, and the expected, overall effect of the efforts of the unit;

(III) The types of identity theft and financial fraud investigation, enforcement, and prosecution activities and assistance the unit will provide and how each will be organized initially and operated on an ongoing basis;

(IV) The anticipated number of attorneys, investigators, and supporting staff the unit will need on an on-going basis to accomplish its tasks;

(V) A plan for coordination and communication throughout the state by the unit with police departments, sheriff's departments, district attorneys, the attorney general, and depository institutions;

(VI) Periodic reports to the board as provided in subsection (2) of this section.

(2) The unit shall submit quarterly reports to the board on the following items:

(a) Criminal activities, patterns, and trends throughout the state and surrounding regions identified by the unit;

(b) The specific forms of identity theft and financial fraud identified by the unit and the evolution of those forms;

(c) Information disseminated by the unit about current and anticipated patterns of identity theft and financial fraud crimes and recommendations to deter and protect against these crimes;

(d) Classes, briefings, and materials disseminated by the unit, in printed or electronic format, to assist local law enforcement agencies, district attorneys, and the attorney general;

(e) Consultation provided by the unit on individual cases, requested local investigations, and related activities and results;

(f) The number of arrests, investigations, and successful and unsuccessful prosecutions for identity theft and financial fraud crimes and the effect that the unit had on the number of identity theft and financial fraud cases throughout the state;

(g) Recommendations for legislative changes to assist in the prevention of identity theft and financial fraud crimes and the apprehension and prosecution of criminals committing such crimes; and

(h) Other items specified by the board.

24-33.5-1707. Funding - cash fund created - donations. (1) (a) The department of public safety is authorized to accept gifts, grants, or donations, including in-kind donations from private or public sources, for the purposes of this part 17. All private and public funds received through gifts, grants, or donations by the department of public safety or by the board shall be transmitted to the state treasurer, who shall credit the same to the Colorado identity theft and financial fraud cash fund, which fund is hereby created and referred to in this part 17 as the "cash fund". The cash fund shall also include the moneys collected pursuant to subsection (2) of this section. Any moneys in the cash fund not expended for the purpose of this part 17 shall be invested by the state treasurer as provided in section 24-36-113. All interest and income derived from the investment and deposit of moneys in the cash fund shall be credited to the cash fund. Any unexpended and unencumbered moneys remaining in the cash fund at the end of any fiscal year shall remain in the cash fund and shall not be credited or transferred to the general fund or any other fund.

(b) The department of public safety shall not be required to solicit gifts, grants, or donations from any source for the purposes of this part 17.

(2) (a) There is hereby established, beginning August 1, 2006, a surcharge of three dollars, in addition to all other lawful charges and fees, to be paid on each filing on every electronic or paper uniform commercial code filing with the secretary of state. The moneys collected by the surcharge shall immediately be transmitted to the state treasurer for deposit in the cash fund.

(b) There is hereby established, beginning August 1, 2006, a surcharge of one hundred dollars to be paid on each supervised lender license, each supervised lender branch license, and each renewal of those licenses issued by the uniform consumer credit office in the attorney general's office, in addition to all other lawful charges and fees on every such license issued. The moneys collected by the surcharge shall immediately be transmitted to the state treasurer for deposit in the cash fund.

(c) There is hereby established, beginning August 1, 2006, a surcharge of five hundred dollars to be paid on each money transmitter license and each money transmitter renewal issued by the division of banking in the department of regulatory agencies, in addition to all other lawful charges and fees on every such license issued. The moneys collected by the surcharge shall immediately be transmitted to the state treasurer for deposit in the cash fund.

24-33.5-1708. Repeal of part. (1) This part 17 is repealed, effective September 1, 2016.

(2) Prior to said repeal, the board and the unit shall be reviewed as provided for in section 24-34-104.

PART 18

SCHOOL SAFETY RESOURCE CENTER

24-33.5-1801. Legislative declaration. (1) The general assembly hereby finds that:

(a) A safe and healthy learning environment for all students in Colorado is an important priority for the state;

(b) Research into evidence-based practices continues to demonstrate that academic achievement improves as the level of safety and security in a school increases;

(c) Studies of recent school attacks have established that school violence may be prevented with appropriate information sharing;

(d) Suicide, which remains one of the leading causes of death for Colorado's youth, may also be prevented with appropriate intervention;

(e) Both the physical and psychological well-being of students and school personnel is critically important; and

(f) Improving student engagement, including reducing dropout rates and truancy levels, is an important factor for ensuring that schools are safe and successful.

(2) The general assembly further finds that:

(a) The most appropriate way to prevent and prepare for acts of violence and other

emergencies that may occur on school campuses is to foster a cooperative effort by schools, school resource officers, law enforcement agencies, emergency responders, behavioral health experts, parents, and community members to identify, gather, and apply the necessary resources; and

(b) Emergency response and crisis management measures should be implemented in all communities within the state to protect students and school personnel.

(3) Now, therefore, the general assembly declares that:

(a) Safe schools are a matter of statewide concern;

(b) All schools have common needs and goals to ensure a safe environment;

(c) Resources are needed to fully develop safety plans and practices in Colorado's schools, colleges, and universities; and

(d) A school safety resource center dedicated to providing evidence-based practices and expertise to all schools is a cost-effective means to improve school safety.

24-33.5-1802. Definitions. As used in this part 18, unless the context otherwise requires:

(1) "Advisory board" means the school safety resource center advisory board created in the department pursuant to section 24-33.5-1804.

(2) "Center" means the school safety resource center created in the department pursuant to section 24-33.5-1803.

(3) "Director" means the director of the center.

(3.3) "First responder" means an individual who responds in a professional capacity to an emergency that occurs in a school building, including, but not limited to, peace officers, firefighters, emergency medical service providers, school administrators, and teachers.

(4) "School" means an institution at which instruction is provided by instructors to students in one or more buildings on a campus. "School" includes a school serving any of grades preschool through twelve and an institution of higher education.

24-33.5-1803. School safety resource center - created - duties - repeal. (1) There is hereby created within the department the school safety resource center to assist schools in preventing, preparing for, responding to, and recovering from emergencies and crisis situations and to foster positive learning environments. The director of the center shall be appointed by the executive director pursuant to section 13 of article XII of the state constitution.

(2) The center and the director shall exercise their powers and perform their duties and functions under the department 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 this title.

(3) The center has the following duties:

(a) To assist schools in developing and implementing safety and preparedness plans, including but not limited to any such plans that are required by state law or applicable rules of accreditation;

(b) To assist schools in establishing practices and strategies for use in responding to an emergency or crisis situation;

(c) To assist schools in developing and establishing prevention and intervention efforts to ensure safe and secure learning environments;

(d) To conduct regular research and assessment projects to determine the efficacy of statewide and local policies and programming;

(e) To make information and other resources available to all schools and school officials;

(f) (I) To select at least one but not more than five school districts or regions, with the consent of the affected school district boards of education, to serve as pilot sites during the first year of the center's operation. The center shall evaluate and develop enhanced school safety services to be provided by the center to the pilot sites.

(II) In selecting the school districts or regions that shall serve as pilot sites pursuant to subparagraph (I) of this paragraph (f), the center shall designate at least one but not more than three schools within each of the pilot sites to participate in a cooperative effort by all such designated schools within the pilot sites to create a first responder school mapping system to provide first responders immediate electronic or digital access to maps of, and other schematic information about, school buildings at such designated schools in the event of an emergency at the designated schools. In creating the first responder school mapping system, the pilot sites may contract with one or more public or private entities with experience in creating first responder school mapping systems. Before entering into any such contract or otherwise proceeding with plans for the creation of the first responder school mapping system, the pilot sites shall submit the contract or plans to the center to approve or disapprove. The department shall reimburse the pilot sites for the direct and indirect costs of creating the first responder school mapping system pursuant to this subparagraph (II).

(III) The general assembly hereby finds and declares that, for purposes of section 17 of article IX of the state constitution, the development and creation of a first responder school mapping system, pursuant to subparagraph (II) of this paragraph (f), is an important element of improving student safety and may therefore receive funding from the state education fund created in section 17 (4) of article IX of the state constitution.

(g) To provide information and resources relating to school safety, school emergency response planning and training, and interoperable communications in schools, as determined by the center, to the division of fire prevention and control in the department of public safety to be distributed to school districts and schools pursuant to

section 24-33.5-1213.4;

(h) (I) To consult with school districts, schools, and charter schools concerning evidence-based best practices for bullying prevention and education;

(II) To consult with the department of education concerning its administration of the school bullying prevention and education grant program created in section 22-93-102, C.R.S.; and

(III) To submit evidence-based best practices for bullying prevention and education to the department of education for the purposes of section 22-93-106, C.R.S.

(i) (I) To hire or contract for the services of an emergency response consultant with experience in law enforcement and school safety to provide guidance for schools, school resource officers, and other community partners for school building safety assessments and the use of best practices for school security, emergency preparedness and response, interoperable communications, and other provisions of the school response framework. The emergency response outreach consultant shall also work with the center director and school outreach consultant to research grant opportunities and provide assistance to schools seeking grants for school safety and emergency response assistance.

(II) This paragraph (i) is repealed, effective July 1, 2018.

(j) To provide information and resources relating to the development and maintenance of school resource officer programs, as determined by the center, to the division of fire prevention and control in the department of public safety for distribution to school districts and schools pursuant to section 24-33.5-1213.4 and to law enforcement agencies and other community partners, as described in section 22-32-109.1, C.R.S.; and

(k) To provide suggestions for school resource officer training to the peace officers standards and training board, pursuant to section 24-31-312.

(4) Subject to the provisions of section 13 of article XII of the state constitution, the director shall appoint employees necessary to conduct an efficient center.

24-33.5-1804. School safety resource center advisory board - created - repeal. (1) There is hereby created in the department the school safety resource center advisory board to recommend policies of the center.

(2) (a) The advisory board shall consist of not less than fourteen members, each of whom shall be appointed to a term of two years as follows:

(I) One member shall represent the department of education created pursuant to section 24-1-115 and be appointed by the commissioner of education.

(II) One member shall be an individual with professional expertise in behavioral health treatment who represents an elementary or secondary school or a school district and be appointed by the commissioner of education.

(III) One member shall be a school administrator and be appointed by the commissioner in consultation with a statewide association of school executives.

(IV) One member shall represent state universities and colleges and be appointed by the executive director of the Colorado commission on higher education appointed pursuant to section 24-1-114.

(V) One member shall represent community colleges and junior colleges and be appointed by the state board for community colleges and occupational education created pursuant to section 23-60-104, C.R.S.

(VI) One member shall be a member of a parents' organization and be appointed by the governor.

(VII) One member shall be a district attorney and be appointed by the governor.

(VIII) One member shall represent the unit within the department of human services, created pursuant to section 26-1-105, C.R.S., that administers behavioral health programs and services, including those related to mental health and substance abuse, and be appointed by the executive director of the department of human services.

(IX) One member shall represent the department of public health and environment created pursuant to section 25-1-102, C.R.S., and be appointed by the executive director of the department of public health and environment.

(X) One member shall represent the Colorado department of law created pursuant to section 24-1-113 and be appointed by the attorney general.

(XI) One member shall represent the department and be appointed by the executive director.

(XII) One member shall be an individual with professional expertise in school security and be appointed by the executive director.

(XIII) One member shall be a law enforcement professional and be appointed by the executive director.

(XIV) One member must be a school resource officer, as defined in section 22-32-109.1 (1), C.R.S., and be appointed by the executive director in consultation with a statewide association representing school resource officers.

(b) The appointing authority of each member of the advisory board shall appoint the member on or before October 1, 2008, and reappoint the member or appoint a new member no later than one month before the expiration of the member's term.

(c) Additional advisory board members may be added to the advisory board as necessary subject to:

(I) The approval of the executive director; and

(II) A majority vote of approval by the existing advisory board members.

(3) If any member of the advisory board vacates his or her office during the term for which appointed to the advisory board, the vacancy shall be filled by appointment by the executive director for the unexpired term.

(4) The advisory board shall annually elect from its members a chairperson and a secretary.

(5) The advisory board shall meet as determined necessary by the director. The

members of the advisory board shall receive no compensation but shall be reimbursed by the department for necessary travel and other expenses actually incurred in the performance of their official duties.

(6) (a) This section is repealed, effective July 1, 2017.

(b) Prior to said repeal, the advisory board appointed pursuant to this section shall be reviewed as provided in section 2-3-1203, C.R.S.

24-33.5-1805. Authorization to contract for services. The department is authorized to contract for services with any state, county, local, municipal, or private agency to implement the provisions of this part 18 and fulfill the duties of the center, which duties are described in section 24-33.5-1803 (3).

24-33.5-1806. Evaluation - report. (1) On or before January 1, 2010, the director shall prepare and submit to the executive director a report evaluating the efficacy and value of the services provided by the center to schools.

(2) On or before January 15, 2010, the executive director shall prepare and submit to the education and judiciary committees of the house of representatives and the senate, or any successor committees, a report evaluating the efficacy and value of the services provided by the center to schools.

24-33.5-1807. School safety resource center cash fund. (1) There is hereby created in the state treasury the school safety resource center cash fund, referred to in this section as the "fund". The fund shall consist of:

(a) Such moneys as the general assembly may appropriate to the fund;

(b) Gifts, grants, and donations received by the department pursuant to subsection (2) of this section; and

(c) Any moneys that the center receives as fees charged to attendees of a training program or conference, as described in section 24-33.5-1808.

(2) The department is authorized to solicit and accept gifts, grants, and donations from public and private sources for the purposes of this part 18; except that the department may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. All moneys collected by the department pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the fund.

(3) The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the direct and indirect costs associated with implementing this part 18. Any moneys in the fund not expended for the purposes of this part 18 may be

invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund.

(4) (a) The department is authorized to expend moneys from the fund for the purposes of this part 18.

(b) The department may expend up to two percent of the moneys annually appropriated from the fund to offset the costs incurred in implementing this part 18.

(5) Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-33.5-1808. Training program and conference fees authorized. (1) The center is authorized to charge a fee to each attendee of a training program or conference that the center implements for the purposes of this part 18. The center shall forward each fee collected pursuant to this section to the state treasurer, who shall credit the entire amount to the school safety resource center cash fund created in section 24-33.5-1807.

(2) The total amount of fees charged by the center to attendees of a training program or conference pursuant to subsection (1) of this section shall not exceed the actual costs incurred by the center in implementing the training program or conference.

ARTICLE 34

Department of Regulatory Agencies

PART 1

ORGANIZATION

24-34-101. Department created - executive director. (1) (a) There is hereby created the department of regulatory agencies, the head of which shall be the executive director of the department of regulatory agencies, which office is hereby created. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109. The executive director shall have those powers, duties, and functions prescribed for heads of principal departments in the "Administrative Organization Act of 1968". The department of regulatory agencies shall be organized as provided in the "Administrative Organization Act of 1968"; but nothing in this part 1 shall be construed to prevent the establishment, combination, or abolition of divisions, sections, or units other than those

created by law.

(b) Repealed.

(2) The executive director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the department of regulatory agencies and divisions thereof.

(3) Publications by the executive director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(4) Repealed.

(5) The executive director of the department of regulatory agencies may enter into contracts pursuant to part 5 of article 50 of this title for the purpose of decreasing appropriations in the annual general appropriation act.

(6) The executive director of the department of regulatory agencies may contract, pursuant to part 5 of article 50 of this title, with a person having the technical or subject matter expertise or the skill and experience to develop, implement, and administer the licensing and examination functions of the divisions in the department when the executive director determines that a division lacks sufficient technical expertise to perform such licensing and examination functions.

(7) A contract entered into pursuant to this section may authorize a contractor to collect fees directly from an applicant. The contract may allow the contractor to retain all or a portion of the fees as payment for performance of the services under the contract. Fees collected and retained by the contractor shall not be subject to the provisions of article 36 of this title.

(8) This section shall not be construed to limit the powers of any **type 1** board or commission in the department of regulatory agencies.

(9) The executive director shall have the authority to accept and expend gifts, grants, and donations for the purposes of implementing and administering the provisions of section 24-4-103 (2.5).

(10) The executive director may contract pursuant to part 5 of article 50 of this title with a person, corporation, or entity having technical or subject matter expertise or skill and experience to develop, implement, and administer the licensing and examination functions of the division of professions and occupations when the executive director determines that the division of professions and occupations is without sufficient technical expertise to perform such licensing and examination functions.

(11) The executive director may contract pursuant to part 5 of article 50 of this title with a person, corporation, or entity for the purpose of decreasing the appropriations for the division of professions and occupations in the annual general appropriations act.

(12) A contract entered into pursuant to subsection (10) or (11) of this section may authorize a contractor to collect fees directly from an applicant. The contractor may retain

all or a portion of the fees designated as payment for performance of the functions under the contract. All fees collected and retained by the contractor shall not be subject to the provisions of article 36 of this title.

(13) The executive director shall include in the presentation to the legislative committee of reference pursuant to section 2-7-203, C.R.S., the number of confidential letters of concern issued in the twelve months prior to the presentation by the director of the division of professions and occupations and any board pursuant to title 12, C.R.S.

24-34-102. Division of professions and occupations - creation - duties of division and department heads - license renewal, reinstatement, and endorsement - definitions - rules - review of functions - repeal. (1) (a) As used in this part 1, unless the context otherwise requires:

(I) "Department" means the department of regulatory agencies.

(II) "Director" means the director of the division of professions and occupations or the director's designee.

(III) "Division" means the division of professions and occupations created in the department pursuant to this section.

(IV) "Executive director" means the executive director of the department.

(V) "License" has the same meaning as set forth in section 24-4-102.

(VI) "Licensee" means a person who has been issued a license.

(b) There is hereby created a division of professions and occupations in the department, the head of which is the director of professions and occupations. The executive director shall appoint the director in accordance with section 13 of article XII of the state constitution. Except as provided in paragraph (c) of this subsection (1), the director shall appoint other personnel as necessary for the efficient operation of the division.

(c) Subject to available appropriations, the director shall give good faith consideration to the recommendations of any **type 1** board or commission relating to the employment of the primary administrator to assist the board or commission, whether the person is designated as an executive secretary, a program administrator, or another title or position.

(2) The division has supervision and control of the **type 2** examining and licensing boards and agencies transferred to the department by the "Administrative Organization Act of 1968". For **type 1** boards or commissions, the division shall provide necessary management support.

(2.5) Repealed.

(3) The supervision and control of, and the management support for, examining and licensing boards and agencies by the department and the division also includes the approval or disapproval of rules of the boards and agencies relating to the examination

and licensure of applicants to ensure that the rules are fair and impartial. The division shall not license a person who has applied to, and otherwise satisfied the requirements for, licensure by a board or agency until the applicant has paid and the division has received all applicable fees.

(4) Subject to subsection (1) of this section, each of the examining and licensing boards or agencies may employ and pay out of moneys appropriated to it by the general assembly only that number of employees and subordinate officers as are certified by it and approved by the executive director of the department of regulatory agencies to be necessary and the necessity for the employment of whom has been approved in writing by the governor. All salaries to be paid such employees and subordinate officers shall be within the appropriation made therefor by the general assembly.

(4.5) It is the intent of the general assembly that the employees authorized in Senate Bill 06-020, enacted at the second regular session of the sixty-fifth general assembly, for the implementation of the "Nurse Licensure Compact", part 32 of article 60 of this title, be funded only for the fiscal years 2006-07 and 2007-08. The salaries to be paid such employees shall be within the appropriation made by the general assembly for such fiscal years.

(5) Each of the examining and licensing boards or agencies shall be provided with suitable offices in the capitol buildings group if space is available in any of such buildings and, if not, then in a suitable office building in the city and county of Denver selected by the executive director of the department of personnel. It is lawful and proper for two or more of such boards or agencies to be assigned space in the same office room or suite, if such grouping or joint occupancy, in the opinion of the executive director of the department of regulatory agencies, will not unreasonably interfere with the efficient operation of any of such boards or agencies so grouped or joined.

(6) Each of the examining and licensing boards or agencies to which office space is provided shall pay into the general revenue fund of the state out of the moneys appropriated to it by the general assembly a monthly or annual charge for rental, heat, light, telephone, collection, legal, and other state services made available to such board or agency as may be fixed by the executive director of the department of personnel, with the approval of the executive director of the department of regulatory agencies, such charges to be not more than twenty-five percent of the moneys appropriated to it by the general assembly.

(7) Notwithstanding any provision of the law to the contrary, upon the approval and recommendation of any examining or licensing board or commission in the division, the executive director may change the period of the validity of any license issued by the board or commission for a period not to exceed three years. If the executive director changes the period of validity of a license pursuant to this subsection (7), the director shall proportionately increase or decrease the fee for the license, as the case may be, but the director shall not impose a fee increase that would result in hardship to the licensee.

(8) (a) **Renewal.** Notwithstanding any provision of the law to the contrary, the director may change the renewal date of any license issued by a licensing board or commission so that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any renewal date is so changed, the fee for the license is proportionately increased or decreased, as the case may be. A license is valid for a period of no less than one year and no longer than three years, as determined by the director in consultation with the licensing board or commission within the division. A licensee shall submit an application for renewal to the licensing board or commission on forms and in the manner prescribed by the director.

(b) The director and any licensing board or commission may prescribe renewal requirements, which shall include compliance with any continuing education requirements adopted pursuant to the director's, licensing board's, or commission's authority.

(c) The director shall allow for a grace period for licenses from licensing boards or commissions within the division. A licensee has a sixty-day grace period after the expiration of his or her license to renew the license without the imposition of a disciplinary sanction by the director, licensing board, or commission for such profession for practicing on an expired license. The licensee shall satisfy all renewal requirements pursuant to the applicable practice act and shall pay a delinquency fee in an amount determined pursuant to sections 24-34-105 and 24-79.5-102.

(d) **Reinstatement.** A licensee, registrant, or certificate holder who does not renew his or her license, registration, or certificate within the sixty-day grace period pursuant to paragraph (c) of this subsection (8) shall be treated as having an expired license, registration, or certificate and shall be ineligible to practice until such license, registration, or certificate is reinstated. An expired license, registration, or certificate may be reinstated at the discretion and pursuant to the authority of the director, licensing board, or commission pursuant to the following requirements:

(I) (A) An application for reinstatement of the license, registration, or certificate is submitted to the director, licensing board, or commission sixty days after the date of expiration and the licensee, registrant, or certificate holder complies with all requirements of the applicable practice act.

(B) If the licensee, registrant, or certificate holder practiced with an expired license, registration, or certificate, pursuant to the authority of the director, the licensing board or commission may impose disciplinary actions against the licensee, registrant, or certificate holder.

(II) If the license, registration, or certificate has expired for more than two years, the person with the expired license, registration, or certificate shall pay all applicable renewal and reinstatement fees and shall satisfactorily demonstrate to the director, licensing board, or commission that the person is competent to practice within his or her profession. Pursuant to the authority of the director, the licensing board or commission, as

it deems appropriate, shall accept one or more of the following as a demonstration of competency to practice:

(A) A license, registration, or certificate from another state that is in good standing for the applicant where the applicant demonstrates active practice;

(B) Practice for a specified time under a restricted license, registration, or certificate;

(C) Successful completion of prescribed remedial courses ordered by the director, licensing board, or commission that are within the authority of the director, licensing board, or commission to require;

(D) Successful completion of any continuing education requirements prescribed by the director, licensing board, or commission that are within the authority of the director, licensing board, or commission to require;

(E) Passage of an examination for licensure, registration, or certification as approved by the director, licensing board, or commission that the director, licensing board, or commission has the authority to acquire; or

(F) Other professional standards or measures of continued competency as determined by the director, licensing board, or commission.

(III) The director, licensing board, or commission may waive the requirements for reinstatement of an expired license, registration, or certificate by an applicant who demonstrates hardship, so long as the director or such board or commission considers the protection of the public in such hardship petition.

(e) **Endorsement.** Unless otherwise prohibited by title 12, C.R.S., an applicant for certification, registration, or licensure by endorsement may demonstrate competency in a specific occupation or profession as determined by the director in lieu of a requirement that the applicant has worked or practiced in that occupation or profession for a period of time prior to the application for endorsement.

(8.5) The director and each of the examining and licensing boards shall, upon presentation of satisfactory evidence by an applicant for certification or licensure, accept education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the qualifications to receive the license or certification. The director and each appropriate examining and licensing board shall promulgate rules to implement this section.

(8.7) Unless there is a specific statutory disqualification that prohibits an applicant from obtaining licensure based on a criminal conviction, if a licensing entity in title 10 or 12, C.R.S., determines that an applicant for licensure has a criminal record, the licensing entity is governed by section 24-5-101 for purposes of granting or denying licensure or placing any conditions on licensure.

(9) The executive director is responsible for receiving and monitoring the disposition of complaints. The executive director may require an investigation of a

complaint concerning a person regulated by a board or agency in the division in accordance with section 24-34-103.

(10) The executive director, after consultation with the examining or licensing board or commission concerned, shall determine the form and content of any license issued by any examining or licensing board or commission in the division, including any document evidencing renewal of a license.

(11) Notwithstanding any **type 1** transfer as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title, the executive director may review any examination or procedure for granting a license by any board or agency in the division prior to the execution of such examination or procedure. After such review, if the executive director has reason to believe such examination or procedure to be unfair to the applicants or unreasonable in content, the executive director shall call on five people licensed in such occupation or profession to review the examination or procedure jointly with him. The executive director and such licensees, acting jointly, may make findings of fact and recommendations to the board or agency concerning any examination or procedure. The findings of fact and recommendations shall be public documents.

(12) Notwithstanding any **type 1** transfer as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title, the executive director may employ an administrative law judge, and may require any board in the division to use an administrative law judge in lieu of a hearing by the board, to conduct hearings on any matter within the jurisdiction of the examining and licensing boards and agencies in the division, subject to appropriations made to the department of personnel. Administrative law judges are appointed pursuant to part 10 of article 30 of this title. An administrative law judge employed pursuant to this subsection (12) shall conduct hearings in accordance with section 24-4-105, and the administrative law judge has the authority specified in section 24-4-105.

(13) Notwithstanding any law to the contrary, each member of a board or commission within the division is entitled to receive a per diem allowance of fifty dollars for each day spent in attendance at board meetings, hearings, or examinations and to be reimbursed for actual and necessary expenses incurred in the discharge of such official duties. The per diem compensation for board or commission members must not exceed that sum in any fiscal year that the state personnel board approves for employees not under the state personnel system. The general assembly shall annually appropriate moneys from the division of professions and occupations cash fund for the payment of per diem compensation and expenses. A state employee shall not receive per diem compensation for services performed during normal working hours, when on paid administrative leave, or when otherwise prohibited by fiscal rules adopted by the state controller.

(14) Repealed.

(15) **Periodic evaluation of division functions.** The department shall conduct an

analysis and evaluation of the division and its functions as set forth in this part 1 and in title 12, C.R.S. The department shall conduct the analysis and evaluation in accordance with section 24-34-104 (8) and shall submit its report and recommendations for legislation, if any, in accordance with that section. The department shall conduct its initial analysis and evaluation of the division and submit its report by October 15, 2015, and shall conduct an analysis and evaluation of the division every ten years thereafter. Nothing in this section requires the termination of the division or its functions as specified in this part 1 and in title 12, C.R.S.

(16) **Change of name - direction to revisor - repeal.** (a) Within three years after August 8, 2012, the revisor of statutes shall change all references to the division of registrations and the director of registrations in this part 1 and everywhere else a reference is contained in the Colorado Revised Statutes to the division of professions and occupations and the director of professions and occupations.

(b) This subsection (16) is repealed, effective January 1, 2016.

24-34-103. Procedures for complaints concerning licensees. (1) All complaints relating to persons licensed by any board or agency in the division of professions and occupations shall be referred to the executive director of the department of regulatory agencies.

(2) For the purpose of facilitating the handling of complaints, the executive director shall devise simple standard complaint forms designed to supply the information necessary to properly conduct an investigation of complaints. Each complaint shall be reduced to writing by the complainant before any formal action is commenced thereon. The receipt of such forms shall be acknowledged on behalf of the executive director. The complainant shall be advised in writing of the final disposition thereof.

(3) The executive director may assign a complaint to the director of professions and occupations or to the appropriate board of registration in the department, or may assign it specially for investigation, or may take such other action thereon as appears to him to be warranted in the circumstances. Assignments of investigations thereof to others shall be subject to specified time limits set by the executive director for completion of investigations.

(4) Nothing in this section shall supersede the provisions of sections 24-4-104 to 24-4-106, or the statutory power to issue, suspend, revoke, or renew licenses.

(5) The executive director may promulgate such rules, pursuant to section 24-4-103 and not inconsistent with the requirements of this part 1, to assist in the efficient performance of the duties imposed by this section. The executive director may also render advice to the general assembly, as well as to the general public, upon the question of the proper role of the state in regulating professions and occupations.

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (1) (a) The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that regulatory agencies tend to become unnecessarily restrictive. The general assembly further finds that, by establishing a system for the termination, continuation, or reestablishment of such agencies and by providing for the analysis and evaluation of such agencies to determine the least restrictive regulation consistent with the public interest, it will be in a better position to evaluate the need for the continued existence of existing and future regulatory bodies.

(b) It is the intent of the general assembly that the system set forth in this section for termination, continuation, or reestablishment of agencies in the department of regulatory agencies, as in effect prior to April 28, 1988, be extended to the functions of certain specified agencies and to certain specified boards. By providing for such extension within the existing system, it is the intent to provide for the review of such functions and boards in the most cost-effective manner.

(2) and (2.5) Repealed.

(3) and (3.1) Repealed.

(4) to (4.3) Repealed.

(4.5) and (4.6) Repealed.

(4.8) (Renumbered by revision as subsection (22).)

(5) (a) The divisions in the department of regulatory agencies, the boards and agencies in the division of professions and occupations, and the functions of the specified agencies and the specified boards shall terminate according to the termination schedule outlined in this section. Requirements for periodic reports to the general assembly shall expire as set forth in section 24-1-136 (11) and shall be treated as "functions" of the respective agencies for purposes of this section except as otherwise provided in this section.

(b) Upon termination, each division, board, or agency shall continue in existence or, in the case of the termination of a function, each function shall continue to be performed until July 1 of the next succeeding year or until the date that is one year after any specified termination date other than July 1 for the purpose of winding up affairs. During the wind-up period, termination shall not reduce or otherwise limit the powers or authority of each respective agency; except that every license issued or renewed during the wind-up period shall expire at the end of said period, and original license and renewal fees shall be prorated accordingly. Upon the expiration of one year after termination, each respective agency shall cease all activities, or, in the case of the termination of a function, each function shall cease. When a license issued or renewed prior to termination is

scheduled to expire after the cessation of activities, the license shall expire at the end of the wind-up period, and the agency shall refund the portion of the license fee paid that is attributable to the period following the cessation of activities. Any criminal penalty for engaging in any profession or activity without being licensed therefor shall not be enforceable with respect to activities occurring after an agency has ceased its activities pursuant to this section.

(c) Paragraph (b) of this subsection (5) shall not apply to the function of the community corrections board terminated pursuant to paragraph (e) of subsection (36) of this section.

(5.5) Repealed.

(6) Whenever the state constitution imposes any powers, duties, or functions on an agency or officer subject to the provisions of this section and such agency or officer is terminated and the general assembly does not designate another agency or officer to exercise such powers or perform such duties and functions, such agency or officer shall continue in existence, after the one-year wind-up period, under the principal department as if the agency or officer were transferred to the department by a **type 2** transfer, as defined in section 24-1-105, until the general assembly shall otherwise designate.

(7) The life of any division, board, or agency scheduled for termination under this section may be continued or reestablished by the general assembly for periods not to exceed ten years. On or after May 25, 1994, the life of any division, board, or agency scheduled for termination under this section may be continued or reestablished by the general assembly for periods not to exceed fifteen years. Any newly created division, board, or agency in the department of regulatory agencies shall have a life not to exceed six years; but, on or after May 25, 1994, any such newly created division, board, or agency shall have a life not to exceed ten years, and shall be subject to the provisions of this section. The general assembly, acting by bill, may reschedule the termination date for a division, board, agency, or function to a later date if such rescheduled date does not violate the appropriate maximum life provision described in this subsection (7).

(8) (a) (I) The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section. In conducting the analysis and evaluation, the department of regulatory agencies shall take into consideration, but need not be limited to considering, the factors listed in paragraph (b) of subsection (9) of this section. The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination, and a copy of said report shall be made available to each member of the general assembly.

(II) The department of regulatory agencies shall submit its report to the office of legislative legal services for the preparation of draft legislation based solely on specific recommendations for legislation contained in such report. Such report shall be submitted,

no later than October 15 of the year preceding the date established for termination, to the office of legislative legal services for the preparation of draft legislation. Such draft legislation shall be prepared by the office of legislative legal services prior to the next regular session of the general assembly for the committee of reference designated pursuant to section 2-3-1201, C.R.S., and shall be submitted with the report of the department of regulatory agencies by the office of legislative legal services to the committee of reference designated pursuant to section 2-3-1201, C.R.S. The committee of reference designated pursuant to section 2-3-1201, C.R.S., shall determine the title of any legislation drafted pursuant to this subparagraph (II).

(III) This subsection (8) is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirement of this subsection (8) shall remain in effect until changed by the general assembly acting by bill.

(b) and (c) Repealed.

(9) (a) Prior to the termination, continuation, or reestablishment of an agency or function, a legislative committee of reference designated pursuant to section 2-3-1201, C.R.S., shall hold public hearings to receive testimony from the public, the executive director of the department of regulatory agencies, and the agencies involved. In such hearing, each agency shall have the burden of demonstrating a public need for continued existence of the agency or function and that its regulation is the least restrictive regulation consistent with the public interest.

(b) In such hearings, the determination as to whether an agency has demonstrated a public need for continued existence of the agency or function and for the degree of regulation it practices shall be based on the following factors, among others:

(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is

not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(VIII.5) Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (I) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

(c) A legislative committee of reference that conducts a review pursuant to paragraph (a) of this subsection (9) shall determine whether each agency or function should be terminated, continued, or reestablished and whether its functions should be revised and, if deemed advisable, may recommend the consideration of a proposed bill to carry out its recommendations.

(c.3) (I) Bills recommended for consideration pursuant to paragraph (c) of this subsection (9) shall be introduced in the house of representatives in even numbered years and in the senate in odd numbered years. The chair of each legislative committee of reference that recommends a bill for consideration shall assign the proposed bill to the following for sponsorship; except that no more than two such bills shall be assigned to any one member of the general assembly:

(A) Members of the committee of reference; or

(B) Members of the general assembly who are not members of the committee if approved by a majority vote of the committee's members.

(II) The speaker of the house of representatives shall assign the proposed bill to a representative for sponsorship in the house of representatives in odd numbered years. The president of the senate shall assign the proposed bill to a senator for sponsorship in the senate in even numbered years.

(c.6) A bill recommended for consideration by any such committee pursuant to paragraph (c) of this subsection (9) shall not be counted against the number of bills to which members of the general assembly are limited by any law or joint rule of the senate and the house of representatives.

(d) Prior to the termination, continuation, reestablishment, or revision of an agency's functions, a committee of reference in each house of the general assembly

designated pursuant to section 2-3-1201, C.R.S., shall hold a public hearing to consider the report provided by the department of regulatory agencies and any bill recommended for consideration pursuant to paragraph (c) of this subsection (9), said hearing to include the factors and testimony set forth in paragraph (b) of this subsection (9).

(10) Repealed.

(11) (a) Pursuant to the process established in this section, no more than one such division, board, or agency shall be continued or reestablished or its functions amended in any bill for an act, and such division, board, or agency shall be mentioned in the bill's title. This paragraph (a) shall not apply to requirements for periodic reports to the general assembly.

(b) This section shall not cause the dismissal of any claim or right of a person through or against any such agency or any claim or right of an agency which has ceased its activities pursuant to this section which is or may be subject to litigation. Any person may pursue said claims or rights through or against the department of regulatory agencies, the agency which performed the terminated function, or, in the case of a terminated board which is not in the department of regulatory agencies, the specified department in which the board is located, and said claims and rights of an agency which has ceased its activities shall be assumed by the department of regulatory agencies, the agency which performed the terminated function, or the specific department. Nothing in this section shall interfere with the general assembly otherwise considering legislation on any division, board, agency, or similar body.

(12) When an agency or function is terminated pursuant to the provisions of this section and the general assembly reestablishes the agency or function during the wind-up period with substantially the same powers, duties, and functions, the agency or function shall be deemed to have been continued.

(12.5) The purpose of this section is to provide a listing of the divisions, boards, agencies, and functions subject to review and scheduled for termination under this section. No provision in this section effectuates the repeal of any statute; the provisions which effectuate the repeal of statute creating or governing a division, board, agency, or function are set forth in the substantive law creating such division, board, agency, or function. Nothing in such a repeal provision shall be construed to invalidate the wind-up period allowed by subsection (5) of this section or the provisions of subsection (6) of this section.

(13) The following divisions in the department of regulatory agencies shall terminate on July 1, 1984:

(a) to (c) Repealed.

(14) The following boards and agencies in the division of registrations shall terminate on July 1, 1985:

(a) to (e) Repealed.

(15) The following boards and agencies in the division of registrations shall

terminate on July 1, 1986:

(a) to (d) Repealed.

(16) (a) The following boards and agencies in the division of registrations shall terminate on July 1, 1987:

(I) to (III) Repealed.

(b) Repealed.

(17) The following boards and agencies in the division of registrations shall terminate on July 1, 1988:

(a) to (f) Repealed.

(18) and (19) Repealed.

(19.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1990:

(a) to (d) Repealed.

(20) (a) (Deleted by amendment, L. 91, p. 1477, § 16, effective July 1, 1991.)

(a.5) and (b) Repealed.

(20.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1991:

(a) to (e) Repealed.

(21) (a) The following boards in the division of registrations shall terminate on July 1, 1992:

(I) (Deleted by amendment, L. 92, p. 2031, § 17, effective July 1, 1992.)

(II) Repealed.

(b) to (d) Repealed.

(21.1) The Colorado manufactured housing licensing board, created by article 51.5 of title 12, C.R.S., was repealed, effective July 1, 1992. However, a legislative committee of reference designated pursuant to section 2-3-1201, C.R.S., has continuing jurisdiction and may exercise discretion to review and recommend reestablishment of such board.

(21.5) Repealed.

(22) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1993:

(I) and (II) Repealed.

(III) (Deleted by amendment, L. 93, p. 2056, § 2, effective July 1, 1993.)

(b) The following boards and agencies in the division of registrations shall terminate on July 1, 1993:

(I) (Deleted by amendment, L. 93, p. 1532, § 2, effective July 1, 1993.)

(II) Repealed.

(c) Repealed.

(I) Repealed.

(II) (Deleted by amendment, L. 93, p. 1751, § 12, effective July 1, 1993.)

(d) (Deleted by amendment, L. 93, p. 1494, § 12, effective July 1, 1993.)

(22.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1993:

(a) to (d) Repealed.

(22.5) Repealed.

(23) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1994:

(I) to (III) Repealed.

(b) Repealed.

(23.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1994:

(a) The licensing of commercial driving schools through the department of revenue in accordance with article 15 of title 12, C.R.S.

(b) to (h) Repealed.

(23.2) Repealed.

(24) The following boards in the division of registrations shall terminate on July 1, 1995:

(a) (Deleted by amendment, L. 95, p. 1320, § 12, effective July 1, 1995.)

(b) Repealed.

(c) (Deleted by amendment, L. 95, p. 1089, § 15, effective July 1, 1995.)

(d) and (e) Repealed.

(24.1) The following functions of the specified agencies shall terminate on July 1, 1995:

(a) to (c) Repealed.

(d) (Deleted by amendment, L. 95, p. 901, § 14, effective July 1, 1995.)

(e) (Deleted by amendment, L. 95, p. 698, § 14, effective May 23, 1995.)

(f) The licensing of persons operating a controlled atmosphere storage facility for apples through the commissioner of agriculture in accordance with article 23.5 of title 35, C.R.S.

(g) Repealed.

(h) (Deleted by amendment, L. 95, p. 296, § 11, effective July 1, 1995.)

(i) (Deleted by amendment, L. 95, p. 698, § 14, effective May 23, 1995.)

(j) Repealed.

(24.2) Repealed.

(24.5) The functions of the division of administration in the department of public health and environment relating to the training and certification requirements established under sections 25-7-105 (11) (c) and (11) (g), C.R.S., shall terminate on July 1, 1996.

(25) The following boards in the division of registrations shall terminate on July 1, 1996:

(a) (Deleted by amendment, L. 96, p. 1416, § 29, effective July 1, 1996.)

(b) Repealed.

(25.1) The following functions of the specified agencies shall terminate on July 1, 1996:

(a) to (i) Repealed.

(j) The licensing function for underground storage tank installers of the state inspector of oils conducted pursuant to part 4 of article 20.5 of title 8, C.R.S.

(k) and (l) Repealed.

(25.2) and (25.5) Repealed.

(25.6) The following agencies and functions of the specified agencies shall terminate on July 1, 1996:

(a) and (b) Repealed.

(25.7) The following agencies, functions, or both, shall terminate on July 1, 1996:

(a) and (b) Repealed.

(26) (a) Repealed.

(b) (Deleted by amendment, L. 97, p. 1076, § 1, effective July 1, 1997.)

(26.1) and (26.2) Repealed.

(27) (a) The following boards in the division of registrations shall terminate on July 1, 1998:

(I) to (IV) Repealed.

(b) The following board and functions of the specified agencies shall terminate on July 1, 1998:

(I) to (III) Repealed.

(c) Repealed.

(d) (Deleted by amendment, L. 94, p. 1637, § 49, effective May 31, 1994.)

(e) Repealed.

(27.1) Repealed.

(27.5) (a) to (e) Repealed.

(f) (Deleted by amendment and revision, L. 98, pp. 74, 78, §§ 2, 2, effective July 1, 1998.)

(28) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1999:

(I) and (II) Repealed.

(b) Repealed.

(c) The following agencies and functions of the specified agencies shall terminate July 1, 1999:

(I) to (III) Repealed.

(28.5) Repealed.

(29) The following boards shall terminate on July 1, 2000:

(a) to (c) Repealed.

(29.1) The following functions of the specified agencies shall terminate on July 1,

2000:

(a) The licensing of debt management through the banking board and the state bank commissioner in accordance with article 20 of title 12, C.R.S.;

(b) Repealed.

(29.5) Repealed.

(30) (a) The following functions of the specified agency shall terminate on July 1, 2001:

(I) to (VI) Repealed.

(b) The following boards in the division of registrations shall terminate July 1, 2001:

(I) to (III) Repealed.

(c) and (d) Repealed.

(31) (a) Repealed.

(b) The following agencies, functions, or both, shall terminate on July 1, 2002:

(I) to (IV) Repealed.

(31.5) The following agencies, functions, or both, shall terminate on July 1, 2002:

(a) Repealed.

(b) The division of insurance, created by sections 10-1-103 and 10-1-104, C.R.S.

(32) The following function of the specified agency shall terminate on July 1, 2003:

(a) to (d) Repealed.

(32.1) Repealed.

(32.5) The following agencies, functions, or both, shall terminate on July 1, 2003:

(a) to (g) Repealed.

(33) (Deleted by amendment, L. 94, p. 1637, § 49, effective May 31, 1994.)

(34) The following agencies, functions, or both, shall terminate on July 1, 2004:

(a) to (c) Repealed.

(d) (I) (Deleted by amendment, L. 2004, p. 15, § 3, effective July 1, 2004.)

(II) (Deleted by amendment, L. 2004, p. 520, § 10, effective July 1, 2004.)

(e) to (i) Repealed.

(35) Repealed.

(36) The following agencies, functions, or both, shall terminate on July 1, 2005:

(a) to (d) Repealed.

(e) The functions of the community corrections board in assisting in and expediting the application process of an inmate or an offender for the receipt of medical assistance or supplemental security income prior to release in accordance with section 17-27-105.7, C.R.S.

(f) Repealed.

(37) The following agencies, functions, or both, shall terminate on July 1, 2006:

(a) and (b) Repealed.

(c) (Deleted by amendment, L. 2003, p. 624, § 44, effective July 1, 2003.)

(d) and (e) Repealed.

(f) (Deleted by amendment, L. 2006, p. 203, § 2, effective March 31, 2006.)

(g) to (j) Repealed.

(38) The following agencies, functions, or both, shall terminate on July 1, 2007:

(a) to (i) Repealed.

(39) (a) Repealed.

(b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(I) to (XV) Repealed.

(XVI) (Deleted by amendment, L. 2008, p. 210, § 6, effective March 26, 2008.)

(XVII) to (XX) Repealed.

(XXI) Review of multiple employer welfare arrangements pursuant to section 10-16-910, C.R.S., by the department of regulatory agencies.

(XXII) Repealed.

(40) The following agencies, functions, or both, shall terminate on July 1, 2009:

(a) to (f) Repealed.

(g) (Deleted by amendment, L. 2009, (SB 09-116), ch. 62, p. 220, § 2, effective July 1, 2009.)

(h) and (i) Repealed.

(j) The following functions of the commissioner of the department of agriculture:

(I) and (II) Repealed.

(III) (Deleted by amendment, L. 2009, (SB 09-114), ch. 111, p. 461, § 2, effective April 9, 2009.)

(IV) Repealed.

(k) to (m) Repealed.

(n) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2157, § 2, effective July 1, 2009.)

(o) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2165, § 2, effective July 1, 2009.)

(p) (Deleted by amendment, L. 2009, (SB 09-167), ch. 366, p. 1916, § 2, effective June 1, 2009.)

(41) The following agencies, functions, or both, shall terminate on July 1, 2010:

(a) Repealed.

(b) The following boards in the division of registrations in the department of regulatory agencies:

(I) and (II) Repealed.

(c) to (p) Repealed.

(q) The obesity treatment pilot program implemented by the department of health care policy and financing pursuant to section 25.5-5-317, C.R.S.

(r) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2157, § 2, effective

July 1, 2009.)

(s) Repealed.

(41.5) Repealed.

(42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(a) to (h) Repealed.

(i) (Deleted by amendment, L. 2011, (SB 11-192), ch. 230, p. 983, § 1, effective July 1, 2011.)

(j) to (o) Repealed.

(43) The following agencies, functions, or both, terminate on July 1, 2012:

(a) and (b) Repealed.

(c) The licensing of audiologists and hearing aid providers by the division of professions and occupations, pursuant to article 5.5 of title 12, C.R.S.;

(d) to (h) Repealed.

(43.5) The following agencies, functions, or both, terminate on June 30, 2013:

(a) to (c) Repealed.

(44) The following agencies, functions, or both, terminate on July 1, 2013:

(a) and (b) Repealed.

(c) (Deleted by amendment, L. 2011, (HB 11-1303), ch. 264, p. 1165, § 58, effective August 10, 2011.)

(d) Repealed.

(e) The Colorado coordination council within the office of the executive director of the department of natural resources created in part 3 of article 33 of this title;

(f) Repealed.

(g) The banking board, created by article 102 of title 11, C.R.S.

(h) to (q) Repealed.

(44.5) Repealed.

(45) The following agencies, functions, or both, terminate on July 1, 2014:

(a) The accreditation of health care providers under the workers' compensation system in accordance with section 8-42-101 (3.5) and (3.6), C.R.S.;

(b) The regulation of outfitters by the director of the division of professions and occupations pursuant to article 55.5 of title 12, C.R.S.;

(c) The state board of dental examiners, created by article 35 of title 12, C.R.S.;

(d) The fire suppression program of the division of fire prevention and control, created pursuant to sections 24-33.5-1204.5, 24-33.5-1206.1, 24-33.5-1206.2, 24-33.5-1206.3, 24-33.5-1206.4, 24-33.5-1206.5, 24-33.5-1206.6, and 24-33.5-1207.6;

(e) The record-keeping and licensing functions of the department of human services relating to addiction programs under which controlled substances are compounded, administered, or dispensed in accordance with part 2 of article 80 of title 27, C.R.S.;

(f) Repealed.

(g) The licensing of home care agencies in accordance with article 27.5 of title 25, C.R.S.;

(h) The licensing of pet animal facilities pursuant to article 80 of title 35, C.R.S.

(45.5) The following agencies, functions, or both, shall terminate on September 1, 2014:

(a) In-home support services, established pursuant to part 12 of article 6 of title 25.5, C.R.S.

(46) The following agencies, functions, or both shall terminate on July 1, 2015:

(a) The licensing of massage parlors in accordance with article 48.5 of title 12, C.R.S.;

(b) The securities board, created in section 11-51-702.5, C.R.S.;

(c) The division of securities, created pursuant to article 51 of title 11, C.R.S.;

(d) The compliance advisory panel to the air pollution control division in the department of public health and environment created in section 25-7-109.2, C.R.S.;

(e) The licensing and regulation of respiratory therapists by the division of professions and occupations in the department of regulatory agencies in accordance with article 41.5 of title 12, C.R.S.;

(f) The licensing of barbers, hairstylists, cosmetologists, cosmeticians, and manicurists by the director of the division of professions and occupations pursuant to article 8 of title 12, C.R.S.;

(g) The office of consumer counsel, created in article 6.5 of title 40, C.R.S.;

(h) The utility consumers' board, created in article 6.5 of title 40, C.R.S.;

(i) The regulation of commercial applicators, qualified supervisors, certified operators, and private applicators by the commissioner of agriculture in accordance with article 10 of title 35, C.R.S.;

(j) The functions pursuant to part 2 of article 14.5 of title 12, C.R.S., of the administrator designated pursuant to section 5-6-103, C.R.S., and the registration of debt-management service providers;

(k) The regulation of athletic trainers by the director of the division of professions and occupations in the department of regulatory agencies in accordance with article 29.7 of title 12, C.R.S.;

(l) The regulation of persons registered to practice mortuary science pursuant to sections 12-54-110 and 12-54-111, C.R.S., and cremation pursuant to sections 12-54-303 and 12-54-304, C.R.S., and the administration thereof pursuant to part 4 of article 54 of title 12, C.R.S.;

(m) The Colorado commission for the deaf and hard of hearing, created by article 21 of title 26, C.R.S.;

(n) The regulation of persons licensed pursuant to article 43.3 of title 12, C.R.S.

(46.5) The following agencies, functions, or both, shall terminate on September 1, 2015:

(a) The regulation of private occupational schools and their agents under article 59 of title 12, C.R.S., including the functions of the private occupational school division created in section 12-59-104.1, C.R.S., and the private occupational school board created in section 12-59-105.1, C.R.S.

(47) The following agencies, functions, or both, shall terminate on July 1, 2016:

(a) Repealed.

(b) The division of racing events, including the Colorado racing commission created by article 60 of title 12, C.R.S.;

(c) The rural alcohol and substance abuse prevention and treatment program created pursuant to section 27-80-117, C.R.S., within the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse;

(d) The regulation of persons licensed pursuant to article 43.4 of title 12, C.R.S.

(47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(a) The nursing facility culture change accountability board created in section 25-1-107.5 (6), C.R.S., and the use of moneys in the nursing home penalty cash fund for the purposes described in section 25-1-107.5 (4) (c) (II), C.R.S.;

(b) The registration of surgical assistants and surgical technologists pursuant to article 43.2 of title 12, C.R.S.;

(c) The identity theft and financial fraud board and the Colorado fraud investigators unit created in part 17 of article 33.5 of this title;

(d) The issuance of information letters and private letter rulings by the executive director of the department of revenue in accordance with section 24-35-103.5;

(e) The registration and regulation of vessels by the department of natural resources in accordance with article 13 of title 33, C.R.S.;

(f) The sex offender management board created in section 16-11.7-103, C.R.S.;

(g) The teen pregnancy and dropout prevention program, created in section 25.5-5-603, C.R.S.;

(h) The registration of direct-entry midwives by the division of registrations in accordance with article 37 of title 12, C.R.S.;

(i) The voluntary licensing of private investigators by the director of the division of professions and occupations in accordance with article 58.5 of title 12, C.R.S.

(48) The following agencies, functions, or both, shall terminate on July 1, 2017:

(a) The licensing of landscape architects and the Colorado state board of landscape architects in the department of regulatory agencies in accordance with article 45 of title 12, C.R.S.;

(b) The certification of conveyances and conveyance mechanics, contractors, and inspectors pursuant to article 5.5 of title 9, C.R.S.;

(c) The motor vehicle dealer board, created by section 12-6-103, C.R.S., and the

functions of the executive director of the department of revenue, including licensing, in accordance with part 1 of article 6 of title 12, C.R.S.;

(d) The regulation of powersports vehicles by the motor vehicle dealer board, created by section 12-6-103, C.R.S.;

(e) The function of licensing of bingo and other games of chance through the secretary of state in accordance with article 9 of title 12, C.R.S.;

(f) The Colorado bingo-raffle advisory board, created in section 12-9-201, C.R.S.;

(g) The division of real estate, including the real estate commission created in part 1 of article 61 of title 12, C.R.S.;

(h) The regulation of collection agencies pursuant to article 14 of title 12, C.R.S.;

(i) The office of boxing, including the Colorado state boxing commission, created by article 10 of title 12, C.R.S.;

(j) The functions of the division of insurance in the department of regulatory agencies pursuant to article 1 of title 10, C.R.S., other than the functions of the division related to the licensing of bail bonding agents.

(48.5) The following agencies, functions, or both, terminate on September 1, 2017:

(a) The domestic violence offender management board created in section 16-11.8-103, C.R.S.;

(b) The regulation of speech-language pathologists by the director of the division of professions and occupations pursuant to article 43.7 of title 12, C.R.S.;

(c) The licensing of professional cash-bail agents and cash-bonding agents under article 23 of title 10, C.R.S.;

(d) The MOST program created by part 5 of article 5 of title 43, C.R.S.;

(e) The registering of naturopathic doctors by the director pursuant to article 37.3 of title 12, C.R.S.

(49) The following agencies, functions, or both, shall terminate on July 1, 2018:

(a) The environmental management system permit program, created in article 6.6 of title 25, C.R.S.;

(b) The conservation easement oversight commission, created in section 12-61-721, C.R.S.;

(c) The issuance of licenses and certificates related to measurement standards by the commissioner of the department of agriculture in accordance with article 14 of title 35, C.R.S.;

(d) The regulation by the department of agriculture of the custom processing of meat animals in accordance with article 33 of title 35, C.R.S.;

(e) The regulation by the department of agriculture of home food service plans in accordance with article 33.5 of title 35, C.R.S.;

(f) The board of examiners of nursing home administrators created pursuant to section 12-39-104, C.R.S.;

(g) The appointment of notaries public through the secretary of state in accordance with part 1 of article 55 of title 12, C.R.S.;

(h) The Colorado civil rights division, including the Colorado civil rights commission, created by part 3 of this article;

(i) The consolidated communications system authority created in section 29-24.5-103, C.R.S.

(49.5) The following agencies, functions, or both, terminate on September 1, 2018:

(a) The automobile theft prevention authority and the automobile theft prevention board, created in section 42-5-112, C.R.S.;

(b) The licensing of physical therapists by the physical therapy board in accordance with article 41 of title 12, C.R.S.;

(c) The certification of physical therapist assistants by the physical therapy board in accordance with article 41 of title 12, C.R.S.;

(d) The issuance of permits for specific weather modification operations through the executive director of the department of natural resources in accordance with article 20 of title 36, C.R.S.;

(e) The licensing of mortgage loan originators and the registration of mortgage companies pursuant to part 9 of article 61 of title 12, C.R.S.;

(f) The requirements and procedures regarding the preparation of a cost-benefit analysis in accordance with section 24-4-103 (2.5);

(g) The licensing of community association managers by the director of the division of real estate in accordance with part 10 of article 61 of title 12, C.R.S.

Editor's note: Paragraph (g) is effective January 1, 2015.

(50) The following agencies, functions, or both, shall terminate on July 1, 2019:

(a) Repealed.

(b) The passenger tramway safety board, created in section 25-5-703, C.R.S.;

(c) The licensing of public livestock markets pursuant to article 55 of title 35, C.R.S.;

(d) The licensing and regulation of psychiatric technicians by the state board of nursing pursuant to article 42 of title 12, C.R.S.;

(e) The state board of accountancy, created by article 2 of title 12, C.R.S.;

(f) The state electrical board, created by article 23 of title 12, C.R.S.;

(g) The Colorado podiatry board, created by article 32 of title 12, C.R.S.;

(h) The Colorado medical board, created by article 36 of title 12, C.R.S.

(50.5) The following agencies, functions, or both, terminate on September 1, 2019:

(a) The Colorado public utilities commission, created by article 2 of title 40,

C.R.S.;

(b) The functions of the commissioner of the department of agriculture related to seed potatoes under article 27.3 of title 35, C.R.S.;

(c) The functions of the administrator, defined in section 5-9.5-103, C.R.S., with regard to refund anticipation loan facilitators regulated under article 9.5 of title 5, C.R.S.;

(d) The function of licensing river outfitters through the parks and wildlife commission and the division of parks and wildlife in accordance with article 32 of title 33, C.R.S.;

(e) The cold case task force created in section 24-33.5-109;

(f) The regulation of dialysis treatment clinics and hemodialysis technicians pursuant to section 25-1.5-108, C.R.S.;

(g) The functions of professional review committees pursuant to article 36.5 of title 12, C.R.S.

(51) The following agencies, functions, or both, shall terminate on July 1, 2020:

(a) The regulation of persons working in coal mines by the department of natural resources through the coal mine board of examiners in accordance with article 22 of title 34, C.R.S.;

(b) The regulation of poultry eggs pursuant to article 21 of title 35, C.R.S.;

(c) The registration functions of the commissioner of agriculture pursuant to article 27 of title 35, C.R.S.;

(d) The licensing and regulation of persons by the department of agriculture pursuant to article 16 of title 12, C.R.S.;

(e) The state board of nursing, created by article 38 of title 12, C.R.S.;

(f) The Colorado state board of chiropractic examiners, created by article 33 of title 12, C.R.S.

(51.5) The following agencies, functions, or both, terminate on September 1, 2020:

(a) The certification of nurse aides by the state board of nursing in accordance with article 38.1 of title 12, C.R.S.;

(b) The HOA information and resource center, created in section 12-61-406.5, C.R.S.;

(c) Notwithstanding paragraph (a) of subsection (11) of this section, the functions of the boards created pursuant to article 43 of title 12, C.R.S., relating to the licensing, registration, or certification of and grievances against any person licensed, registered, or certified pursuant to article 43 of title 12, C.R.S.;

(d) The water and wastewater facility operators certification board, created by section 25-9-103, C.R.S.;

(e) The licensing of audiologists by the division of professions and occupations pursuant to article 29.9 of title 12, C.R.S.;

(f) The licensing of hearing aid providers by the division of professions and

occupations, pursuant to article 5.5 of title 12, C.R.S.;

(g) The licensing of occupational therapists and occupational therapy assistants in accordance with article 40.5 of title 12, C.R.S.

(52) The following agencies, functions, or both, terminate on July 1, 2021:

(a) The workers' compensation classification appeals board, created in article 55 of title 8, C.R.S.;

(b) The electronic prescription drug monitoring program created in part 4 of article 42.5 of title 12, C.R.S.

(52.5) The following agencies, functions, or both, terminate on September 1, 2021:

(a) The assistance program for disability benefits under part 22 of article 30 of this title;

(b) The state board of pharmacy and the regulation of the practice of pharmacy by the department of regulatory agencies through the division of professions and occupations in accordance with parts 1 to 3 of article 42.5 of title 12, C.R.S.

(53.5) The following agencies, functions, or both, terminate on September 1, 2022:

(a) The state board of optometry, created by article 40 of title 12, C.R.S.;

(b) The state board of veterinary medicine, created by article 64 of title 12, C.R.S.;

(c) The certification of persons in connection with the control of asbestos pursuant to part 5 of article 7 of title 25, C.R.S.;

(d) The licensing of persons who practice acupuncture by the director of the division of professions and occupations in accordance with article 29.5 of title 12, C.R.S.;

(e) The licensure of massage therapists by the director of the division of professions and occupations in accordance with article 35.5 of title 12, C.R.S.;

(f) The board of real estate appraisers, created by article 61 of title 12, C.R.S.;

(g) The division of gaming, created by part 2 of article 47.1 of title 12, C.R.S.

(54) Reserved.

(55) The following agencies, functions, or both, terminate on September 1, 2024:

(a) The division of financial services created by article 44 of title 11, C.R.S.;

(b) The licensing functions of the banking board and the state bank commissioner in accordance with article 52 of title 12, C.R.S., regarding persons who transmit money;

(c) The division of banking and the banking board created by article 102 of title 11, C.R.S.;

(d) The state board of licensure for architects, professional engineers, and professional land surveyors in the department of regulatory agencies, created by section 12-25-106, C.R.S.;

(e) The state plumbing board, created by article 58 of title 12, C.R.S.

24-34-104.1. General assembly sunrise review of new regulation of occupations and professions. (1) The general assembly finds that regulation should be imposed on an occupation or profession only when necessary for the protection of the public interest. The general assembly further finds that establishing a system for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with the public interest.

(2) (a) For proposals submitted on or after July 1, 2012, any professional or occupational group or organization, any individual, or any other interested party that proposes the regulation of any unregulated professional or occupational group shall submit the following information to the department of regulatory agencies no later than December 1 of any year for analysis and evaluation during the following year:

(I) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(II) A definition of the problem or problems to be solved by regulation and the reasons why regulation is necessary;

(III) A statement of support for the proposed regulation as described in paragraph (b) of this subsection (2);

(IV) The reasons why certification, registration, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;

(V) The benefit to the public that would result from the proposed regulation;

(VI) The cost of the proposed regulation; and

(VII) A description of any anticipated disqualifications on an applicant for licensure, certification, relicensure, or recertification based on criminal history and how the disqualifications serve public safety or commercial or consumer protection interests.

(b) The department shall review a proposal to regulate a professional or occupational group only when the party requesting the review files a statement of support for the proposed regulation that has been signed by at least ten members of the professional or occupational group for which regulation is being sought or at least ten individuals who are not members of the professional or occupational group.

(3) (a) Except as provided in paragraph (b) or (c) of this subsection (3), the department of regulatory agencies shall conduct an analysis and evaluation of any proposed regulation submitted on or after July 1, 2012. The analysis and evaluation must be based upon the criteria listed in paragraph (b) of subsection (4) of this section. The department of regulatory agencies shall submit a report to the proponents of the regulation and to the general assembly no later than October 15 of the year following the year in which the proposed regulation was submitted.

(b) (I) After review of a proposal to regulate a professional or occupational group that was submitted on or after July 1, 2012, the department of regulatory agencies may

decline to conduct an analysis and evaluation of the proposed regulation only if it:

(A) Previously conducted an analysis and evaluation of the proposed regulation of the same professional or occupational group;

(B) Issued a report not more than thirty-six months prior to the submission of the current proposal to regulate the same professional or occupational group; and

(C) Finds that no new information has been submitted that would cause the department to alter or modify the recommendations made in its earlier report on the proposed regulation of the professional or occupational group.

(II) If the department of regulatory agencies declines to conduct an analysis and evaluation pursuant to this paragraph (b), the department shall reissue its earlier report on the proposed regulation to the proponents of the regulation and the general assembly no later than October 15 of the year following the year in which the proposed regulation was submitted.

(c) If the department receives a proposal to regulate a professional or occupational group indicating, based on documentation verified by the department, that the unregulated professional or occupational group poses an imminent threat to public health, safety, or welfare, the department shall promptly notify the proponents of the proposed regulation and the legislative council of the general assembly of the imminent threat and shall submit to the legislative council the documentation on which it bases its finding of imminent threat. Within thirty days after receipt of the notice and documentation from the department, the legislative council shall conduct a hearing to examine the documentation and determine whether it concurs with the department's finding that an imminent threat exists. In conducting its examination, the legislative council shall consider whether regulation of the professional or occupational group without first obtaining an analysis and evaluation pursuant to paragraph (a) of this subsection (3) will substantially alter the impact on public health, safety, or welfare. The department may forego the analysis and evaluation only if the legislative council notifies the department that the legislative council concurs with the department's finding of imminent threat to public health, safety, and welfare.

(4) (a) (Deleted by amendment, L. 96, p. 796, § 7, effective May 23, 1996.)

(b) In such hearings, the determination as to whether such regulation of an occupation or a profession is needed shall be based upon the following considerations:

(I) 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 the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;

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

(IV) Whether the imposition of any disqualifications on applicants for licensure,

certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

(c) (Deleted by amendment, L. 96, p. 796, § 7, effective May 23, 1996.)

(5) Repealed.

(6) (a) Except as provided in paragraph (b) of this subsection (6), the supporters of regulation of a professional or occupational group may request members of the general assembly to present appropriate legislation to the general assembly during each of the two regular sessions that immediately succeed the date of the report required pursuant to subsection (3) of this section without the supporters having to comply again with the provisions of subsections (2), (3), and (4) of this section. Bills introduced pursuant to this subsection (6) shall count against the number of bills to which members of the general assembly are limited by any joint rule of the senate and the house of representatives.

(b) If, pursuant to paragraph (b) or (c) of subsection (3) of this section, the department of regulatory agencies declines to conduct an analysis and evaluation of the proposed regulation of a professional or occupational group and reissues a prior report on the proposed regulation of the same professional or occupational group or finds that the unregulated professional or occupational group poses an imminent threat to public health, safety, or welfare, as confirmed by the legislative council of the general assembly, the supporters of the regulation of the professional or occupational group may request that members of the general assembly present appropriate legislation to the general assembly during each of the next two regular sessions that begin after the date the department reissues its original report on the proposed regulation or the date on which the legislative council notifies the department that it concurs in a finding of imminent threat pursuant to paragraph (c) of subsection (3) of this section, whichever is applicable.

(7) This section is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirement of this section shall remain in effect until changed by the general assembly acting by bill.

24-34-104.3. General assembly review of reprocessing fee - motor vehicle registration. (Repealed)

24-34-104.4. Excise tax on fees. (1) Notwithstanding any provision of law to the contrary, there is imposed, and the executive director of the department of regulatory agencies shall collect, an excise tax upon the payment of the following fees:

(a) and (b) (Deleted by amendment, L. 97, p. 1613, § 1, effective July 1, 1997.)

(c) Repealed.

(d) (Deleted by amendment, L. 97, p. 1613, § 1, effective July 1, 1997.)

(e) Within the division of professions and occupations, renewal fees that are

required to be paid by individuals for the renewal of a license, registration, or certificate granting the individual authority or permission from the state to continue the practice of a profession or occupation; except that such excise tax shall not be imposed on the renewal fee paid by nurse aides pursuant to section 12-38.1-109, C.R.S. The amount of the excise tax to be collected shall be one dollar for each year of the renewal period.

(2) For the purposes of this section, "renewal fees" includes all fees for the renewal, reinstatement, and continuation of a license, registration, or certificate for the practice of a profession or occupation in this state. "Renewal fees" does not include fees paid for initial licensure, registration, or certification, application fees, examination fees, penalty late fees, duplicate license fees, board action fees, verification fees, license change fees, fees for the verification of licensure, registration, or certification status to other states, electrical inspection permit fees, plumbing inspection fees, and fees for certification of grades.

(2.5) Repealed.

(3) Moneys collected pursuant to subsection (1) of this section shall be credited to the legal defense account created within the division of professions and occupations cash fund pursuant to section 24-34-105 (2) (b).

(4) (a) (Deleted by amendment, L. 97, p. 1613, § 1, effective July 1, 1997.)

(b) On October 1 of each year, the executive director of the department of regulatory agencies shall report to the joint budget committee the amount of money credited to the legal defense account created within the division of professions and occupations cash fund pursuant to subsection (1) of this section for the preceding fiscal year.

24-34-104.5. Cost of reports - charges. The reasonable cost to perform sunset reviews of programs not within the department of regulatory agencies shall be charged to the departments in which such programs are located.

24-34-105. Fee adjustments - division of professions and occupations cash fund created - legal defense account - repeal. (1) This section applies to all activities of the boards and commissions in the division in the department.

(2) (a) Each board and commission in the division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the board or commission is authorized by law to collect. The budget request and the adjusted fees for each board or commission must reflect direct and indirect costs that are appropriated in the annual general appropriation act.

(b) (I) Based upon the appropriation made and subject to the approval of the executive director, each board or commission shall adjust its fees so that the revenue

generated from the fees approximates its direct and indirect costs; except that the costs of the state board of psychologist examiners, the state board of marriage and family therapist examiners, the state board of licensed professional counselor examiners, the state board of social work examiners, the state board of registered psychotherapists, and the state board of addiction counselor examiners shall be considered collectively in the renewal fee-setting process. Subsequent revenue generated by the fees set by the boards plus revenues generated pursuant to section 12-43-702.5, C.R.S., shall be compared to those collective costs to determine recovery of direct and indirect costs. The fees remain in effect for the fiscal year for which the budget request applies. All fees collected by each board and commission, not including any fees retained by contractors as established pursuant to section 24-34-101 (10), shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund, which fund is hereby created. All moneys credited to the division of professions and occupations cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(I.5) Any fees established pursuant to section 24-34-101 (10) or (11) may be received by a contractor and retained as payment for the costs of examination or other services rendered pursuant to the contract with the executive director. Fees retained by a contractor and not collected by the state or deposited with the state treasurer shall not be subject to article 36 of this title.

(II) The excise tax collected pursuant to section 24-34-104.4 shall be credited to the legal defense account, which account is hereby created within the division of professions and occupations cash fund. The excise tax is the sole source of funding for the account, and no other fee, or any portion thereof, collected by a board or commission and credited to the division of professions and occupations cash fund shall be deposited in or transferred to the account. The account shall be used to supplement revenues received by a board or commission but shall only be used for the purpose of paying legal expenses incurred by said board or commission. Upon a determination of the need of a board or commission for additional revenues for the payment of legal expenses, the director may authorize the transfer of revenues from the legal defense account to the account of such board or commission in the division of professions and occupations cash fund. For purposes of this subparagraph (II), "legal expenses" includes costs relating to the holding of administrative hearings and charges for legal services provided by the department of law, administrative law judge services, investigative services, expert witnesses, and consultants.

(III) and (IV) Repealed.

(c) Beginning July 1, 1979, and each July 1 thereafter, whenever moneys appropriated to a board or commission for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to such board or commission for the next fiscal year, and such amount shall not be raised from fees

collected by such board or commission. If a supplemental appropriation is made to a board or commission for its activities, the fees of such board or commission, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to a board or commission in the annual long appropriation bill shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by such board or commission.

(3) **Change of name - direction to revisor - repeal.** (a) Within three years after August 8, 2012, the revisor of statutes shall change all references to the division of registrations cash fund in this part 1 and everywhere else a reference is contained in the Colorado Revised Statutes to the division of professions and occupations cash fund.

(b) This subsection (3) is repealed, effective January 1, 2016.

24-34-106. Professions and occupations - alternative to existing disciplinary actions. If, as a result of a proceeding held pursuant to article 4 of this title, it is determined that a person licensed, registered, or certified to practice a profession or occupation pursuant to article 2 of title 10 or title 12, C.R.S., has acted in such a manner as to be subject to disciplinary action, the licensing board, commission, or other agency of the state may, in lieu of or in addition to other forms of disciplinary action that may be authorized by law, require a licensee, registrant, or certificate holder to take courses of training or education relating to his profession or occupation. The licensing board, commission, or other agency of the state shall determine the conditions, on a case-by-case basis, which shall be imposed on such licensee, registrant, or certificate holder including, but not limited to, the type of and number of hours of training or education. All training or education courses are subject to approval by the board, commission, or agency, and the licensee, registrant, or certificate holder shall be required to furnish satisfactory proof that he has successfully completed such courses. Any training or education required by this section shall be in addition to the mandatory continuing education requirements for the profession or occupation, if any.

24-34-107. Applications for licenses - authority to suspend licenses - rules. (1) (a) Every application by an individual for a license issued pursuant to the authority set forth in titles 10, 11, and 12, C.R.S., by any division, board, or agency of the department of regulatory agencies shall require the applicant's name, address, and social security number. Subject to the exemptions found in 8 U.S.C. sec. 1621 (c) (2), to the extent that any such license constitutes a professional license or commercial license regulated by 8 U.S.C. sec. 1621, such division, board, or agency may issue or renew any such license to an individual only if the individual is lawfully present in the United States,

and shall immediately deny any such license or renewal thereof upon determining that the individual is unlawfully present in the United States. The individual shall prove his or her identity with a secure and verifiable document, as that term is defined in section 24-72.1-102. The division, board, or agency shall not sell or utilize for any purpose other than those specified in law the information contained in the secure and verifiable document, and shall keep such information confidential unless disclosure is required by law; except that nothing in this paragraph (a) shall be construed to limit public access to records that are available for public inspection pursuant to article 72 of this title.

(b) For purposes of this subsection (1), an individual is unlawfully present in the United States if the individual is an alien who is not:

(I) A qualified alien as defined in 8 U.S.C. sec. 1641;

(II) A nonimmigrant under the "Immigration and Nationality Act", federal Public Law 82-414, as amended; or

(III) An alien who is paroled into the United States under 8 U.S.C. sec. 1182 (d)(5) for less than one year.

(c) This subsection (1) shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(2) The divisions, boards, or agencies of the department of regulatory agencies shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if such division, board, or agency receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of any such division, board, or agency of the department of regulatory agencies, rules promulgated by the state board of human services, and any memorandum of understanding entered into between any division, board, or agency of the department of regulatory agencies and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The divisions, boards, and agencies of the department of regulatory agencies may enter into a memorandum of understanding with the state child support enforcement agency to facilitate implementation of this section and section 26-13-126, C.R.S., through the rules promulgated pursuant to subsection (2) of this section.

(b) The divisions, boards, and agencies of the department of regulatory agencies are authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any registration, certificate, charter, or membership issued by any division, board, or agency of the department of

regulatory agencies for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-34-108. Consumer outreach and education program - creation - cash fund - fine surcharge. (1) The executive director of the department of regulatory agencies shall develop and implement a consumer outreach and education program, referred to in this section as the "program", for the purposes of informing consumers of their rights regarding regulated professions and occupations, decreasing regulatory violations, and ensuring public awareness of consumer protection information available from the department.

(2) There is hereby created within the state treasury the consumer outreach and education cash fund for the purpose of developing, implementing, and maintaining the program. The fund shall consist of any surcharges that may be imposed by the executive director of the department of regulatory agencies within the department of regulatory agencies, including fines collected pursuant to titles 10, 11, 12, 40, and 42, C.R.S. The amount of each surcharge shall not exceed fifteen percent of the fine collected. The surcharges shall be adjusted as necessary so that surcharge revenues collected do not exceed two hundred thousand dollars annually. All moneys collected shall be transmitted to the state treasurer who shall credit such moneys to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of the program. Moneys in the fund not expended for the purposes of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Moneys credited to the fund shall not be transferred to the general fund or any other fund; except that any unexpended and unencumbered moneys remaining in the fund at the end of any fiscal year that exceed ten percent of the fund's expenditures in that fiscal year shall be transferred to the general fund or another fund.

(3) On or before November 1 of each year, the executive director of the department of regulatory agencies shall provide a report to the joint budget committee of the general assembly that includes the amount of revenue collected from the surcharge in accordance with subsection (2) of this section for the previous fiscal year, a description of how the moneys were spent in the previous fiscal year, and a plan for how the moneys will be spent in the current fiscal year.

24-34-109. Nurse-physician advisory task force for Colorado health care - creation - duties - definition - repeal. (1) There is hereby created, within the division of professions and occupations in the department of regulatory agencies, the nurse-physician

advisory task force for Colorado health care, referred to in this section as "NPATCH". The purpose of the NPATCH is to promote public safety and improve health care in Colorado by supporting collaboration and communication between the practices of nursing and medicine. The NPATCH shall:

(a) Promote patient safety and quality care;

(b) Address issues of mutual concern at the interface of the practices of nursing and medicine;

(c) Inform public policy-making; and

(d) Make consensus recommendations to policy-making and rule-making entities, including:

(I) Recommendations to the state board of nursing created in section 12-38-104, C.R.S., and the Colorado medical board created in section 12-36-103, C.R.S., regarding the transition to the articulated plan model and harmonizing language for articulated plans; and

(II) Recommendations to the executive director of the department of regulatory agencies.

(2) (a) The NPATCH shall consist of twelve members appointed as follows:

(I) One member of the state board of nursing, appointed by the president of the board;

(II) One member of the Colorado medical board, appointed by the president of the board;

(III) Ten members appointed by the governor as follows:

(A) Three members recommended by and representing a statewide professional nursing organization;

(B) Three members recommended by and representing a statewide physicians' organization;

(C) One member representing the nursing community who may or may not be a member of a statewide professional nursing organization;

(D) One member representing the physician community who may or may not be a member of a statewide physicians' organization; and

(E) Two members representing consumers.

(b) The members of the NPATCH shall serve on a voluntary basis without compensation and shall serve three-year terms; except that, in order to ensure staggered terms of office, four of the initial appointees shall serve initial one-year terms and four of the initial appointees shall serve initial two-year terms.

(3) (a) Except as provided in paragraph (b) of this subsection (3), the NPATCH may develop its own bylaws and procedures to govern its operations.

(b) A recommendation of the NPATCH requires the consensus of the members of the task force. For purposes of this section, "consensus" means an agreement, decision, or recommendation that all members of the task force can actively support and that no

member actively opposes.

(4) The division of professions and occupations shall staff the NPATCH. The division's costs for administering and staffing the NPATCH shall be funded by an increase in fees for professional and advanced practice nursing and medical license renewal fees, as authorized in sections 12-38-108 (1) (b) (I) and 12-36-123, C.R.S., with fifty percent of the funding derived from the physician license renewal fees and fifty percent derived from the professional and advanced practice nursing fees.

(5) The NPATCH shall prioritize consideration of and make recommendations on the following topics:

(a) Facilitating a smooth transition to the articulated plan model, as described in sections 12-38-111.6 (4.5) and 12-36-106.4, C.R.S.;

(b) The framework for articulated plans, including creation of sample plans;

(c) Quality assurance mechanisms for all medication prescribers;

(d) Evidence-based guidelines;

(e) Decision support tools;

(f) Safe prescribing metrics for all medication prescribers;

(g) Methods to foster effective communication between health professions;

(h) Health care delivery system integration and related improvements;

(i) Physician standards, process, and metrics to ensure appropriate consultation, collaboration, and referral regarding advanced practice nurse prescriptive authority; and

(j) Prescribing issues regarding providers other than physicians and advanced practice nurses.

(6) (a) The NPATCH shall make recommendations to the state board of nursing and the Colorado medical board to assist the boards in the development of independent rules, consistent with sections 12-38-111.6 (4.5) and 12-36-106.4, C.R.S., regarding prescriptive authority of advanced practice nurses, articulated plans, and the consultation or collaboration between advanced practice nurses and physicians.

(b) The NPATCH shall make recommendations, other than those described in paragraph (a) of this subsection (6), to the executive director of the department of regulatory agencies.

(7) This section is repealed, effective July 1, 2014. Prior to such repeal, the functions of the NPATCH shall be reviewed as provided in section 2-3-1203, C.R.S.

24-34-110. Medical transparency act of 2010 - disclosure of information about health care licensees - fines - rules - short title - legislative declaration. (1) This section shall be known and may be cited as the "Michael Skolnik Medical Transparency Act of 2010".

(2) (a) The general assembly hereby finds and determines that:

(I) The people of Colorado need to be fully informed about the past practices of

persons practicing a health care profession in this state in order to make informed decisions when choosing a health care provider and determining whether to proceed with a particular regimen of care recommended by a health care provider;

(II) The purpose of this section is to provide transparency to the public regarding the competency of persons engaged in the practice of certain health care professions in this state to assist citizens in making informed health care decisions.

(b) The general assembly further finds and declares that it is important to make information about persons engaged in the practice of a health care profession available to the public in a manner that is efficient, cost-effective, and maintains the integrity of the information, and to that end, the general assembly encourages persons to file the required information with the division of professions and occupations electronically, to the extent possible.

(3) (a) As used in this section, "applicant" means a person applying for a new, active license, certification, or registration or to renew, reinstate, or reactivate an active license, certification, or registration to practice:

(I) Audiology pursuant to article 29.9 of title 12, C.R.S.;

(II) As a licensed hearing aid provider pursuant to part 2 of article 5.5 of title 12, C.R.S.;

(III) Acupuncture pursuant to article 29.5 of title 12, C.R.S.;

(IV) Podiatry pursuant to article 32 of title 12, C.R.S.;

(V) Chiropractic pursuant to article 33 of title 12, C.R.S.;

(VI) Dentistry pursuant to article 35 of title 12, C.R.S.;

(VII) Dental hygiene pursuant to article 35 of title 12, C.R.S.;

(VIII) Medicine pursuant to article 36 of title 12, C.R.S.;

(IX) As a physician assistant or an anesthesiologist assistant pursuant to article 36 of title 12, C.R.S.;

(X) Direct-entry midwifery pursuant to article 37 of title 12, C.R.S.;

(XI) Practical nursing, professional nursing, or advanced practice nursing pursuant to article 38 of title 12, C.R.S.;

(XII) Optometry pursuant to article 40 of title 12, C.R.S.;

(XIII) Physical therapy pursuant to article 41 of title 12, C.R.S.;

(XIV) Psychology pursuant to part 3 of article 43 of title 12, C.R.S.;

(XV) Social work pursuant to part 4 of article 43 of title 12, C.R.S.;

(XVI) Marriage and family therapy pursuant to part 5 of article 43 of title 12, C.R.S.;

(XVII) Professional counseling pursuant to part 6 of article 43 of title 12, C.R.S.;

(XVIII) Psychotherapy pursuant to part 7 of article 43 of title 12, C.R.S.;

(XIX) Addiction counseling pursuant to part 8 of article 43 of title 12, C.R.S.;

(XX) Speech-language pathology pursuant to article 43.5 of title 12, C.R.S.;

(XXI) Athletic training pursuant to article 29.7 of title 12, C.R.S.;

(XXII) Massage therapy pursuant to article 35.5 of title 12, C.R.S.;

(XXIII) As a certified nurse aide pursuant to part 1 of article 38.1 of title 12, C.R.S.;

(XXIV) Occupational therapy pursuant to article 40.5 of title 12, C.R.S.;

(XXV) Respiratory therapy pursuant to article 41.5 of title 12, C.R.S.;

(XXVI) Pharmacy pursuant to article 42.5 of title 12, C.R.S.;

(XXVII) As a psychiatric technician pursuant to article 42 of title 12, C.R.S.;

(XXVIII) As a surgical assistant or surgical technologist pursuant to article 43.2 of title 12, C.R.S.; and

(XXIX) Naturopathic medicine pursuant to article 37.3 of title 12, C.R.S.

(b) A person who is an applicant under this subsection (3) is not, by virtue of inclusion in this section, a health care provider for purposes of any other provision of Colorado law.

(4) When applying for a new license, certification, or registration or to renew, reinstate, or reactivate a license, certification, or registration in this state, each applicant shall provide the following information to the director of the division of professions and occupations, in a form and manner determined by the director, as applicable to each profession:

(a) (I) The applicant's full name, including any known aliases;

(II) The applicant's current address of record and telephone number;

(III) The applicant's location of practice, if different than the address of record;

(IV) The applicant's education and training related to his or her profession;

(V) Information pertaining to any license, certification, or registration to practice in the profession for which the applicant seeks licensure, certification, or registration, issued or held during the immediately preceding ten years, including the license, certification, or registration status and year of issuance;

(VI) Any board certifications and specialties, if applicable;

(VII) Any affiliations with or clinical privileges held in hospitals or health care facilities;

(VIII) Any health care-related business ownership interests;

(IX) Information pertaining to the applicant's employer, if any, including name, current address, and telephone number; and

(X) Information pertaining to any health care-related employment contracts or contracts establishing an independent contractor relationship with any entities if the annual aggregate value of the contracts exceeds five thousand dollars, as adjusted by the director during each license, certification, or registration renewal cycle to reflect changes in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, all urban consumers, or its successor index. Nothing in this subparagraph (X) requires an applicant to report such information regarding contracts with insurance carriers for reimbursement of health care services

provided to patients.

(b) Any public disciplinary action taken against the applicant by the director, the applicable state board that regulates the applicant's profession, or the board or licensing agency of any other state or country. The applicant shall provide a copy of the action to the director at the time the application is made.

(c) Any agreement or stipulation entered into between the applicant and the director, the applicable state board that regulates the applicant's profession, or the board or licensing agency of any other state or country whereby the applicant agrees to temporarily cease or restrict his or her practice, or any director or board order restricting or suspending the applicant's license, certification, or registration. The applicant shall provide a copy of the agreement, stipulation, or order to the director at the time the application is made.

(d) (I) Any final action that results in an involuntary limitation or probationary status on, or a reduction, nonrenewal, denial, revocation, or suspension of, the applicant's medical staff membership or clinical privileges at any hospital or health care facility occurring on or after September 1, 1990. The applicant shall not be required to report a precautionary or administrative suspension of medical staff membership or clinical privileges, as defined by the director by rule, unless the applicant resigns his or her medical staff membership or clinical privileges while the precautionary or administrative suspension is pending. To report the information required by this paragraph (d), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the action:

(A) The name of the facility or entity that took the action;

(B) The date the action was taken;

(C) The type of action taken, including any terms and conditions of the action;

(D) The duration of the action; and

(E) Whether the applicant has fulfilled the terms or conditions of the action, if applicable.

(II) Notwithstanding article 36.5 of title 12, article 3 of title 25, C.R.S., and any provision of law to the contrary, the form completed by the applicant pursuant to this paragraph (d) is a public record and is not confidential. Compliance with this paragraph (d) does not constitute a waiver of any privilege or confidentiality conferred by any applicable state or federal law.

(e) Any final action of an employer that results in the applicant's loss of employment where the grounds for termination constitute a violation of the laws governing the applicant's practice. To report the information required by this paragraph (e), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the action:

(I) The name of the employer that terminated the employment; and

(II) The date the termination occurred or became effective.

(f) Any involuntary surrender of the applicant's United States drug enforcement administration registration. The applicant shall provide a copy of the order requiring the surrender of such registration to the director at the time the application is made.

(g) Any final criminal conviction or plea arrangement resulting from the commission or alleged commission of a felony or crime of moral turpitude in any jurisdiction at any time after the person has been issued a license, certification, or registration to practice his or her health care profession in any state or country. The applicant shall provide a copy of the final conviction or plea arrangement to the director at the time the application is made.

(h) Any final judgment against, settlement entered into by, or arbitration award paid on behalf of the applicant on or after September 1, 1990, for malpractice. To report the information required by this paragraph (h), the applicant shall complete a form developed by the director that requires the applicant to report only the following information regarding the malpractice action:

(I) Whether the action was resolved by a final judgment against, settlement entered into by, or arbitration award paid on behalf of the applicant;

(II) The date of the judgment, settlement, or arbitration award;

(III) The location or jurisdiction in which the action occurred or was resolved; and

(IV) The court in which the final judgment was ordered, the mediator that aided in the settlement, if applicable, or the arbitrator that granted the arbitration award.

(i) Any refusal by an issuer of professional liability insurance to issue a policy to the applicant due to past claims experience. The applicant shall provide a copy of the refusal to the director at the time the application is made.

(5) In addition to the information required by subsection (4) of this section, an applicant may submit information regarding awards and recognitions he or she has received or charity care he or she has provided. The director may remove information regarding awards and recognitions that the director finds to be unrelated to the applicant's profession or offensive or inappropriate.

(6) The director shall make the information specified in subsections (4) and (5) of this section that is submitted by an applicant readily available to the public in a manner that allows the public to search the information by name, license number, board certification or specialty area, if applicable, or city of the applicant's address of record. The director may satisfy this requirement by posting and allowing the ability to search the information on the director's web site or on the web site for the state regulatory board that oversees the applicant's practice. If the information is made available on either web site, the director shall ensure that the web site is updated at least monthly and that the date on which the update occurs is indicated on the web site. If the information made available pursuant to this subsection (6) is the same or substantially similar to information the director must make available pursuant to section 12-43.2-102 (3), C.R.S., the director may elect to use this database as the exclusive means for making the information required by

section 12-43.2-102 (3), C.R.S., publicly available.

(7) When disclosing information regarding an applicant to the public, the director or applicable state board that regulates the applicant's profession shall include the following statement or a similar statement that communicates the same meaning:

> Some studies have shown that there is no significant correlation between malpractice history and a [insert applicable type of health care provider]'s competence. At the same time, the [director or board of _____, as applicable] believes that consumers should have access to malpractice information. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high quality care by selecting a health care provider based solely on malpractice history. When considering malpractice data, please keep in mind:
>
> Malpractice histories tend to vary by profession and, as applicable, by specialty. Some professions or specialties are more likely than others to be the subject of litigation.
>
> You should take into account how long the health care provider has been in practice when considering malpractice averages.
>
> The incident causing the malpractice claim may have happened years before a malpractice action is finally resolved. Sometimes, it takes a long time for a malpractice lawsuit to move through the legal system.
>
> Some health care providers work primarily with high-risk patients. These health care providers may have malpractice histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.
>
> Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the health care provider. A payment in settlement of a malpractice action or claim should not be construed as creating a presumption that malpractice has occurred.
>
> You may wish to discuss information provided by the [director or board of _____, as applicable], and malpractice generally, with your health care provider.
>
> The information posted on the [director's or board of _____'s, as applicable] web site was provided by applicants for a license and applicants for renewal, reinstatement, or reactivation of a license.

(8) (a) Except as specified in paragraph (b) of this subsection (8), an applicant, licensee, certificate holder, or registrant shall ensure that the information required by subsection (4) of this section is current and shall report any updated information and

provide copies of the required documentation to the director within thirty days after the date of the action described in said subsection (4) or as otherwise provided in the article of title 12, C.R.S., that regulates the applicant's, licensee's, certificate holder's, or registrant's profession to ensure that the information provided to the public is as accurate as possible.

(b) An applicant shall report updated information regarding the applicant's employer, any health care-related business ownership interests, and any health care-related employment contracts or contracts establishing an independent contractor relationship, as required by paragraph (a) of subsection (4) of this section, within one year after a change in that information.

(9) (a) The director may impose an administrative fine not to exceed five thousand dollars against an applicant, licensee, certificate holder, or registrant who fails to comply with this section. The director shall notify the applicable state board that regulates the profession when the director imposes a fine pursuant to this subsection (9). Any fine imposed pursuant to this subsection (9) shall be deposited in the general fund.

(b) The imposition of an administrative fine pursuant to this subsection (9) shall not constitute a disciplinary action pursuant to the laws governing the applicant's, licensee's, certificate holder's, or registrant's practice area and shall not preclude the state regulatory board that oversees the applicant's, licensee's, certificate holder's, or registrant's practice area from taking disciplinary action against an applicant, licensee, certificate holder, or registrant for failure to comply with this section. A license, certification, or registration shall not be issued, renewed, reinstated, or reactivated if the applicant has failed to pay a fine imposed pursuant to this subsection (9).

(c) Failure of an applicant, licensee, certificate holder, or registrant to comply with this section constitutes unprofessional conduct or grounds for discipline under the specific article of title 12, C.R.S., that regulates the applicant's, licensee's, certificate holder's, or registrant's profession.

(10) Nothing in this section relieves an applicant, licensee, certificate holder, or registrant from his or her obligation to report adverse actions to the director or applicable state board that regulates the applicant's profession, as required by the applicable laws in title 12, C.R.S., regulating that profession.

(11) The director may adopt rules, as necessary, to implement this section.

24-34-110.5. Health care work force data collection - notice of funding through gifts, grants, and donations - repeal. (1) On or before July 1, 2013, the director of the division of professions and occupations shall implement a system to collect health care work force data from health care professionals who are eligible for the Colorado health service corps pursuant to part 5 of article 1.5 of title 25, C.R.S., from practical and professional nurses licensed pursuant to article 38 of title 12, C.R.S., and

from pharmacists who are licensed pursuant to article 22 of title 12, C.R.S., collectively referred to in this section as "health care professionals". Each health care professional shall submit the data as part of the initial licensure process and upon the renewal of his or her license. No executive department or board is responsible for verifying the data or disciplining a health care professional for noncompliance with this section.

(2) The director of the division of registrations shall request each health care professional to provide data recommended by the director of the primary care office in consultation with the advisory group formed pursuant to subsection (3) of this section. The director of the division of registrations has final approval authority regarding the form and manner of the data collected. The data collected concerns:

(a) Each practice address of the health care professional;

(b) The number of hours the health care professional provides direct patient care at each practice location;

(c) Any specialties of the health care professional, if applicable;

(d) Information about each practice setting type;

(e) The health care professional's education and training related to his or her profession; and

(f) The year of birth of the health care professional.

(3) (a) The director of the primary care office created in section 25-1.5-403, C.R.S., shall designate an advisory group composed of a representative of the department of regulatory agencies as determined by the executive director, the director of the division of professions and occupations in the department of regulatory agencies, or his or her designee, representatives of the affected health care professions, and individuals with expertise in health care work force research, analysis, and planning to be convened by a nonprofit statewide membership organization that provides programs and services to enhance rural health care in Colorado. The members of the advisory group shall serve without compensation or reimbursement for actual or necessary expenses incurred in the performance of their duties. The advisory group shall recommend the structure of the data elements in subsection (2) of this section. The advisory group shall consider, but is not limited to using, the division of professions and occupations' existing data fields as a possible structure for the data elements recommended in this section. The director of the division of professions and occupations has final approval authority regarding the structure of the data elements.

(b) The director of the division of registrations shall ensure that the data provided by health care professionals is available to the primary care office in electronic format for analysis. A member of the public may request, in writing, unanalyzed data from the primary care office. Data available to the public must be limited to unique records that do not include names or other identifying information.

(c) The advisory group is repealed, effective September 1, 2022. Before the repeal, the department of regulatory agencies shall review the advisory group pursuant to

section 2-3-1203, C.R.S.

(4) (a) The director of the division of registrations is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section; except that the director may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The director shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the division of registrations cash fund created in section 24-34-105. The moneys in the fund are subject to annual appropriation by the general assembly to the director for the direct and indirect costs associated with implementing this section.

(b) (I) In seeking or accepting a gift, grant, or donation, the director shall notify the legislative council staff when he or she has received adequate funding through gifts, grants, or donations to implement this section and shall include in the notification the information specified in section 24-75-1303 (3).

(II) This paragraph (b) is repealed, effective July 1, 2015.

24-34-111. Posting summary transparency reports required by federal law. Upon receipt by the state from the secretary of the United States department of health and human services, the department of regulatory agencies shall post on its web site the report required by section 6002 of the federal "Patient Protection and Affordable Care Act", H.R. 3590, Pub.L. 111-148, containing a summary of information submitted by manufacturers and group purchasing organizations to the secretary pursuant to said law. The department shall post the report by September 30, 2013, and by June 30 of each calendar year thereafter, or as soon as possible after the state receives the report from the secretary, whichever occurs first.

PART 2

COLORADO COMMISSION ON WOMEN

24-34-201 and 24-34-202. (Repealed)

PART 3

COLORADO CIVIL RIGHTS DIVISION - COMMISSION - PROCEDURES

24-34-301. Definitions. As used in parts 3 to 7 of this article, unless the context otherwise requires:

(1) "Age" means a chronological age of at least forty years.

(1.5) "Commission" means the Colorado civil rights commission created by section 24-34-303.

(1.6) "Commissioner" means a member of the Colorado civil rights commission.

(2) "Director" means the director of the Colorado civil rights division, which office is created by section 24-34-302.

(2.5) (a) "Disability" means a physical impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment.

(b) (I) On and after July 1, 1990, as to part 5 of this article, "disability" shall also include such a person who has a mental impairment, but such term does not include any person currently involved in the illegal use of or addiction to a controlled substance.

(II) On and after July 1, 1992, as to parts 4, 6, and 7 of this article, "disability" shall also include such a person who has a mental impairment.

(III) The term "mental impairment" as used in subparagraphs (I) and (II) of this paragraph (b) shall mean any mental or psychological disorder such as developmental disability, organic brain syndrome, mental illness, or specific learning disabilities.

(3) "Division" means the Colorado civil rights division, created by section 24-34-302.

(4) (Deleted by amendment, L. 93, p. 1655, § 59, effective July 1, 1993.)

(4.5) "Marital status" means a relationship or a spousal status of a person, including but not limited to being single, cohabitating, engaged, widowed, married, in a civil union, or legally separated, or a relationship or a spousal status of a person who has had or is in the process of having a marriage or civil union dissolved or declared invalid.

(5) "Person" means one or more individuals, limited liability companies, partnerships, associations, corporations, legal representatives, trustees, receivers, or the state of Colorado, and all political subdivisions and agencies thereof.

(6) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any of the provisions of parts 3 to 7 of this article.

(7) "Sexual orientation" means a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person's perception thereof.

24-34-302. Civil rights division - director - powers and duties. (1) There is hereby created within the department of regulatory agencies a division of state government to be known and designated as the Colorado civil rights division, the head of which shall be the director of the Colorado civil rights division. The director shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution, and the executive director shall give good faith consideration to the recommendations of the commission prior to making the

appointment.

(2) The director shall appoint such investigators and other personnel as may be necessary to carry out the functions and duties of the division. The director and the staff of the division shall receive, investigate, and make determinations on charges alleging unfair or discriminatory practices in violation of parts 4 to 7 of this article.

24-34-303. Civil rights commission - membership. (1) There is hereby created, within the division, the Colorado civil rights commission. The commission shall consist of seven members, who shall be appointed by the governor, with the consent of the senate, for terms of four years. The governor shall make appointments in such a manner that there are at all times two members of the commission representing the business community, at least one of whom shall be a representative of small business, two members of the commission representing state or local government entities, and three members of the commission from the community at large. The membership of the commission shall at all times be comprised of at least four members who are members of groups of people who have been or who might be discriminated against because of disability, race, creed, color, sex, sexual orientation, national origin, ancestry, marital status, religion, or age. Appointments shall be made to provide geographical area representation insofar as may be practicable, and no more than four members shall belong to the same political party.

(2) Vacancies on the commission shall be filled by the governor by appointment, with the consent of the senate, and the term of a commissioner so appointed shall be for the unexpired part of the term for which the commissioner is appointed.

(3) Any commissioner may be removed from office by the governor for misconduct, incompetence, or neglect of duty.

(4) Commissioners shall receive a per diem allowance and shall be reimbursed for actual and necessary expenses incurred by them while on official commission business, as provided in section 24-34-102 (13).

(5) The commission may adopt, amend, or rescind rules for governing its meetings. Four commissioners shall constitute a quorum for purposes of conducting the business of the commission.

24-34-304. Division and commission subject to termination - repeal of part. (1) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division and the commission created by this part 3.

(2) This part 3 is repealed, effective July 1, 2018. Prior to such repeal, the functions of the division and commission shall be reviewed as provided for in section 24-

34-104.

24-34-305. Powers and duties of commission. (1) The commission has the following powers and duties:

(a) To adopt, publish, amend, and rescind rules and regulations, in accordance with the provisions of section 24-4-103, which are consistent with and for the implementation of parts 3 to 7 of this article. All such rules adopted or amended on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II).

(b) Repealed.

(c) (I) To investigate and study the existence, character, causes, and extent of unfair or discriminatory practices as defined in parts 4 to 7 of this article and to formulate plans for the elimination of those practices by educational or other means.

(II) (A) In furtherance of its educational efforts to reduce instances of discriminatory or unfair employment practices, the commission shall create a volunteer working group representing both employer and employee interests, including human resource professionals, to assist in education and outreach efforts to foster understanding of and compliance with part 4 of this article. The commission may accept and expend gifts, grants, and donations to assist in its duties pursuant to this subparagraph (II).

(B) The commission shall create the volunteer working group by September 1, 2013. The working group shall develop and submit to the commission, by January 1, 2014, an education and outreach plan for the commission to implement for purposes of educating employers and providing outreach regarding part 4 of the article.

(C) In addition to the outreach plan required by sub-subparagraph (B) of this subparagraph (II), the working group shall compile and provide to the commission information on educational resources available to employers regarding the requirements of and compliance with part 4 of this article, including resources for employers on prevention of discriminatory employment practices. The commission shall post the information on its web site and shall make the information available in an electronic format to all state departments and agencies that interact with private businesses in the state, including the departments of labor and employment, regulatory agencies, revenue, and state and the governor's office of economic development. Those departments and agencies, within existing resources, shall post the information provided by the commission, or links to that information, on their web sites.

(d) (I) To hold hearings upon any complaint issued against a respondent pursuant to section 24-34-306; to subpoena witnesses and compel their attendance; to administer oaths and take the testimony of any person under oath; and to compel such respondent to produce for examination any books and papers relating to any matter involved in such complaint. Such hearings may be held by the commission itself, or by any commissioner,

or by any administrative law judge appointed by the commission pursuant to part 10 of article 30 of this title, subject to appropriations for such administrative law judges made to the department of personnel; except that, if no administrative law judge is made available within the time limitations set forth in section 24-34-306 (11), the governor shall appoint an administrative law judge at the request of the commission, and such administrative law judge shall be paid out of moneys appropriated to the division. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall in a proper case issue its subpoena. Refusal to obey such subpoena shall be punishable as contempt.

(II) No person may be excused from attending and testifying or from producing records, correspondence, documents, or other evidence in obedience to a subpoena in any such matter on the ground that the evidence or the testimony required of him may tend to incriminate him or subject him to any penalty or forfeiture. However, no testimony or other information compelled under order from the commission, or other information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution and punishment for perjury or false statement committed in so testifying.

(e) To issue such publications and reports of investigations and research as in its judgment will tend to promote goodwill among the various racial, religious, age, and ethnic groups of the state and which will tend to minimize or eliminate discriminatory or unfair practices as specified by parts 3 to 7 of this article. Publications of the commission circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(f) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the commission;

(g) To recommend policies to the governor and to submit recommendations to persons, agencies, organizations, and other entities in the private sector to effectuate such policies;

(h) To make recommendations to the general assembly for such further legislation concerning discrimination as it may deem necessary and desirable;

(i) To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article, in the planning and conducting of educational programs designed to eliminate racial, religious, cultural, age, and intergroup tensions;

(i.5) To intervene in racial, religious, cultural, age, and intergroup tensions or conflicts for the purpose of informal mediation using alternative dispute resolution

techniques. Such intervention may be made in cooperation with other agencies or organizations, both public and private, whose purposes are consistent with those of parts 3 to 7 of this article.

(j) To adopt an official seal.

(2) Any provision of this article to the contrary notwithstanding, no person shall be required to alter, modify, or purchase any building, structure, or equipment or incur any additional expense which would not otherwise be incurred in order to comply with parts 3, 4, 6, and 7 of this article.

(3) In exercising the powers and performing the duties and functions under parts 3 to 7 of this article, the commission, the division, and the director shall presume that the conduct of any respondent is not unfair or discriminatory until proven otherwise.

(4) Whether by rule, regulation, or other action or whether as a remedy for violation of any provision of parts 3 to 7 of this article or otherwise, the commission shall not prescribe or require the implementation of a quota system.

24-34-306. Charge - complaint - hearing - procedure - exhaustion of administrative remedies. (1) (a) Any person claiming to be aggrieved by a discriminatory or unfair practice as defined by parts 4 to 7 of this article may, by himself or herself or through his or her attorney-at-law, make, sign, and file with the division a verified written charge stating the name and address of the respondent alleged to have committed the discriminatory or unfair practice, setting forth the particulars of the alleged discriminatory or unfair practice, and containing any other information required by the division.

(b) The commission, a commissioner, or the attorney general on its own motion may make, sign, and file a charge alleging a discriminatory or unfair practice in cases where the commission, a commissioner, or the attorney general determines that the alleged discriminatory or unfair practice imposes a significant societal or community impact. The charge shall be filed in the same manner and shall contain the same information as required for a charge filed by an individual pursuant to paragraph (a) of this subsection (1). When the commission, a commissioner, or the attorney general files a charge pursuant to this paragraph (b), the remedy available for the discriminatory or unfair practice shall be limited to equitable relief to eliminate the discriminatory or unfair practice.

(c) Prior to any other action by the division regarding the charge, the division shall notify the respondent of the charges filed against him or her.

(2) (a) After the filing of a charge alleging a discriminatory or unfair practice as defined by parts 4 to 7 of this article, the director, with the assistance of the division's staff, shall make a prompt investigation of the charge. The director may subpoena witnesses and compel the testimony of witnesses and the production of books, papers, and

records if the testimony, books, papers, and records sought are limited to matters directly related to the charge. Any subpoena issued pursuant to this paragraph (a) shall be enforceable in the district court for the district in which the alleged discriminatory or unfair practice occurred and shall be issued only if the person or entity to be subpoenaed has refused or failed, after a proper request from the director, to provide voluntarily to the director the information sought by the subpoena.

(b) The director or the director's designee, who shall be an employee of the division, shall determine as promptly as possible whether probable cause exists for crediting the allegations of the charge, and shall follow one of the following courses of action:

(I) If the director or the director's designee determines that probable cause does not exist, he or she shall dismiss the charge and shall notify the person filing the charge and the respondent of the dismissal. In addition, in the notice, the director or the director's designee shall advise both parties:

(A) That the charging party has the right to file an appeal of the dismissal with the commission within ten days after the date the notification of dismissal is mailed;

(B) That, if the charging party wishes to file a civil action in a district court in this state based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the commission, he or she must do so: Within ninety days after the date the notice specified in this subparagraph (I) is mailed if he or she does not file an appeal with the commission pursuant to sub-subparagraph (A) of this subparagraph (I); or within ninety days after the date the notice that the commission has dismissed the appeal specified in sub-subparagraph (A) of this subparagraph (I) is mailed;

(C) That, if the charging party does not file an action within the time limits specified in sub-subparagraph (B) of this subparagraph (I), the action will be barred, and no district court shall have jurisdiction to hear the action.

(II) If the director or the director's designee determines that probable cause exists, the director or the director's designee shall serve the respondent with written notice stating with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted. In addition, the director or the director's designee shall order the charging party and the respondent to participate in compulsory mediation. Immediately after the director or the director's designee serves notice on the respondent, the director or the director's designee shall endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion and by means of the compulsory mediation required by this subparagraph (II).

(c) (Deleted by amendment, L. 2009, (SB 09-110), ch. 238, p. 1083, § 6, effective July 1, 2009.)

(3) The members of the commission and its staff shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion unless such

disclosure is made in connection with the conduct of the investigation, in connection with the filing of a petition seeking appropriate injunctive relief against the respondent under section 24-34-507, or at a public hearing or unless the complainant and the respondent agree to such disclosure. Nothing in this subsection (3) shall be construed to prevent the commission from disclosing its final action on a charge, including the reasons for dismissing such charge, the terms of a conciliation agreement, or the contents of an order issued after hearing.

(4) When the director is satisfied that further efforts to settle the matter by conference, conciliation, and persuasion will be futile, he shall so report to the commission. If the commission determines that the circumstances warrant, it shall issue and cause to be served, in the manner provided by section 24-4-105 (2), a written notice and complaint requiring the respondent to answer the charges at a formal hearing before the commission, a commissioner, or an administrative law judge. Such hearing shall be commenced within one hundred twenty days after the service of such written notice and complaint. Such notice and complaint shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted.

(5) In accordance with rules adopted by the commission, discovery procedures may be used by the commission and the parties under the same circumstances and in the same manner as is provided by the Colorado rules of civil procedure after the notice of hearing under subsection (4) of this section has been given.

(6) The respondent may file a written answer prior to the date of the hearing. When a respondent has failed to answer at a hearing, the commission, a commissioner, or the administrative law judge, as the case may be, may enter his default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry. If the respondent is in default, testimony may be heard on behalf of the complainant. After hearing such testimony, the commission, a commissioner, or the administrative law judge, as the case may be, may enter such order as the evidence warrants.

(7) The commission or the complainant shall have the power to reasonably and fairly amend any complaint, and the respondent shall have like power to amend his answer.

(8) The hearing shall be conducted and decisions rendered in accordance with section 24-4-105; except that the decision shall also include a statement of the reasons why the findings of fact lead to the conclusions. The case in support of the complaint shall be presented at the hearing by one of the commission's attorneys or agents, but no one presenting the case in support of the complaint shall counsel or advise the commission, commissioner, or administrative law judge who hears the case. The director and the staff shall not participate in the hearing except as a witness, nor shall they participate in the deliberations of, or counsel or advise, the commission, commissioner, or administrative law judge in such case. At any such hearing, the person presenting the case

in support of the complaint shall have the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the respondent's conduct shall be presumed not to be unfair or discriminatory until proven otherwise.

(9) If, upon all the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has engaged in or is engaging in any discriminatory or unfair practice as defined in parts 4 to 7 of this article, the commission shall issue and cause to be served upon the respondent an order requiring such respondent to cease and desist from such discriminatory or unfair practice and to take such action as it may order in accordance with the provisions of parts 4 to 7 of this article.

(10) If, upon all of the evidence at a hearing, there is a statement of findings and conclusions in accordance with section 24-4-105, together with a statement of reasons for such conclusions, showing that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue and cause to be served an order dismissing the complaint on the person alleging such discriminatory or unfair practice.

(11) If written notice that a formal hearing will be held is not served within two hundred seventy days after the filing of the charge, if the complainant has requested and received a notice of right to sue pursuant to subsection (15) of this section, or if the hearing is not commenced within the one-hundred-twenty-day period prescribed by subsection (4) of this section, the jurisdiction of the commission over the complaint shall cease, and the complainant may seek the relief authorized under this part 3 and parts 4 to 7 of this article against the respondent by filing a civil action in the district court for the district in which the alleged discriminatory or unfair practice occurred. Such action must be filed within ninety days of the date upon which the jurisdiction of the commission ceased, and if not so filed, it shall be barred and the district court shall have no jurisdiction to hear such action. If any party requests the extension of any time period prescribed by this subsection (11), such extension may be granted for good cause by the commission, a commissioner, or the administrative law judge, as the case may be, but the total period of all such extensions to either the respondent or the complainant shall not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions shall not exceed one hundred eighty days.

(12) The division shall maintain a central file of decisions rendered under parts 3 to 7 of this article, and such file shall be open to the public for inspection during regular business hours.

(13) Any member of the commission and any person participating in good faith in the making of a complaint or a report or in any investigative or administrative proceeding authorized by parts 3 to 7 of this article shall be immune from liability in any civil action brought against him for acts occurring while acting in his capacity as a commission member or participant, respectively, if such individual was acting in good faith within the scope of his respective capacity, made a reasonable effort to obtain the facts of the matter

as to which he acted, and acted in the reasonable belief that the action taken by him was warranted by the facts.

(14) No person may file a civil action in a district court in this state based on an alleged discriminatory or unfair practice prohibited by parts 4 to 7 of this article without first exhausting the proceedings and remedies available to him under this part 3 unless he shows, in an action filed in the appropriate district court, by clear and convincing evidence, his ill health which is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

(15) The charging party in any action may request the division to issue a written notice of right to sue at any time prior to service of a notice and complaint pursuant to subsection (4) of this section. The charging party shall make the request for notice of right to sue in writing. The division shall promptly grant a claimant's request for notice of right to sue made after the expiration of one hundred eighty days following the filing of the charge. If a claimant makes a request for a notice of right to sue prior to the expiration of one hundred eighty days following the filing of the charge, the division shall grant the request upon a determination that the investigation of the charge will not be completed within one hundred eighty days following the filing of the charge. A notice of right to sue shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to this part 3.

24-34-307. Judicial review and enforcement. (1) Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11).

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the commission and upon all parties who appeared before the commission, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the commission in whole or in part.

(4) An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) Any party may move the court to remit the case to the commission in the

interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereof, if such party shows reasonable grounds for the failure to adduce such evidence before the commission.

(6) The findings of the commission as to the facts shall be conclusive if supported by substantial evidence.

(7) The jurisdiction of the court shall be exclusive and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(8) The commission's copy of the testimony shall be available to all parties for examination at all reasonable times, without cost, and for the purpose of judicial review of the commission's orders.

(9) The commission may appear in court by its own attorney.

(9.5) Upon application by a person alleging a discriminatory housing practice under section 24-34-502 or a person against whom such a practice is alleged, the court may appoint an attorney for such person or may authorize the commencement or continuation of a civil action without the payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(10) The commission or court upon motion may grant a stay of the commission order pending appeal.

(11) Appeals filed under this section shall be heard expeditiously and determined upon the transcript filed, without requirement for printing. Hearings in the court of appeals under this part 3 shall take precedence over all other matters, except matters of the same character.

(12) If no proceeding to obtain judicial review is instituted by a complainant or respondent within forty-five days from the service of an order of the commission pursuant to section 24-34-306, the commission may obtain a decree of the district court for the enforcement of such order upon showing that such respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.

24-34-308. Enforcement of federal law prohibited. Nothing in parts 3 to 8 of this article shall be construed to authorize the commission, the director, or the division to enforce any provision of federal law. Nothing in this section shall prevent the commission from accepting federal grants for the enforcement of parts 3 to 7.

PART 4

EMPLOYMENT PRACTICES

24-34-401. Definitions. As used in this part 4, unless the context otherwise

requires:

(1) "Apprenticeship" means any program for the training of apprentices.

(2) "Employee" means any person employed by an employer, except a person in the domestic service of any person.

(3) "Employer" means the state of Colorado or any political subdivision, commission, department, institution, or school district thereof, and every other person employing persons within the state; but it does not mean religious organizations or associations, except such organizations or associations supported in whole or in part by money raised by taxation or public borrowing.

(4) "Employment agency" means any person undertaking to procure employees or opportunities to work for any other person or holding itself out to be equipped to do so.

(5) "Joint apprenticeship committee" means any association of representatives of a labor organization and an employer providing, coordinating, or controlling an apprentice training program.

(6) "Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

(7) "On-the-job training" means any program designed to instruct a person who, while learning the particular job for which he is receiving instruction, is also employed at that job or who may be employed by the employer conducting the program during the course of the program or when the program is completed.

(7.5) "Sexual orientation" means a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer's perception thereof.

(8) "Unfair employment practice" means those practices specified as discriminatory or unfair in section 24-34-402.

(9) "Vocational school" means any school or institution conducting a course of instruction, training, or retraining to prepare individuals to follow an occupation or trade or to pursue a manual, mechanical, technical, industrial, business, commercial, office, personal service, or other nonprofessional occupation.

24-34-402. Discriminatory or unfair employment practices. (1) It shall be a discriminatory or unfair employment practice:

(a) For an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no

reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. For purposes of this paragraph (a), "harass" means to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate.

(b) For an employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which such individual is otherwise qualified because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or for an employment agency to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry; but, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job, and the disability has a significant impact on the job;

(c) For a labor organization to exclude any individual otherwise qualified from full membership rights in such labor organization, or to expel any such individual from membership in such labor organization, or to otherwise discriminate against any of its members in the full enjoyment of work opportunity because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(d) For any employer, employment agency, or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification or required by and given to an agency of government for security reasons;

(e) For any person, whether or not an employer, an employment agency, a labor organization, or the employees or members thereof:

(I) To aid, abet, incite, compel, or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice;

(II) To obstruct or prevent any person from complying with the provisions of this part 4 or any order issued with respect thereto;

(III) To attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;

(IV) To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;

(f) For any employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling apprenticeship programs or providing, coordinating, or controlling on-the-job training programs or other instruction, training, or retraining programs:

(I) To deny to or withhold from any qualified person because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry the right to be admitted to or participate in an apprenticeship training program, an on-the-job training program, or any other occupational instruction, training, or retraining program; but, with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program, and the disability has a significant impact on participation in the program;

(II) To discriminate against any qualified person in pursuit of such programs or to discriminate against such a person in the terms, conditions, or privileges of such programs because of disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry;

(III) To print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for such programs, or to make any inquiry in connection with such programs that expresses, directly or indirectly, any limitation, specification, or discrimination as to disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry or any intent to make any such limitation, specification, or discrimination, unless based on a bona fide occupational qualification;

(g) For any private employer to refuse to hire, or to discriminate against, any person, whether directly or indirectly, who is otherwise qualified for employment solely because the person did not apply for employment through a private employment agency; but an employer shall not be deemed to have violated the provisions of this section if such employer retains one or more employment agencies as exclusive suppliers of personnel and no employment fees are charged to an employee who is hired as a result of having to utilize the services of any such employment agency;

(h) (I) For any employer to discharge an employee or to refuse to hire a person solely on the basis that such employee or person is married to or plans to marry another employee of the employer; but this subparagraph (I) shall not apply to employers with twenty-five or fewer employees.

(II) It shall not be unfair or discriminatory for an employer to discharge an employee or to refuse to hire a person for the reasons stated in subparagraph (I) of this paragraph (h) under circumstances where:

(A) One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;

(B) One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or

(C) One spouse has access to the employer's confidential information, including payroll and personnel records.

(i) Unless otherwise permitted by federal law, for an employer to discharge, discipline, discriminate against, coerce, intimidate, threaten, or interfere with any employee or other person because the employee inquired about, disclosed, compared, or otherwise discussed the employee's wages; to require as a condition of employment nondisclosure by an employee of his or her wages; or to require an employee to sign a waiver or other document that purports to deny an employee the right to disclose his or her wage information. This paragraph (i) shall not apply to employers who are exempt from the provisions of the "National Labor Relations Act", 29 U.S.C. sec. 151 et seq.

(2) Notwithstanding any provisions of this section to the contrary, it is not a discriminatory or an unfair employment practice for the division of unemployment insurance in the department of labor and employment to ascertain and record the disability, sex, age, race, creed, color, or national origin of any individual for the purpose of making reports as may be required by law to agencies of the federal or state government only. The division may make and keep the records in the manner required by the federal or state law, but neither the division nor the department of labor and employment shall divulge the information to prospective employers as a basis for employment, except as provided in this subsection (2).

(3) Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions, or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty hours per week and lasting no more than eighteen months.

(4) Notwithstanding any other provision of this section to the contrary, it shall not be a discriminatory or an unfair employment practice with respect to age:

(a) To take any action otherwise prohibited by this section if age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular employer or where the differentiation is based on reasonable factors other than age; or

(b) To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section; except that, unless authorized in paragraph (a) of this subsection (4), no such employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual; or

(c) To compel the retirement of any employee who is sixty-five years of age or older and under seventy years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee and if such plan equals, in the aggregate, at least forty-four thousand dollars; or

(d) To discharge or otherwise discipline an individual for reasons other than age.

(5) Nothing in this section shall preclude an employer from requiring compliance with a reasonable dress code as long as the dress code is applied consistently.

(6) Notwithstanding any other provision of law, this section shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(7) For purposes of this section, "employer" shall not include any religious organization or association, except for any religious organization or association that is supported in whole or in part by money raised by taxation or public borrowing.

24-34-402.5. Unlawful prohibition of legal activities as a condition of employment. (1) It shall be a discriminatory or unfair employment practice for an employer to terminate the employment of any employee due to that employee's engaging in any lawful activity off the premises of the employer during nonworking hours unless such a restriction:

(a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of a particular employee or a particular group of employees, rather than to all employees of the employer; or

(b) Is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of such a conflict of interest.

(2) (a) Notwithstanding any other provisions of this article, the sole remedy for any person claiming to be aggrieved by a discriminatory or unfair employment practice as defined in this section shall be as follows: He or she may bring a civil action for damages in any district court of competent jurisdiction and may sue for all wages and benefits that would have been due him or her up to and including the date of the judgment had the

discriminatory or unfair employment practice not occurred; except that nothing in this section shall be construed to relieve the person from the obligation to mitigate his or her damages.

(b) (I) If the prevailing party in the civil action is the plaintiff, the court shall award the plaintiff court costs and a reasonable attorney fee.

(II) This paragraph (b) shall not apply to an employee of a business that has or had fifteen or fewer employees during each of twenty or more calendar work weeks in the current or preceding calendar year.

24-34-402.7. Unlawful action against employees seeking protection. (1) (a) Employers shall permit an employee to request or take up to three working days of leave from work in any twelve-month period, with or without pay, if the employee is the victim of domestic abuse, as that term is defined in section 13-14-101 (2), C.R.S., the victim of stalking, as that crime is described in section 18-3-602, C.R.S., the victim of sexual assault, as that crime is defined in section 18-3-402, C.R.S., or the victim of any other crime, the underlying factual basis of which has been found by a court on the record to include an act of domestic violence, as that term is defined in section 18-6-800.3 (1), C.R.S. This section shall only apply if the employee is using the leave from work to protect himself or herself by:

(I) Seeking a civil protection order to prevent domestic abuse pursuant to section 13-14-102, C.R.S.;

(II) Obtaining medical care or mental health counseling or both for himself or herself or for his or her children to address physical or psychological injuries resulting from the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence;

(III) Making his or her home secure from the perpetrator of the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence or seeking new housing to escape said perpetrator;

(IV) Seeking legal assistance to address issues arising from the act of domestic abuse, stalking, or sexual assault or other crime involving domestic violence and attending and preparing for court-related proceedings arising from said act or crime.

(b) The provisions of paragraph (a) of this subsection (1) shall only apply to employers who employ fifty or more employees and to employees who have been employed with the employer for twelve months or more.

(2) (a) Except in cases of imminent danger to the health or safety of the employee, an employee seeking leave from work pursuant to this section shall provide his or her employer with the appropriate advance notice of such leave as may be required by the employer's policy and such documentation as may be required by the employer.

(b) An employee seeking leave pursuant to this section, prior to receiving such

leave, shall exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable, that may be available to the employee, unless the employer waives this requirement.

(c) All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(3) (a) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or any attempt to exercise any rights provided under this section.

(b) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for exercising his or her rights under this section.

(c) An employee shall have no greater rights to continued employment or to other benefits and conditions of employment than if the employee was not entitled to leave under this section. Nothing in this section shall be construed to limit the employer's right to discipline or terminate any employee for any reason, including but not limited to reductions in work force or termination for cause or for no reason at all, other than exercising his or her rights under this section.

(4) Notwithstanding any other provisions of this article to the contrary, the sole remedy for any person claiming to be aggrieved by a violation of this section shall be to bring a civil suit for damages or equitable relief or both in any district court of competent jurisdiction. Such person may claim as damages all wages and benefits that would have been due the person up to and including the date of the judgment had the act violating this section not occurred; except that nothing in this section shall be construed to relieve such person from the obligation to mitigate his or her damages.

24-34-403. Time limits on filing of charges. Any charge alleging a violation of this part 4 shall be filed with the commission pursuant to section 24-34-306 within six months after the alleged discriminatory or unfair employment practice occurred, and if not so filed, it shall be barred.

24-34-404. Charges by employers and others. Any employer, labor organization, joint apprenticeship committee, or vocational school whose employees or members, or some of them, refuse or threaten to refuse to comply with the provisions of this part 4 may file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

24-34-405. Relief authorized - short title. (1) This section shall be known and may be cited as the "Job Protection and Civil Rights Enforcement Act of 2013".

(2) (a) In addition to the relief authorized by section 24-34-306 (9), the commission or the court may order affirmative relief that the commission or court determines to be appropriate, including the following relief, against a respondent who is found to have engaged in an unfair or discriminatory employment practice:

(I) Reinstatement or hiring of employees, with or without back pay. If the commission or court orders back pay, the employer, employment agency, or labor organization responsible for the discriminatory or unfair employment practice shall pay the back pay to the person who was the victim of the practice.

(II) Front pay; or

(III) Any other equitable relief the commission or court deems appropriate.

(b) If the commission or court orders back pay, the liability for back pay accrues from a date not more than two years prior to the filing of a charge with the division. The commission or court shall reduce an award of back pay by any amount of actual earnings of, or amounts that could have been earned with reasonable diligence by, the person who was the victim of the discriminatory or unfair employment practice.

(3) (a) In addition to the relief available pursuant to subsection (2) of this section, and except as provided in paragraph (g) of this subsection (3), in a civil action brought by a plaintiff under this part 4 against a defendant who is found to have engaged in an intentional discriminatory or unfair employment practice, the plaintiff may recover compensatory and punitive damages as specified in this subsection (3). The court shall not award a plaintiff compensatory or punitive damages when the defendant is found to have engaged in an employment practice that is unlawful solely because of its disparate impact.

(b) (I) Except as limited by the "Colorado Governmental Immunity Act", article 10 of this title, and except as provided in subparagraph (II) of this paragraph (b), a plaintiff may recover punitive damages against a defendant, other than the state or any political subdivision, commission, department, institution, or school district of the state, if the plaintiff demonstrates by clear and convincing evidence that the defendant engaged in a discriminatory or unfair employment practice with malice or reckless indifference to the rights of the plaintiff. However, if the defendant demonstrates good-faith efforts to comply with this part 4 and to prevent discriminatory and unfair employment practices in the workplace, the court shall not award punitive damages against the defendant.

(II) The court shall not award punitive damages in a civil action involving a claim of failure to make a reasonable accommodation for a person with a disability if the defendant demonstrates good-faith efforts to identify and make a reasonable accommodation that would provide the person with a disability an equally effective opportunity and would not cause an undue hardship on the operation of the defendant's business.

(c) A plaintiff may recover compensatory damages against a defendant for other pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of

enjoyment of life, and other nonpecuniary losses.

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), the total amount of compensatory and punitive damages awarded pursuant to this subsection (3) shall not exceed the amounts specified in 42 U.S.C. sec. 1981a (b) (3).

(II) For employers who employ fewer than fifteen employees, the total amount of compensatory and punitive damages awarded pursuant to this subsection (3) shall not exceed the following amounts:

(A) If the defendant has one or more employees but fewer than five employees in each of twenty or more calendar weeks in either the current or preceding calendar year, ten thousand dollars; or

(B) If the defendant has five or more employees but fourteen or fewer employees in each of twenty or more calendar weeks in either the current or preceding calendar year, twenty-five thousand dollars.

(III) In determining the appropriate level of damages to award a plaintiff who has been the victim of an intentional discriminatory or unfair employment practice, the court shall consider the size and assets of the defendant and the egregiousness of the intentional discriminatory or unfair employment practice.

(IV) If a plaintiff asserts claims of intentional discriminatory or unfair employment practices under this article and under applicable federal anti-discrimination laws, the plaintiff may recover relief under this section only once for the same injuries, damages, or losses.

(e) Compensatory or punitive damages awarded pursuant to this subsection (3) are in addition to, and do not include, front pay, back pay, interest on back pay, or any other type of relief awarded pursuant to subsection (2) of this section.

(f) The remedies specified in this subsection (3) apply to causes of action alleging discriminatory or unfair employment practices accruing on or after January 1, 2015.

(g) In a civil action involving a claim of discrimination based on age, the plaintiff is entitled only to the relief authorized in subsection (2) of this section and in 29 U.S.C. sec. 626 (b) and 29 U.S.C. sec. 216 (b) if the court finds that the defendant engaged in a discriminatory or unfair employment practice based on age. If, in addition to alleging discrimination based on age, the plaintiff alleges discrimination based on any other factor specified in section 24-34-402 (1), this paragraph (g) does not preclude a plaintiff from recovering the relief authorized by this section for that discrimination claim.

(4) If a plaintiff in a civil action filed under this part 4 seeks compensatory or punitive damages pursuant to subsection (3) of this section, any party to the civil action may demand a trial by jury.

(5) In any civil action under this part 4, the court may award reasonable attorney fees and costs to the prevailing plaintiff. If the court finds that an action or defense brought pursuant to this part 4 was frivolous, groundless, or vexatious as provided in article 17 of title 13, C.R.S., the court may award costs and attorney fees to the defendant

in the action.

(6) Except when federal law is silent on the issue, this section shall be construed, interpreted, and applied in a manner that is consistent with standards established through judicial interpretation of Title VII of the federal "Civil Rights Act of 1964", as amended, 42 U.S.C. sec. 2000e et seq.; the federal "Age Discrimination in Employment Act of 1967", as amended, 29 U.S.C. sec. 621 et seq.; titles I and V of the federal "Americans with Disabilities Act of 1990", as amended, 42 U.S.C. sec. 12111 et seq.; and the federal "Civil Rights Act of 1991", 42 U.S.C. sec. 1981a.

(7) Nothing in this section precludes a party from asserting any other available statutory or common law claims.

(8) (a) As used in this subsection (8), "aggrieved party" means a person who has filed a complaint alleging an intentional discriminatory or unfair employment practice, including an applicant for a position in the state personnel system or an employee in the state personnel system.

(b) The commission, a commissioner, an administrative law judge appointed pursuant to part 10 of article 30 of this title, or, in cases involving applicants for positions in or employees in the state personnel system, the state personnel board established pursuant to section 14 of article XII of the state constitution shall not award damages to an aggrieved party alleging an intentional discriminatory or unfair employment practice. An aggrieved party who is seeking damages as authorized in subsection (3) of this section must file a civil action in a court of competent jurisdiction to recover those damages; except that punitive damages are not recoverable against the state or any political subdivision, commission, department, institution, or school district of the state.

(c) (I) Upon issuance of an order by the commission pursuant to section 24-34-306 (9) and subsection (2) of this section or of a written decision by the state personnel board pursuant to section 24-50-125.4 in which the commission or state personnel board makes a finding of an intentional discriminatory or unfair employment practice, an aggrieved party may file a civil action in a district court in this state seeking damages as authorized in subsection (3) of this section.

(II) For complaints filed with the commission, the aggrieved party must file the action for damages within thirty days after the date the commission mails notice of the order issued pursuant to section 24-34-306 (9) and subsection (2) of this section. If the aggrieved party fails to file an action for damages within thirty days after the date the notice of the order is mailed, the action is barred, no district court has jurisdiction to hear the action, and the commission's order becomes final and is subject to judicial review pursuant to section 24-34-307.

(III) (A) For complaints filed with the state personnel board, if an administrative law judge issues the initial written decision on behalf of the state personnel board, the aggrieved party may not file a civil action until after the expiration of the thirty-day period specified in section 24-50-125.4 (4) for filing an appeal. If a party does not file an

appeal of the administrative law judge's initial decision with the state personnel board in accordance with section 24-50-125.4 (4), the aggrieved party must file the civil action for compensatory damages within thirty days after the expiration of the appeal period specified in section 24-50-125.4 (4). If a party files an appeal with the state personnel board in accordance with section 24-50-125.4 (4), the aggrieved party must file the civil action for compensatory damages within thirty days after the date the state personnel board transmits the notice of its decision on the appeal in accordance with section 24-50-125.4 (6).

(B) If the aggrieved party fails to file an action for compensatory damages within thirty days after the appeal period expires or the date the state personnel board's notice of decision is transmitted, whichever is applicable pursuant to sub-subparagraph (A) of this subparagraph (III), the action for compensatory damages is barred, no district court has jurisdiction to hear the action, and the state personnel board's decision becomes final and is subject to judicial review pursuant to sections 24-50-125.4 (3) and 24-4-106 (11).

(d) (I) If the aggrieved party initially filed a complaint with the commission, the aggrieved party and the district court shall serve a copy of the civil action complaint on the commission, and upon receipt of the civil action complaint, the commission's order is automatically stayed pending the outcome of the civil action, in which case the commission's decision is not a final order subject to judicial review pursuant to section 24-34-307 until the district court issues a final judgment in the civil action for damages.

(II) If the aggrieved party is an applicant for a position in or an employee in the state personnel system, the aggrieved party and the district court shall serve a copy of the civil action complaint on the state personnel board, and upon receipt of the complaint, the state personnel board's decision is automatically stayed pending the outcome of the civil action, in which case the state personnel board's decision is not a final order subject to judicial review pursuant to sections 24-50-125.4 (3) and 24-4-106 (11) until the district court issues a final judgment in the civil action for compensatory damages.

(e) (I) In a civil action brought pursuant to this subsection (8) for damages after the commission or state personnel board makes a finding of an intentional discriminatory or unfair employment practice, the district court shall consider the issue of whether the aggrieved party is entitled to damages and the amount of damages, if awarded.

(II) The district court may award attorney fees and costs in connection with the action for damages consistent with subsection (5) of this section.

(III) The district court shall expedite the action for damages and set the matter for trial at the earliest practical time.

(f) Upon entering a final judgment in a civil action brought pursuant to this subsection (8), the district court shall serve notice of the judgment on the parties and the commission or state personnel board, as appropriate. Once the commission or state personnel board receives a final judgment from the district court, the commission or state personnel board shall incorporate the district court judgment in its order or decision,

which becomes a final order subject to judicial review in accordance with section 24-34-307 or sections 24-50-125.4 (3) and 24-4-106 (11), as applicable.

(g) A claim filed pursuant to this subsection (8) by an aggrieved party against the state for compensatory damages for an intentional unfair or discriminatory employment practice is not subject to the "Colorado Governmental Immunity Act", article 10 of this title.

24-34-406. Ruling on unemployment benefits not a bar. No findings, conclusions, or orders made pursuant to the provisions of articles 70 to 82 of title 8, C.R.S., shall be binding upon the commission in the exercise of its powers pursuant to parts 3 and 4 of this article; except that the commission may consider any explicit findings or conclusions on the issue of discrimination. If the decision under parts 3 and 4 of this article is in favor of the complainant, the respondent may present evidence of any unemployment benefits pursuant to articles 70 to 82 of title 8, C.R.S., which were received by the complainant based on the same occurrence. The relief granted to the complainant shall be reduced by the amount of such benefits, as provided in section 8-2-119, C.R.S.

PART 5

HOUSING PRACTICES

24-34-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or believes that he will be injured by a discriminatory housing practice that is about to occur.

(1.5) "Discriminate" includes both segregate and separate.

(1.6) "Familial status" means one or more individuals, who have not attained eighteen years of age, being domiciled with a parent or another person having legal custody of or parental responsibilities for such individual or individuals or the designee of such parent or other persons having such custody or parental responsibilities with the written permission of such parent or other person. Familial status shall apply to any person who is pregnant or is in the process of securing legal custody or parental responsibilities of any individual who has not attained eighteen years of age.

(2) "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership; except that "housing" does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.

(3) "Person" has the meaning ascribed to such term in section 24-34-301 (5) and includes any owner, lessee, proprietor, manager, employee, or any agent of a person; but, for purposes of this part 5, "person" does not include any private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings that it owns or operates for other than a commercial purpose unless such club has the purpose of promoting discrimination in the matter of housing against any person because of disability, race, creed, color, religion, sex, sexual orientation, marital status, familial status, national origin, or ancestry.

(4) "Restrictive covenant" means any specification limiting the transfer, rental, or lease of any housing because of disability, race, creed, color, religion, sex, sexual orientation, marital status, familial status, national origin, or ancestry.

(5) "Transfer", as used in this part 5, shall not apply to transfer of property by will or by gift.

(6) "Unfair housing practices" means those practices specified in section 24-34-502.

24-34-502. Unfair housing practices prohibited. (1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(a) For any person to refuse to show, sell, transfer, rent, or lease, or to refuse to receive and transmit any bona fide offer to buy, sell, rent, or lease, or otherwise make unavailable or deny or withhold from any person such housing because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry; to discriminate against any person because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith; or to cause to be made any written or oral inquiry or record concerning the disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry of a person seeking to purchase, rent, or lease any housing; however, nothing in this paragraph (a) shall be construed to require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others;

(b) For any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing to make or cause to be made any written or oral inquiry concerning the disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry of a person seeking such financial assistance or concerning the disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or

ancestry of prospective occupants or tenants of such housing, or to discriminate against any person because of the disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry of such person or prospective occupants or tenants in the terms, conditions, or privileges relating to the obtaining or use of any such financial assistance;

(c) (I) For any person to include in any transfer, sale, rental, or lease of housing any restrictive covenants, but shall not include any person who, in good faith and in the usual course of business, delivers any document or copy of a document regarding the transfer, sale, rental, or lease of housing which includes any restrictive covenants which are based upon race or religion, or reference thereto; or

(II) For any person to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to housing;

(d) For any person to make, print, or publish or cause to be made, printed, or published any notice or advertisement relating to the sale, transfer, rental, or lease of any housing that indicates any preference, limitation, specification, or discrimination based on disability, race, creed, color, religion, sex, sexual orientation, marital status, familial status, national origin, or ancestry;

(e) For any person: To aid, abet, incite, compel, or coerce the doing of any act defined in this section as an unfair housing practice; to obstruct or prevent any person from complying with the provisions of this part 5 or any order issued with respect thereto; to attempt either directly or indirectly to commit any act defined in this section to be an unfair housing practice; to discriminate against any person because such person has opposed any practice made an unfair housing practice by this part 5, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 5 of this article; or to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged, any other person in the exercise of any right granted or protected by parts 3 and 5 of this article;

(f) For any person to discharge, demote, or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this part 5;

(g) For any person whose business includes residential real estate-related transactions, which transactions involve the making or purchasing of loans secured by residential real estate or the provisions of other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or the selling, brokering, or appraising of residential real property, to discriminate against any person in making available such a transaction or in fixing the terms or conditions of such a transaction because of race, creed, color, religion, sex, sexual orientation, marital status, disability, familial status, or national origin or ancestry;

(h) For any person to deny another person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, creed, color, religion, sex, sexual orientation, disability, marital status, familial status, or national origin or ancestry;

(i) For any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, disability, familial status, creed, national origin, or ancestry;

(j) For any person to represent to any other person that any dwelling is not available for inspection, sale, or rental, when such dwelling is in fact available, for the purpose of discriminating against another person on the basis of race, color, religion, sex, sexual orientation, disability, familial status, creed, national origin, or ancestry.

(2) The provisions of this section shall not apply to or prohibit compliance with local zoning ordinance provisions concerning residential restrictions on marital status.

(3) Nothing contained in this part 5 shall be construed to bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin, nor shall anything in this part 5 prohibit a private club not in fact open to the public which, as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(4) (Deleted by amendment, L. 92, p. 1122, § 4, effective July 1, 1992.)

(5) Nothing in this section shall be construed to prevent or restrict the sale, lease, rental, transfer, or development of housing designed or intended for the use of persons with disabilities.

(6) Nothing in this part 5 shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, creed, color, religion, sex, sexual orientation, marital status, familial status, disability, religion, national origin, or ancestry.

(7) (a) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor shall any provision in this section regarding familial status apply with respect to housing for older persons.

(b) As used in this subsection (7), "housing for older persons" means housing provided under any state or federal program that the division determines is specifically

designed and operated to assist older persons, or is intended for, and solely occupied by, persons sixty-two years of age or older, or is intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing intended and operated for occupancy by one person fifty-five years of age or older per unit qualifies as housing for older persons under this subsection (7), the division shall require the following:

(I) That the housing facility or community publish and adhere to policies and procedures that demonstrate the intent required under this paragraph (b);

(II) That at least eighty percent of the occupied units be occupied by at least one person who is fifty-five years of age or older; and

(III) That the housing facility or community comply with rules promulgated by the commission for verification of occupancy. Such rules shall:

(A) Provide for verification by reliable surveys and affidavits; and

(B) Include examples of the types of policies and procedures relevant to a determination of such compliance with the requirements of subparagraph (II) of this paragraph (b). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of verification of occupancy in accordance with this section.

(c) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of March 12, 1989, who do not meet the age requirements of paragraph (b) of this subsection (7) if the new occupants of such housing meet the age requirements of paragraph (b) of this subsection (7) or, by reason of unoccupied units, if such units are reserved for occupancy by persons who meet the age requirements of paragraph (b) of this subsection (7).

(d) (I) A person shall not be held personally liable for monetary damages for a violation of this part 5 if such person reasonably relied, in good faith, on the application of the exemption available under this part 5 relating to housing for older persons.

(II) For purposes of this paragraph (d), a person may only show good faith reliance on the application of an exemption by showing that:

(A) Such person has no actual knowledge that the facility or community is not or will not be eligible for the exemption claimed; and

(B) The owner, operator, or other official representative of the facility or community has stated, formally, in writing, that the facility or community complies with the requirements of the exemption claimed.

(8) (a) With respect to "familial status", nothing in this part 5 shall apply to the following:

(I) Any single-family house sold or rented by an owner if such private individual owner does not own more than three such single-family houses at any one time. In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such

house prior to such sale, the exemption granted by this subsection (8) shall apply only with respect to one such sale within any twenty-four-month period. Such bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from the application of this subsection (8) only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(B) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this section; but nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(II) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of paragraph (a) of this subsection (8), a person shall be deemed to be in the business of selling or renting dwellings if:

(I) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(II) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(III) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(9) Repealed.

24-34-502.2. Unfair or discriminatory housing practices against persons with disabilities prohibited. (1) It shall be an unfair or discriminatory housing practice and unlawful and hereby prohibited:

(a) For any person to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter, or of any person who will reside in the dwelling after it is sold, rented, or made available, or of any person associated with such buyer or renter;

(b) For any person to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in

connection with such dwelling because of a disability of that person, of any person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or of any person associated with that person.

(2) For purposes of this section, "discrimination" includes, but is not limited to:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the federal "Fair Housing Amendments Act of 1988", a failure to design and construct those dwellings in such a manner that the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities. At least one building entrance shall be on an accessible route unless it is impractical to do so because of the terrain or the unusual characteristics of the site. All doors designed to allow passage into and within all premises within such dwellings shall be sufficiently wide to allow passage by persons with disabilities in wheelchairs, and all premises within such dwellings shall contain the following features of adaptive design:

(I) Accessible routes into and through the dwellings;

(II) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) Reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(3) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with physical disabilities (commonly cited as ANSI A117.1) suffices to satisfy the requirements of paragraph (c) of subsection (2) of this section.

(4) As used in this section, "covered multifamily dwellings" means:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of four or more units.

24-34-503. Refusal to show housing. If the charge alleging an unfair housing

practice relates to the refusal to show the housing involved, the commission, after proper investigations as set forth in section 24-34-306, may issue its order that the housing involved be shown to the person filing such charge, and, if the respondent refuses without good reason to comply therewith within three days, then the commission or any commissioner may file a petition pursuant to section 24-34-509. The district court shall hear such matters at the earliest possible time, and the court may waive the requirement of security for a petition filed under this section. If the district court finds that the denial to show is based upon an unfair housing practice, it shall order the respondent to immediately show said housing involved and also to make full disclosure concerning the sale, lease, or rental price and any other information being then given to the public.

24-34-504. Time limits on filing of charges. (1) Any charge alleging a violation of this part 5 shall be filed with the commission pursuant to section 24-34-306 within one year after the alleged unfair housing practice occurred, or it shall be barred.

(2) A civil action filed by the attorney general under this section shall be commenced not later than eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(3) The director, not later than ten days after filing or identifying additional respondents, shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this part 5, together with a copy of the original charge.

(4) The director shall commence an investigation of any charge filed pursuant to subsection (1) of this section within thirty days of such filing. Within one hundred days after the filing of the charge, the director shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or the director has approved a conciliation agreement with respect to the charge. If the director is unable to complete the investigation within one hundred days after the filing of the charge, the director shall notify the parties of the reasons for not doing so.

(4.1) After a determination by the director that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall issue a notice and complaint as provided in section 24-34-306 (4). After such notice and complaint is issued by the commission, the complainant, respondent, or any aggrieved person on whose behalf the charge was filed may elect to have the claims asserted in the charge decided in a civil action in lieu of an administrative hearing. Such election shall be made in writing within twenty days after receipt of the notice and complaint issued by the commission. The commission shall provide notice of the election to all other parties to whom the notice and complaint relates.

(4.2) If all parties agree to have the charges decided in an administrative hearing,

the commission shall hold a hearing as provided in section 24-34-306. If any party elects a civil action, the commission shall authorize the attorney general to commence and maintain a civil action in the appropriate state district court to obtain relief with respect to the discriminatory housing practice or practices alleged in the notice and complaint.

(4.3) Final administrative disposition of a charge filed pursuant to this section shall be made within one year of the date the charge was filed, unless it is impractical to do so. If the commission is unable to do so, the commission shall notify the complainant and the respondent, in writing, of the reasons that such disposition is impractical.

(5) Repealed.

24-34-505. Charges by other persons. Any person whose employees, agents, employers, or principals, or some of them, refuse or threaten to refuse to comply with the provisions of this part 5 may make, sign, and file with the commission a verified written charge in duplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

24-34-505.5. Enforcement by the attorney general. (1) Upon timely application, the attorney general may intervene in any civil action filed as provided in section 24-34-505.6 if the attorney general certifies that the case is of general public importance. Upon such intervention, the attorney general may obtain such relief as would be available to the director under section 24-34-306 in a civil action to which such section applies.

(2) Whenever the attorney general has probable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the attorney general may commence a civil action in any appropriate district court.

(3) The attorney general may commence a civil action in any appropriate district court for appropriate relief with respect to:

(a) A discriminatory housing practice referred to the attorney general by the commission under section 24-34-306; or

(b) Breach of a conciliation agreement referred to the attorney general by the director under section 24-34-506.5.

(4) The attorney general, on behalf of the commission, division, or other party at whose request a subpoena is issued under this section, may enforce such subpoena in appropriate proceedings in the district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(5) Repealed.

24-34-505.6. Enforcement by private persons. (1) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action in an appropriate United States district court or state district court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subsection (2) does not apply to actions arising from a breach of a conciliation agreement.

(3) Notwithstanding any provision of this article to the contrary, an aggrieved person may commence a civil action under this section whether or not a charge has been filed under section 24-34-306 and without regard to the status of any such charge, but if the director or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such charge except for the purpose of enforcing the terms of such an agreement.

(4) An aggrieved person may not commence a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a complaint issued by the commission if an administrative law judge has commenced a hearing on the record under this title with respect to such complaint.

(5) At the request of the aggrieved person, the court may appoint an attorney in accordance with section 24-34-307 (9.5).

(6) In addition to the relief which may be granted in accordance with section 24-34-508, the following relief is available:

(a) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages or may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs.

(c) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a charge with the commission or a civil action under this section.

(7) Repealed.

24-34-506. Probable cause. In making his determination on probable cause under the provisions of section 24-34-306 (2), the director shall find that probable cause exists if upon all the facts and circumstances a person of reasonable prudence and caution would be warranted in a belief that an unfair housing practice has been committed.

24-34-506.5. Conciliation agreements. (1) A conciliation agreement arising out of a conciliation shall be an agreement between the respondent and the charging party, and shall be subject to approval by the director.

(2) A conciliation agreement may provide for binding arbitration of the dispute arising from the charge. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(3) Each conciliation agreement shall be made public unless the charging party and respondent otherwise agree and the director determines that disclosure is not required to further the purposes of this section.

(4) Whenever the director has reasonable cause to believe that a respondent has breached a conciliation agreement, the director shall refer the matter to the attorney general with a recommendation that a civil action be filed under section 24-34-505.5 for the enforcement of such agreement.

(5) Repealed.

24-34-507. Injunctive relief. (1) After the filing of a charge pursuant to section 24-34-306 (1), the commission or a commissioner designated by the commission for that purpose may file in the name of the people of the state of Colorado through the attorney general of the state a petition in the district court of the county in which the alleged unfair housing practice occurred, or of any county in which a respondent resides, seeking appropriate injunctive relief against such respondent, including orders or decrees restraining and enjoining him from selling, renting, or otherwise making unavailable to the complainant any housing with respect to which the complaint is made, pending the final determination of proceedings before the commission under this part 5.

(2) Any injunctive relief granted pursuant to this section shall expire by its terms within such time after entry, not to exceed sixty days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. An affidavit of notice of hearing shall forthwith be filed in the office of the clerk of the district court wherein said petition is filed. The procedure for seeking and granting said injunctive relief, including temporary restraining orders and preliminary injunctions, shall be the procedure provided in the rules of civil procedure for courts of record in

Colorado pertaining to injunctions, and the district court has power to grant such temporary relief or restraining orders as it deems just and proper.

(3) The district court shall hear matters on the request for an injunction at the earliest possible time.

(4) If, upon all the evidence at a hearing, the commission finds that a respondent has not engaged in any such unfair housing practice, the district court which has granted temporary relief or restraining orders pursuant to the petition filed by the commission or commissioner shall dismiss such temporary relief or restraining orders. Any person filing a charge alleging an unfair housing practice with the commission, a commissioner, or the attorney general may not thereafter apply, by himself or herself or by his or her attorney-at-law, directly to the district court for any further relief under this part 5, except as provided in section 24-34-307.

24-34-508. Relief authorized. (1) In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged in an unfair housing practice:

(a) To rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 5;

(b) To take affirmative action regarding the granting of financial assistance as provided in section 24-34-502 (1) (b) or the showing, sale, transfer, rental, or lease of housing;

(c) To make reports as to the manner of compliance with the order of the commission;

(d) To reimburse any person who was discriminated against for any fee charged in violation of this part 5 and for any actual expenses incurred in obtaining comparable alternate housing, as well as any storage or moving charges associated with obtaining such housing;

(e) To award actual damages suffered by the aggrieved person and injunctive or other equitable relief;

(f) To assess a civil penalty against the respondent in the following amounts:

(I) Not to exceed ten thousand dollars if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(II) Not to exceed twenty-five thousand dollars if the respondent has been adjudged to have committed any other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

(III) Not to exceed fifty thousand dollars if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

24-34-509. Enforcement sought by commission. Upon refusal by a person to comply with any order, order pursuant to section 24-34-503, or regulation of the commission, the commission has authority to immediately seek an order in the district court enforcing the order or regulation of the commission. Such proceedings shall be brought in the district court in the county in which the respondent resides or transacts business.

24-34-510. Remedy. (Repealed)

PART 6

DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION

24-34-601. Discrimination in places of public accommodation - definition. (1) As used in this part 6, "place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment conducted to serve the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor. "Place of public accommodation" shall not include a church, synagogue, mosque, or other place that is principally used for religious purposes.

(2) It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry.

(2.5) It is a discriminatory practice and unlawful for any person to discriminate against any individual or group because such person or group has opposed any practice made a discriminatory practice by this part 6 or because such person or group has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to this part 6.

(3) Notwithstanding any other provisions of this section, it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

24-34-602. Penalty and civil liability. (1) Any person who violates section 24-34-601 shall be fined not less than fifty dollars nor more than five hundred dollars for each violation. A person aggrieved by the violation of section 24-34-601 shall bring an action in any court of competent jurisdiction in the county where the violation occurred. Upon finding a violation, the court shall order the defendant to pay the fine to the aggrieved party.

(2) Repealed.

(3) The relief provided by this section is an alternative to that authorized by section 24-34-306 (9), and a person who seeks redress under this section is not permitted to seek relief from the commission.

24-34-603. Jurisdiction of county court - trial. The county court in the county where the offense is committed shall have jurisdiction in all civil actions brought under this part 6 to recover damages to the extent of the jurisdiction of the county court to recover a money demand in other actions. Either party shall have the right to have the cause tried by jury and to appeal from the judgment of the court in the same manner as in other civil suits.

24-34-604. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 6 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and if not so filed, it shall be barred.

24-34-605. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have engaged

in a discriminatory practice as defined in this part 6 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 6; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 6.

PART 7

DISCRIMINATORY ADVERTISING

24-34-701. Publishing of discriminative matter forbidden. No person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort, or amusement, directly or indirectly, by himself or herself or through another person shall publish, issue, circulate, send, distribute, give away, or display in any way, manner, or shape or by any means or method, except as provided in this section, any communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement of any kind, nature, or description that is intended or calculated to discriminate or actually discriminates against any disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry or against any of the members thereof in the matter of furnishing or neglecting or refusing to furnish to them or any one of them any lodging, housing, schooling, or tuition or any accommodation, right, privilege, advantage, or convenience offered to or enjoyed by the general public or which states that any of the accommodations, rights, privileges, advantages, or conveniences of any such place of public accommodation, resort, or amusement shall or will be refused, withheld from, or denied to any person or class of persons on account of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry or that the patronage, custom, presence, frequenting, dwelling, staying, or lodging at such place by any person or class of persons belonging to or purporting to be of any particular disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry is unwelcome or objectionable or not acceptable, desired, or solicited.

24-34-702. Presumptive evidence. The production of any such communication, paper, poster, folder, manuscript, book, pamphlet, writing, print, letter, notice, or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, agent, superintendent, manager, or employee thereof, shall be presumptive evidence in any civil or criminal action or prosecution that the same was authorized by such person.

24-34-703. Places of public accommodation, resort, or amusement. A place of public accommodation, resort, or amusement, within the meaning of this part 7, shall be deemed to include any inn, tavern, or hotel, whether conducted for the entertainment, housing, or lodging of transient guests or for the benefit, use, or accommodation of those seeking health, recreation, or rest, and any restaurant, eating house, public conveyance on land or water, bathhouse, barber shop, theater, and music hall.

24-34-704. Exceptions. Nothing in this part 7 shall be construed to prohibit the mailing of a private communication in writing sent in response to specific written inquiry.

24-34-705. Penalty. Any person who violates any of the provisions of this part 7 or who aids in, incites, causes, or brings about in whole or in part the violation of any of such provisions, for each and every violation thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment. The penalty provided by this section shall be an alternative to the relief authorized by section 24-34-306 (9), and a person who seeks redress under this section shall not be permitted to seek relief from the commission.

24-34-706. Time limits on filing of charges. Any charge filed with the commission alleging a violation of this part 7 shall be filed pursuant to section 24-34-306 within sixty days after the alleged discriminatory act occurred, and, if not so filed, it shall be barred.

24-34-707. Relief authorized. In addition to the relief authorized by section 24-34-306 (9), the commission may order a respondent who has been found to have violated any of the provisions of this part 7 to rehire, reinstate, and provide back pay to any employee or agent discriminated against because of his obedience to this part 7; to make reports as to the manner of compliance with the order of the commission; and to take affirmative action, including the posting of notices setting forth the substantive rights of the public under this part 7.

PART 8

PERSONS WITH DISABILITIES - CIVIL RIGHTS

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) and (f) Repealed.

(2) Repealed.

24-34-802. Violation - penalty. Any person, firm, or corporation or the agent of any person, firm, or corporation that denies or interferes with the rights and the admittance to or enjoyment of the public facilities enumerated in section 24-34-801 (1) (b) to (1) (d) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

24-34-803. Rights of persons with assistance dogs. (1) A person with a

disability, including but not limited to a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person, has the right to be accompanied by an assistance dog specially trained for that person without being required to pay an extra charge for the assistance dog in or on the following places and subject to the conditions and limitations established by law and applicable alike to all persons:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places;

(b) Any place of public accommodation or on public transportation services; and

(c) Any housing accommodation offered for rent, lease, or other compensation in the state.

(2) A trainer of an assistance dog has the right to be accompanied by an assistance dog that the trainer is in the process of training without being required to pay an extra charge for the assistance dog in or on the following places:

(a) Public streets, highways, walkways, public buildings, public facilities and services, and other public places; and

(b) Any place of public accommodation or on public transportation services.

(3) (a) An employer shall not refuse to permit an employee with a disability who is accompanied by an assistance dog to keep the employee's assistance dog with the employee at all times in the place of employment. An employer shall not fail or refuse to hire or discharge any person with a disability, or otherwise discriminate against any person with a disability, with respect to compensation, terms, conditions, or privileges of employment because that person with a disability is accompanied by an assistance dog specially trained for that person.

(b) An employer shall make reasonable accommodation to make the workplace accessible for an otherwise qualified person with a disability who is an applicant or employee and who is accompanied by an assistance dog specially trained for that person unless the employer can show that the accommodation would impose an undue hardship on the employer's business. For purposes of this paragraph (b), "undue hardship" means an action requiring significant difficulty or expense.

(4) The owner or the person having control or custody of an assistance dog or an assistance dog in training is liable for any damage to persons, premises, or facilities, including places of housing accommodation and places of employment, caused by that person's assistance dog or assistance dog in training. The person having control or custody of an assistance dog or an assistance dog in training shall be subject to the provisions of section 18-9-204.5, C.R.S.

(5) A person with a disability is exempt from any state or local licensing fees or charges that might otherwise apply in connection with owning an assistance dog.

(6) The mere presence of an assistance dog in a place of public accommodation shall not be grounds for any violation of a sanitary standard, rule, or regulation promulgated pursuant to section 25-4-1604, C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Assistance dog" means a dog that has been or is being trained as a guide dog, hearing dog, or service dog. Such terms are further defined as follows:

(I) "Guide dog" means a dog that has been or is being specially trained to aid a particular blind or visually impaired person.

(II) "Hearing dog" means a dog that has been or is being specially trained to aid a particular deaf or hearing impaired person.

(III) "Service dog" means a dog that has been or is being specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing impairment.

(b) "Disability" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12102, as amended.

(c) "Employer" has the same meaning as set forth in the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12111 (5), as amended.

(d) "Housing accommodations" means any real property or portion thereof that is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons but does not include any single family residence, the occupants of which rent, lease, or furnish for compensation not more than one room in that residence.

(e) "Places of public accommodation" means the following categories of private entities:

(I) Inns, hotels, motels, or other places of lodging, except establishments located within buildings actually occupied by the proprietor as the proprietor's residence containing five or fewer rooms for rent or hire;

(II) Restaurants, bars, cafeterias, lunchrooms, lunch counters, soda fountains, casinos, or other establishments serving food or drink, including any such facility located on the premises of any retail establishment;

(III) Gasoline stations or garages;

(IV) Motion picture theaters, theaters, billiard or pool halls, concert halls, stadiums, sports arenas, amusement or recreation parks, or other places of exhibition or entertainment;

(V) Auditoriums, convention centers, lecture halls, or other places of public gathering;

(VI) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or retail establishments;

(VII) Laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, offices of accountants or attorneys-at-law, pharmacies, insurance offices, professional offices of health care providers, hospitals, or other service establishments;

(VIII) Terminals, depots, or other stations used for specified purposes;

(IX) Museums, libraries, galleries, or other places of public display or collection;

(X) Parks, zoos, or other places of recreation;

(XI) Nursery, elementary, secondary, undergraduate, or graduate schools or other places of education;

(XII) Day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social service center establishments;

(XIII) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(XIV) Any other establishment or place to which the public is invited; or

(XV) Any establishment physically containing or contained within any of the establishments described in this paragraph (e) that holds itself out as serving patrons of the described establishment.

(f) "Public transportation services" means common carriers of passengers or any other means of public conveyance or modes of transportation, including but not limited to airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or taxis.

(g) "Trainer of an assistance dog" means a person who is qualified to train dogs to serve as assistance dogs.

24-34-804. Violations - penalties. (1) It is unlawful for any person, firm, corporation, or agent of any person, firm, or corporation to:

(a) Withhold, deny, deprive, or attempt to withhold, deny, or deprive any person with a disability or trainer of any of the rights or privileges secured in section 24-34-803;

(b) Threaten to interfere with any of the rights of persons with disabilities or trainers secured in section 24-34-803;

(c) Punish or attempt to punish any person with a disability or trainer for exercising or attempting to exercise any right or privilege secured by section 24-34-803; or

(d) Interfere with, injure, or harm, or cause another dog to interfere with, injure, or harm, an assistance dog.

(2) Any person who violates any provision of subsection (1) of this section commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) (a) Any person who violates any provision of subsection (1) of this section shall be liable to the person with a disability or trainer whose rights were affected for actual damages for economic loss, to be recovered in a civil action in a court in the county where the infringement of rights occurred or where the defendant resides.

(b) In any action commenced pursuant to this subsection (3), a court may award costs and reasonable attorney fees.

(4) Nothing in this section is intended to interfere with remedies or relief that any

person might be entitled to pursuant to parts 3 to 7 of this article.

PART 9

MANDATORY REVIEW OF PROPOSED
CONTINUING EDUCATION REQUIREMENTS
FOR REGULATED OCCUPATIONS AND PROFESSIONS

24-34-901. Proposed continuing education requirements for regulated occupations and professions - review by office of executive director. (1) Before any bill is introduced in the general assembly that contains, or any bill is amended to contain, 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 executive director shall impartially review such evidence, analyze and evaluate the proposal, and report in writing to the general assembly whether mandatory continuing education would likely protect the public served by the practitioners. Proposals may include, but need not be limited to: Information that shows that the knowledge base for the profession or occupation is changing; that mandatory continuing education of this profession or occupation is required in other states; if applicable, that any independent studies have shown that mandatory continuing education is effective in assuring the competency of practitioners. The proposal may also include any assessment tool that shows the effectiveness of mandatory continuing education and recommendations about sanctions that should be included for noncompliance with the requirement of mandatory continuing education. The provisions of this section shall not be applicable to:

(a) Any profession or occupation that, as of July 1, 1991, has mandatory continuing education requirements in place;

(b) Any bill that is introduced as a result of a legislative interim committee and that as introduced in the general assembly includes a mandatory continuing education requirement.

(2) This section is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirement of this section shall remain in effect until changed by the general assembly acting by bill.

ARTICLE 35

Department of Revenue

PART 1

ORGANIZATION

24-35-101. Functions of department of revenue. (1) There is hereby created the department of revenue, the functions of which are the collection of the following:

(a) Taxes levied and the license fees imposed by the provisions of articles 22 and 26 to 29 of title 39, C.R.S., and section 21 of article X of the state constitution, and the administration and enforcement of said provisions;

(b) Taxes levied by the provisions of articles 23.5 and 25 of title 39, C.R.S.;

(c) Taxes levied and the license fees imposed by the provisions of part 1 of article 6 and article 15 of title 12, title 42, and part 2 of article 5 of title 43, C.R.S., and the administration and enforcement of said provisions;

(d) Taxes levied and the license fees imposed by the provisions of article 46 and part 5 of article 47 of title 12, C.R.S., and the administration and enforcement of said provisions;

(e) Repealed.

(f) Taxes, fees, and other revenues, the payment of which is required by law, which the department may be directed by law, rule, or agreement to administer, collect, or enforce.

24-35-102. Executive director - annual report. (1) There is hereby created the office of the executive director of the department of revenue, who shall be the head of the department. The executive director shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The reappointment of an executive director after initial election of a governor shall be subject to the provisions of section 24-20-109. Whenever any law of this state refers to the director of revenue, such law shall be deemed to refer to the executive director of the department of revenue.

(2) The executive director shall be the chief authority of the state and the adviser of the governor and the general assembly in matters of collection of taxes and the enforcement of the taxing and licensing laws and shall have such powers and duties as are necessary and proper to the carrying out of the functions vested by this title in the department of revenue.

(3) The executive director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the department of revenue or to any subdivisions thereof.

(4) Publications of the department circulated in quantity outside the executive

branch shall be issued by the executive director in accordance with the provisions of section 24-1-136.

(5) The executive director shall provide for the printing each year of the financial report summary provided to him by the controller pursuant to section 24-30-207 (2) in the state income tax instruction booklet.

24-35-103. Powers of executive director - deputies. (1) In addition to the divisions specified in section 24-1-117 (4), the executive director of the department of revenue, subject to the approval of the governor, may create such groups, divisions, or subordinate departments within the department of revenue as he or she deems necessary for the proper and efficient functioning of said department, and, when established, may appoint, subject to the approval of the governor, all heads of groups, divisions, and subordinate departments. All such appointments shall be from an eligible list prepared by the state personnel director. If there is no eligible list for the position to be filled, the state personnel director shall forthwith issue to the appointee named by the executive director a provisional appointment, which shall remain in effect until examination is had and such eligible list established, but in no event for a longer period than six months.

(2) (a) Except as provided in paragraph (b) of this subsection (2), the executive director of the department of revenue, with the written approval of the governor, may combine existing groups, divisions, or subordinate departments or reduce the personnel in any group, division, or subordinate department or combined groups, divisions, or subordinate departments or in the department of revenue as a whole, in which case all employees so losing their positions for such reason, in the order of their seniority, shall be placed at the head of the eligible list of like qualifications and duties by the state personnel director. If such employee is a provisional employee, the employee shall not be placed at the head of any such list unless the employee has passed the regular examination of the state personnel system for such position and then only if his or her grade in such examination entitles such person to such position on said eligible list.

(b) The executive director of the department of revenue shall not combine or eliminate the divisions specified in section 24-1-117 (4) (a) unless specifically authorized by law.

(3) Repealed.

(4) (a) Notwithstanding any provision of law, upon approval by the appropriate examination, registration, or licensing board or commission, the executive director of the department of revenue may change the annual renewal date of any license, registration, or certificate issued by such board or commission in order to ensure that approximately the same number of licenses, registrations, or certificates are scheduled for renewal each month of the year. When an annual renewal date is changed or established pursuant to this subsection (4), the fee for such renewal shall be prorated accordingly, and in no case shall

fees for an annual license, registration, or certificate be charged for a period in excess of twenty-four months until July 1, 2005, or, after July 1, 2005, a period in excess of twelve months.

(b) This subsection (4) shall not be construed to prohibit the issuance of a license, registration, or certificate for more than twelve months if such authority is granted by statute.

24-35-103.5. Private letter rulings - fees - creation of fund - definitions - repeal. (1) For purposes of this section, unless the context otherwise requires:

(a) "Information letter" means a nonbinding statement issued by the department of revenue to a taxpayer that provides general information regarding any tax administered by the department pursuant to title 29 or 39, C.R.S., that is made in response to a written request from a taxpayer for such information.

(b) "Private letter ruling" means a written determination issued by the executive director of the department of revenue, or the executive director's designee, to a taxpayer on the tax consequences of a proposed or completed transaction under any tax administered by the department pursuant to title 29 or 39, C.R.S., that is made in response to a written request from a taxpayer for such a ruling.

(2) The executive director of the department of revenue, or the executive director's designee, shall, except as otherwise provided by rule, issue information letters and private letter rulings upon the written request of a taxpayer. The executive director shall promulgate rules in accordance with article 4 of this title establishing the process for issuing an information letter or a private letter ruling, including but not limited to rules that specify:

(a) The procedure, form, and time periods for submitting a request for an information letter or a private letter ruling;

(b) The terms and conditions under which a private letter ruling binds the department of revenue or may be revoked or modified; except that any revocation by the department of a private letter ruling shall only be effective prospectively and shall not affect any transaction undertaken on or prior to the date of the revocation;

(c) The limitations on the applicability of an information letter or a private letter ruling to specific persons, transactions, factual circumstances, and time periods;

(d) The circumstances under which a request for an information letter or a private letter ruling may be declined by the executive director of the department of revenue.

(3) The executive director of the department of revenue shall issue private letter rulings within ninety days of the receipt of a written request by a taxpayer unless the request is declined. In the event a request for a private letter ruling is declined, the executive director shall notify the taxpayer in writing of such declination no later than thirty days after the date the request was submitted to the department.

(4) The issuance, modification, or revocation of an information letter or a private letter ruling shall not constitute a tax policy change for purposes of section 20 (4) (a) of article X of the state constitution.

(5) (a) The executive director of the department of revenue shall redact information from an information letter or private letter ruling in order to ensure the confidentiality of the taxpayer or other persons, transactions, factual circumstances, or time periods that are the subject of the information letter or private letter ruling and make public the balance of the information letter or private letter ruling.

(b) The executive director may withhold the information letter or private letter ruling from the public based upon a determination that information in the information letter or private letter ruling cannot be redacted in a manner that maintains the confidentiality of the taxpayer or other persons, transactions, factual circumstances, or time periods that are the subject of the information letter or private letter ruling. Such a determination shall be subject to review by a court of competent jurisdiction.

(6) The executive director of the department of revenue shall promulgate rules pursuant to article 4 of this title establishing reasonable fees for the direct and indirect costs of the administration of this section, which fees shall accompany any request for a private letter ruling made pursuant to subsection (1) of this section. All fees collected shall be transmitted to the state treasurer, who shall credit the same to the private letter ruling fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this section.

(7) This section is repealed, effective September 1, 2016. Prior to such repeal, the information letter and private letter ruling function of the executive director of the department of revenue shall be reviewed as provided for in section 24-34-104. The general assembly shall not continue to authorize the department of revenue to retain full-time equivalent employee authorization to issue information letters and private letter rulings after this section is repealed.

24-35-104. Bond of executive director. The executive director of the department of revenue, on or before entering upon the duties of his office, shall give bond to the state of Colorado in the sum of two hundred thousand dollars, conditioned upon the faithful discharge of the duties of his office. Said bond shall be signed by one or more surety companies authorized to transact business in the state of Colorado, and the entire premium therefor shall be paid in one lump sum from state funds, and the general assembly shall make the necessary appropriation therefor.

24-35-105. Supplies. The department of revenue shall be provided with suitable

quarters, equipment, services, supplies, materials, and other facilities and services as may be necessary to carry out its functions and is authorized to incur necessary expenditures for such facilities and services, subject to the limitation of appropriations and dedicated revenues provided therefor.

24-35-106. Deposits by executive director - working capital. The executive director of the department of revenue, before the close of each business day, shall deposit with the state treasurer all sums of money collected by the department of revenue. The executive director may retain for the use of the department of revenue a working capital account in such reasonable amount as may be determined by the executive director and the state treasurer. In the event of disagreement or dispute between them as to the amount of working capital, the question of the reasonable amount of working capital shall be submitted for determination to the governor, whose decision shall be final. The executive director shall account to the state treasurer on or before the first day of each month for the working capital of the department of revenue thus retained, and one copy of such accounting shall be delivered to the governor, one copy to the state treasurer, and one copy to the state auditor. The state treasurer, upon receipt of any moneys from the executive director, shall give his receipt therefor, execute the same in triplicate, and deliver one copy of such receipt to the executive director, one copy to the state auditor, and shall retain the third copy thereof in his files.

24-35-107. Division of enforcement - deputy director of revenue appointed. (Repealed)

24-35-108. Functions of department of revenue - collection of state taxes. (1) In addition to any function specified in this article, the functions of the department of revenue and the duties of the executive director of the department of revenue as the head of said department or of the head of a group, division, or subordinate department appointed by the executive director in accordance with this article are:

(a) To collect delinquent taxes, assessments, and licenses under the jurisdiction of the department of revenue;

(b) To assist the attorney general in the prosecution of any legal actions commenced for the collection of any delinquent tax, assessment, or license within the jurisdiction of the department of revenue;

(c) To audit reports and returns of taxpayers in connection with all taxes, assessments, and licenses within the jurisdiction of the department of revenue, and, in the performance of this function and duty, the work of the department of revenue shall be so

planned and organized that when a field auditor of the department of revenue investigates the tax liability of a taxpayer, to the extent practical, he or she shall examine the tax liability of such taxpayer with respect to all state taxes as to which the return or report of the taxpayer is in question to the end that separate audits by different auditors shall be reduced to a minimum;

(d) To assist local tax collectors insofar as the collection of state taxes is concerned;

(e) To promulgate and establish, with the approval of the governor, rules governing not only the internal administration of the department of revenue but also the collection of taxes, assessments, and licenses and delinquencies in any thereof;

(f) To make arbitrary deficiency and jeopardy assessments as provided by law and by the rules of the department;

(g) Such other duties as may be delegated from time to time to the department of revenue by law concerning the enforcement and collection of state taxes, assessments, and licenses;

(h) To act for and on behalf of the executive director of the department of revenue in all department of revenue matters whenever the executive director specifically authorizes the head of a group, division, or subordinate department to act on his or her behalf for the purposes described in this section.

24-35-108.5. Annual disclosure to individual taxpayers of average taxes paid. (1) For calendar years commencing on or after January 1, 2003, the department of revenue shall determine the average amount of certain federal, state, and local taxes paid by individual taxpayers based on taxpayers' average income as presented in the most recent publication of the data in the department's Colorado tax profile study, or its successor. The department shall disclose such information to taxpayers on an annual basis pursuant to this section.

(2) (a) In the calculation of the average amount of federal taxes paid by individual taxpayers, the department of revenue shall include the average federal income tax and the average amount of the joint employer and employee contribution to social security and medicare paid on behalf of each employee for the tax year corresponding to the most recent publication of the department's Colorado tax profile study, or its successor.

(b) In the calculation of the average amount of state taxes paid by individual taxpayers, the department of revenue shall include the average state individual income tax; sales and use tax; gas and gasohol tax; licenses and registrations; tax on alcoholic beverages; and tax on cigarettes and tobacco.

(c) In the calculation of the average amount of local taxes paid by individual taxpayers, the department of revenue shall include the average residential property tax; local sales and use tax; specific ownership tax; and occupational tax.

(3) For each of the taxes specified in subsection (2) of this section, the department of revenue shall determine the average amount of taxes paid by income classes as presented in the most recent publication of such data in the department's Colorado tax profile study, or its successor. Such income classes shall be stratified from the lowest to the highest income tax ranges.

(4) The department of revenue shall prepare a table that discloses the average amount of taxes paid by taxpayers as printed in the most recent publication of the department's Colorado tax profile study, or its successor. Each tax specified in subsection (2) of this section shall be listed in a column on the left side of the table. The income ranges specified in subsection (3) of this section shall appear across the top of the table. The average amount paid for each tax, the average total amount paid in federal, state, and local tax, and the average total amount paid for all taxes combined shall appear under each income range. The table shall be titled "Disclosure of Average Taxes Paid", and the title line of the table shall be printed in eighteen-point type or larger.

(5) The department of revenue shall print the table prepared pursuant to subsection (4) of this section in the income tax booklet that the department mails to taxpayers on an annual basis. The department shall print the table in a clear and noticeable location in the income tax booklet and shall indicate the location of such table in the table of contents for the income tax booklet. The department shall also make the table available through the "NetFile" link on the department's web site and shall ensure that the table is clearly accessible through a noticeable link on the "NetFile" web site.

24-35-109. Collections - distraint and sale. (1) The department of revenue has every power provided by law to enforce the collection of taxes and license fees due the state by foreclosure of liens against real estate and by execution and sale as for a debt due the state or any taxing division or agency thereof.

(2) Specifically, by way of extension and not of limitation, if any person, firm, or corporation liable to pay any tax for personal property or license fee, all or any portion of which is then due the state, neglects or refuses to pay the same within thirty days after notice and demand therefor to the taxpayer is made in writing by the executive director of the department of revenue or a group, division, or subordinate department head appointed pursuant to this article, it is lawful for the executive director or such group, division, or subordinate department head, to collect the whole of said tax or license fee, together with such interest and other amounts as are required by law, by distraint and sale of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt of the delinquent taxpayer. Only such property as is exempt from attachment and execution under the laws of this state shall be exempt from distraint and sale under the provisions of this title.

(3) When distraint is made under the power granted in this section, the officer

making such distraint shall make or cause to be made an account of the goods, chattels, and effects distrained and shall sign the same in the name of the state of Colorado by authority of the executive director of the department of revenue. A copy of said notice shall be served upon the owner and upon the possessor of any of the distrained property in the same manner as provided by law for the service of summons in judicial actions in the district courts of the state. Said notice shall also specify the total amount of tax, interest, and penalties due, the time and place when the sale thereof shall occur, and the upset or minimum price, if any, at which the distrained property will be sold. A copy of said notice shall likewise be published once in some legal newspaper within the county in which said distraint is made not more than thirty nor less than ten days prior to the date of such sale, and it shall be posted in a conspicuous place in the county courthouse of said county. If there is no legal newspaper published in such county, then the publication of said notice shall not be required.

(4) Every such sale shall be at public auction and shall be held not less than thirty nor more than sixty days after service of the notice of distraint, but any such sale may be adjourned from time to time by the officer making the same if the upset or minimum price is not bid or if for any other reason he deems such adjournment advisable; but no such sale shall be adjourned for a longer period than ninety days in all.

(5) In all cases of sale under distraint, the certificate of such sale shall be prima facie evidence of the regularity of the proceedings in making the sale, and said certificate shall transfer to the purchaser all right, title, and interest of the delinquent taxpayer in and to the property sold; and, if any of the property sold consists of stocks, registered bonds, or other certificates of indebtedness, said certificate of such sale shall be authority for the corporation, firm, or association issuing such stock or having outstanding any such registered bonds or certificates of indebtedness and to all transfer agents thereof to record and transfer the same on their books, accounts, and records the same in all respects as if the certificates of stock or registered bonds or certificates of indebtedness had been duly endorsed for transfer by the delinquent taxpayer as owner thereof.

(6) No such distraint and sale shall occur or be valid unless commenced within three years from and after the date when such tax or license fee becomes due and payable. Every owner of property thus distrained and sold may redeem the same from such sale after the date when the sale occurred by payment of the amount of such tax, together with interest, penalties, and costs of sale. The executive director of the department of revenue shall collect all taxes due the state on real property in the manner provided by law.

(7) If, at any such sale or any adjournment thereof, the price bid is less than the cost of sale, the officer making the sale shall bid in the property in the name of the state of Colorado; except that the proportionate share of any political subdivision derived from any such sale shall be remitted to the political subdivision entitled thereto. If the amount bid at any such sale or at any adjournment thereof is less than the amount of the delinquency plus interest, penalties, and costs, if any, the officer making the sale may bid

in the property in the name of the state of Colorado if the property tax administrator shall direct him in writing to do so, certifying in such direction that in the opinion of the property tax administrator the price offered is less than the forced sale value of the distrained property offered for sale.

(8) If any person, firm, or corporation liable for the payment of any tax has repeatedly failed, neglected, or refused to pay the same within the time specified for such payment and the department of revenue has been required to exercise its enforcement proceedings three or more times through the issuance of a distraint warrant to enforce payment of any such taxes due, then the executive director of the department of revenue is authorized to assess and collect the amount of such taxes due together with all the interest and penalties thereon provided by law and also assess and collect an additional amount equal to fifteen percent of the delinquent taxes, interest, and penalties due or the sum of twenty-five dollars, whichever amount is greater, said additional amount being imposed to compensate the department for administrative and collection costs incurred in collecting such delinquent taxes.

24-35-110. Collection for political subdivisions - contract. The executive director of the department of revenue is hereby authorized to negotiate and contract with any city, town, or city and county for the purpose of arranging for the collection by the department of revenue of any tax levied by the city, town, or city and county which is also levied and collected by the department of revenue for the state of Colorado.

24-35-111. Collection fee. The executive director of the department of revenue is hereby authorized to make any agreement with any city, town, or city and county for the collection of such taxes under such conditions as he may approve, if such agreement includes a fee in such amount as may be necessary to fully cover the cost of collection to be paid by such city, town, or city and county to the department of revenue.

24-35-112. Legal adviser. The attorney general shall be the legal adviser for the department of revenue and shall have control of all matters relating to the interpretation of law, commencement of legal proceedings, and conduct of legal actions for the enforcement and collection of delinquent taxes, assessments, and licenses referred to him for collection. No member of the attorney general's staff shall receive any payment of state taxes, assessments, or licenses.

24-35-113. Employees interchangeable. (1) It is the duty of the executive

director of the department of revenue in the administration of his or her department to organize the same so that all employees of the department, insofar as possible, are interchangeable in work assignment, to the end that they may be shifted within the department of revenue so as to meet the demands upon any division, group, or branch of the department and the number of such employees kept to the minimum possible for efficient operation. It is likewise the duty of the said executive director, insofar as practicable, to centralize all record-keeping, filing, payroll, and other services required by the department and divisions thereof.

(2) In any fiscal year in which employees are shifted between divisions, groups, or branches of the department of revenue pursuant to subsection (1) of this section, the executive director of the department shall prepare a report that demonstrates that the total FTE funded with cash funds, reappropriated funds, and federal funds and appropriated to such a division, group, or branch of the department for such fiscal year has not been exceeded in that fiscal year by such division, group, or branch. Such report shall be submitted with the department's annual budget request to the joint budget committee.

24-35-114. Civil penalty for unpaid checks. (1) The executive director of the department of revenue, or such executive director's delegate, shall assess a forty-one-dollar penalty against any person who issues a check returned for any of the reasons set forth in subsection (2) of this section to the department of revenue in payment of taxes, licenses, or fees collectible by the department of revenue for this state. The penalty provided for in this section shall be assessed in addition to any other penalties or interest provided by law, but shall not be assessed for checks issued pursuant to section 42-4-1701 (5), C.R.S., as a penalty assessment.

(2) The penalty in subsection (1) shall apply to a check that is returned to the department of revenue without payment because of insufficient funds, a closed account, or a stop payment order on the check.

24-35-115. Mineral audit program. (1) The purpose of the mineral audit program established by this section is to develop reasonable assurance that all mineral revenues due to the state are received.

(2) The department of revenue shall conduct or cause to be conducted audits of oil, gas, and mineral rents and royalties, the mill levy revenue from oil and gas production under section 34-60-122, C.R.S., and severance taxes accruing to the state from federal, state, and private lands. This auditing shall be conducted by a special unit which shall not have any other duties. The auditing may be conducted through contracts with other state agencies or the federal government. However, a state agency may not contract for an audit of federal mineral revenues unless the federal government pays the cost of any such audit.

(3) The cost of each of the following audits shall be paid by an appropriation from the general fund: Severance tax revenues; revenues accruing to leases managed by the state board of land commissioners authorized in section 36-1-113, C.R.S.; and revenues accruing to the oil and gas conservation and environmental response fund created in section 34-60-122 (5), C.R.S. At the end of each fiscal year, beginning with the fiscal year starting July 1, 1986, the oil and gas conservation commission and the state board of land commissioners shall each repay, from the oil and gas conservation and environmental response fund, created by section 34-60-122 (5), C.R.S., and the state land board administration fund, created by section 36-1-145 (2) (a), C.R.S., to the general fund the cost of such audits performed on their respective fund, which reimbursement shall not exceed the dollar amount of the collections received by each agency from such audits.

(4) Repealed.

24-35-116. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department of revenue or any division or authorized agent of such department shall require the applicant's name, address, and social security number.

(2) The department of revenue or any division or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department of revenue, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department of revenue or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department of revenue shall enter into a memorandum of understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department of revenue and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department of revenue is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or

permission that the department of revenue or any division or any authorized agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-35-117. Public list of delinquent state taxes. (1) Notwithstanding any provision of law, the executive director of the department of revenue shall annually disclose a list of all taxpayers, including but not limited to individuals, trusts, partnerships, corporations, and other taxable entities, that are delinquent in the payment of tax liabilities collected by the department. The list shall include only those taxpayers with total delinquent final liabilities for all taxes collected by the department, including penalties and interest, in an amount greater than twenty thousand dollars for a period of six months from the time that a distraint warrant issues or may issue. The list shall contain the name, address, types of taxes, month and year in which each tax liability was asserted in a duly issued distraint warrant, the amount of each tax outstanding of each delinquent taxpayer, and, in the case of a corporate taxpayer, the name of the current president of record of the corporation.

(2) At least ninety days before the disclosure of the name of a delinquent taxpayer prescribed in subsection (1) of this section, the executive director of the department of revenue shall mail a written notice to the delinquent taxpayer at his or her last known address informing the taxpayer that the failure to cure the tax delinquency could result in the taxpayer's name being included in a list of delinquent taxpayers that is published on the internet on the web site maintained by the department pursuant to this section. If the delinquent tax has not been paid sixty days after the notice was mailed, and the taxpayer has not, since the mailing of the notice, either entered into a written agreement with the department for payment of the delinquency or corrected a default in an existing agreement to the satisfaction of the executive director, the executive director may disclose the tax in the list of delinquent taxpayers.

(3) Unpaid taxes shall not be deemed to be delinquent and subject to disclosure if:

(a) A written agreement for payment exists without default between the taxpayer and the department of revenue; or

(b) The tax liability is the subject of an administrative hearing, administrative review, judicial review, or an appeal of any such proceedings.

(4) The list described in subsection (1) of this section shall be available for public inspection at the department of revenue and shall be published on the internet on the web site maintained by the department.

(5) The name of a taxpayer shall be removed within fifteen days after the payment

of the debt.

(6) Any disclosure made by the executive director of the department of revenue in a good faith effort to comply with this section shall not be considered a violation of any statute prohibiting disclosure of taxpayer information.

24-35-118. Regional tourism projects - authority of department. (1) In addition to the other functions and powers of the department of revenue and the executive director of the department pursuant to this part 1, the department shall establish and determine the base year revenue, as defined in section 24-46-303 (1), for each regional tourism zone, as defined in section 24-46-303 (11); shall collect, account for, and remit to the applicable financing entity, as defined in section 24-46-303 (6), all state sales tax increment revenue, as defined in section 24-46-303 (12), generated within each regional tourism zone; and shall otherwise perform such functions as are required of the department with respect to any financing entity and any regional tourism zone designated in the written notice thereof to be provided to the executive director pursuant to section 24-46-305.

(2) The executive director shall have the authority to create forms and promulgate rules as deemed necessary or convenient to implement the department's responsibilities with respect to the determination of base year revenue, collection and disbursement of state sales tax increment revenue, and other functions of the department pursuant to part 3 of article 46 of this title. The executive director is authorized to enter into contracts with financing entities approved pursuant to part 3 of article 46 of this title in the manner provided for in section 24-35-110 regarding the performance of the department's functions in implementing part 3 of article 46 of this title, and to establish an administrative fee for such services in the manner provided for in section 24-35-111, with the amount thereof to be reasonably calculated to offset the department's actual direct costs and expenses in performing such collection and disbursement functions.

(3) All state sales tax increment revenue collected by the department on behalf of a financing entity shall be construed and treated for all purposes as being assigned to, the property of, and the revenue of the applicable financing entity and shall not be construed or treated for any purpose as revenue or property of the state. In collecting and disbursing state sales tax increment revenue as provided in this section and otherwise performing its responsibilities pursuant to part 3 of article 46 of this title, the department shall act solely as a collecting agent for the financing entity and shall segregate in a separate fund any portion of state sales tax increment revenue that is dedicated to the financing entity but will not be remitted to the financing entity in the immediate future.

24-35-119. Law enforcement agencies of department to provide identification

cards to retired peace officers upon request - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Law enforcement agency of the department" means the department of revenue and any agency within the department of revenue that employs at least one peace officer.

(b) "Peace officer" means a peace officer described in section 16-2.5-101, 16-2.5-121, 16-2.5-122, 16-2.5-123, 16-2.5-124, 16-2.5-124.5, 16-2.5-125, or 16-2.5-126, C.R.S.

(c) "Photographic identification" means a photographic identification that satisfies the description at 18 U.S.C. sec. 926C (d).

(2) Except as described in subsection (3) of this section, on and after August 7, 2013, if a law enforcement agency of the department has a policy, on August 7, 2013, of issuing photographic identification to peace officers who have retired from the agency, and the agency discontinues said policy after August 7, 2013, the agency shall continue to provide such photographic identification to peace officers who have retired from the agency if:

(a) The peace officer requests the identification;

(b) The peace officer retired from the law enforcement agency before the date upon which the agency discontinued the policy; and

(c) The peace officer is a qualified retired law enforcement officer, as defined in 18 U.S.C. sec. 926C (c).

(3) Before issuing or renewing a photographic identification to a retired law enforcement officer pursuant to this section, a law enforcement agency of the state shall complete a criminal background check of the officer through a search of the national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t), and a search of the state integrated criminal justice information system. If the background check indicates that the officer is prohibited from possessing a firearm by state or federal law, the law enforcement agency shall not issue the photographic identification.

(4) A law enforcement agency of the department may charge a fee for issuing a photographic identification to a retired peace officer pursuant to subsection (2) of this section, which fee shall not exceed the direct and indirect costs assumed by the agency in issuing the photographic identification.

(5) Notwithstanding any provision of this section to the contrary, a law enforcement agency of the department shall not be required to issue a photographic identification to a particular peace officer if the chief administrative officer of the agency elects not to do so.

(6) If a law enforcement agency of the department denies a photographic identification to a retired peace officer who requests a photographic identification pursuant to this section, the law enforcement agency shall provide the retired peace officer a written statement setting forth the reason for the denial.

PART 2

STATE LOTTERY DIVISION

24-35-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Cash prize" means any prize paid in cash in its entirety, including any expenditures made to fund Colorado or multistate prize reserves.

(1.5) "Commission" means the Colorado lottery commission.

(1.7) "Department" means the department of revenue.

(2) "Director" means the director of the state lottery division.

(3) "Division" means the state lottery division.

(4) "Executive director" means the executive director of the department of revenue.

(5) "Lottery" means any and all lotteries created and operated pursuant to this part 2, including, without limitation, the game commonly known as lotto, in which prizes are awarded on the basis of designated numbers conforming to numbers selected at random, electronically or otherwise, by or at the direction of the commission, and any multistate lottery or game that is authorized by a multistate agreement to which the division is party. All references in this article to "the lottery" shall be construed to include any or all lotteries within the meaning of this subsection (5). "Lottery" shall not include a promotional drawing as defined in subsection (8) of this section.

(6) "Multistate agreement" means an agreement entered into by the division and at least one other state's lottery authority that authorizes the division to allow Colorado residents to participate in one or more multistate lotteries pursuant to rules promulgated by the commission.

(7) "Non-cash prize" means any prize paid in merchandise or a combination of cash and merchandise.

(8) "Promotional drawing" means a prize promotion involving the conduct of giveaways through the use of free chances, including the use of nonwinning tickets from existing or prior games, for purposes of commercial advertisement of the lottery, the creation of goodwill, the promotion of new lottery products, or the collection of names.

24-35-202. State lottery division - creation - location - enterprise status. (1) (a) There is hereby created, within the department of revenue, the state lottery division, the head of which shall be the director of the state lottery division, who shall be appointed and subject to removal by the executive director of the department of revenue in accordance with section 13 of article XII of the state constitution. The state lottery division shall be headquartered in the city of Pueblo in facilities provided at the expense

of the lottery division.

(b) The state lottery division and the Colorado lottery commission, created in section 24-35-207, shall constitute an enterprise for the purposes of section 20 of article X of the state constitution, so long as the commission retains the authority to issue revenue bonds and the division receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to this section, the state lottery division and the Colorado lottery commission shall not be subject to any of the provisions of section 20 of article X of the state constitution.

(2) The state lottery division, including the Colorado lottery commission created in section 24-35-207, and the director of the state lottery division shall exercise their powers and perform their duties and functions specified in this part 2 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 this title; except that the commission shall have full and exclusive authority to promulgate rules related to the lottery without any approval by, or delegation of authority from, the department.

(3) For purposes of part 2 of article 72 of this title, the records of the division and the commission shall be public records, as defined in section 24-72-202 (6), regardless of whether the state lottery division and the Colorado lottery commission constitute an enterprise pursuant to section 24-35-202 (1).

24-35-203. Function of division. The function of the division is to establish, operate, and supervise the lottery authorized by section 2 of article XVIII of the state constitution, as approved by the electors.

24-35-204. Director - qualifications - powers and duties. (1) The director shall be qualified by training and experience to direct a lottery and the work of the division; and, notwithstanding the provisions of section 24-5-101, shall be of good character and shall not have been convicted of any felony or gambling-related offense.

(2) The director shall devote his entire time and attention to the duties of his office and shall not be engaged in any other profession or occupation.

(2.5) The director may promote the lottery by:

(a) Establishing promotional drawings. The general assembly hereby finds and declares that promotional drawings shall not be subject to regulation under this part 2. No award of prizes through a promotional drawing shall be deemed a lottery or game of chance.

(b) Selling memorabilia or other promotional items. Any revenue generated from

the sale of such items shall be transmitted to the state treasurer to be credited to the lottery fund created in section 24-35-210 (1).

(3) The director, as administrative head of the division, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon the director elsewhere in this part 2, it shall be the director's duty:

(a) To supervise and administer the operation of the lottery in accordance with the provisions of this part 2 and the rules of the commission, state fiscal rules, state personnel rules, and state procurement rules, to perform all duties and obligations pursuant to and administer any multistate agreements, and to provide for all expenses incurred in connection with any such multistate agreements unless such expenses are otherwise provided for in such multistate agreements;

(b) To attend meetings of the commission or to appoint a designee to attend in his place;

(c) To employ and direct such personnel as may be necessary to carry out the purposes of this part 2, but no person shall be employed who has been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101. The director by agreement may secure and, pursuant to section 24-35-210 (2), provide payment for such services as the director may deem necessary from any department, agency, or unit of the state government and may employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law. The director shall ensure that the division conducts full criminal background investigations of vendors, officers of licensed sales agents, members of the commission, and division employees as are necessary to ensure the security and integrity of the operation of the state lottery. The executive director may request the division of gaming to perform such investigations on members of the commission, division employees, and vendors.

(d) To license, in accordance with the provisions of section 24-35-206 and the rules and regulations of the commission, as agents to sell lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares;

(e) To deny, suspend, or revoke any lottery license subject to the provisions of section 24-4-104. The director may designate an administrative law judge, pursuant to part 10 of article 30 of this title, to take evidence and to make findings and report them to the director.

(f) To confer, as necessary or desirable and not less than once each month, with the commission on the operation of the lottery;

(g) To make available for inspection by the commission or any member of the commission, upon request, all books, records, files, and other information and documents of his office;

(h) To advise the commission and recommend such rules and regulations and such other matters as he deems necessary and advisable to improve the operation of the lottery;

(i) (Deleted by amendment, L. 2009, (HB 09-1002), ch. 31, p. 130, § 2, effective March 20, 2009.)

(j) To make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries, any literature on the subject which from time to time may be published or available, and any federal laws which may affect the operation of the lottery, and the reaction of Colorado citizens to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this part 2;

(k) To furnish monthly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for each month. All reports required by this paragraph (k) shall be public, and copies of all such reports shall be sent to the governor, the speaker of the house of representatives, the president of the senate, and the minority leaders of both houses.

(l) (Deleted by amendment, L. 2009, (HB 09-1002), ch. 31, p. 130, § 2, effective March 20, 2009.)

(m) To take such action as may be necessary to protect the security and integrity of the lottery games;

(n) To determine the manner of payment of prizes to the holders of winning tickets or shares, which determination shall include consideration of whether a prize should be awarded as a lump sum or as an amortized annuity in light of the "Internal Revenue Code of 1986", as amended, and the rules and regulations promulgated pursuant thereto;

(o) To determine such other matters as necessary or desirable for the efficient and economical operation and administration of the lottery; and

(p) To perform any other lawful acts which he and the commission may consider necessary or desirable to carry out the purposes and provisions of this part 2.

24-35-204.5. Executive director - duties. (1) It shall be the executive director's duty:

(a) To enter into contracts for materials, equipment, and supplies to be used in the operation of the lottery, for the design and installation of games or lotteries, and for promotion of the lottery. No contract shall be legal or enforceable that provides for the management of the lottery or for the entire operation of its games by any private person, firm, or corporation, because management of the lottery and control over the operation of its games shall remain with the state; except that management of and control over the operation of a multistate lottery shall be determined by the terms of a multistate agreement. Except for advertising and promotional contracts, when a contract other than a multistate agreement is awarded, a performance bond satisfactory to the executive director, executed by a surety company authorized to do business in this state or otherwise

secured in a manner satisfactory to the state, in an amount set annually by the executive director shall be delivered to the state and shall become binding on the parties upon execution of the contract.

(b) To annually prepare and submit to the commission a proposed budget for the ensuing fiscal year, which budget shall present a complete financial plan setting forth all proposed expenditures and anticipated revenues of the division. The fiscal year of the division shall commence on July 1 and end on June 30 of each year.

24-35-205. Contractors supplying services, equipment, or materials - gaming equipment - disclosures. (1) Any person, firm, association, or corporation, referred to in this section as "supplier", that enters into a contract to supply services, equipment, or materials or gaming materials or equipment for use in the operation of the state lottery shall first disclose to the division:

(a) In addition to the supplier's business name and address, the names and addresses of the following:

(I) If the supplier is a partnership, all of the general and limited partners;

(I.5) If the supplier is a limited liability company, all of the members;

(II) If the supplier is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(III) If the supplier is an association, the members, officers, and directors;

(IV) If the supplier is a corporation, the officers, directors, and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in such corporation; except that, in the case of owners or holders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of such publicly held securities need be disclosed;

(V) If the supplier is a subsidiary or intermediary company, the intermediary company, holding company, or parent company involved therewith, and the officers, directors, and stockholders of each; except that, in the case of owners or holders of publicly held securities of an intermediary company or holding company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent or more of such publicly held securities need be disclosed;

(b) If the supplier is a corporation, all the states in which the supplier is incorporated to do business, and the nature of that business;

(c) Other jurisdictions in which the supplier has contracts to supply gaming materials or equipment;

(d) The details of any criminal conviction, state or federal, of the supplier or any person whose name and address are required by paragraph (a) of this subsection (1). This paragraph (d) applies irrespective of any of the laws of the state to the contrary regarding expungement or sealed records.

(e) The details of any disciplinary action taken by any state against the supplier or any person whose name and address are required by paragraph (a) of this subsection (1) regarding any matter related to the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(f) A statement of the gross receipts realized in the preceding year from the sale, lease, or distribution of gaming materials or equipment to states operating lotteries and to private persons licensed to conduct gambling, which statement shall differentiate that portion of the gross receipts attributable to transactions with states operating lotteries from that portion of the gross receipts attributable to transactions with private persons licensed to conduct gambling;

(g) The name and address of any source of gaming materials or equipment for the supplier;

(h) The number of years the supplier has been in the business of supplying gaming materials or equipment;

(i) Such other information, accompanied by such documents, as the commission, by rule or regulation, may require as being necessary or appropriate in the public interest to accomplish the purposes of this part 2.

(2) If the supplier is a subsidiary or intermediary company, the intermediary company, holding company, or parent company involved therewith shall supply the same information required by this section of the supplier.

(3) The costs of any investigation into the background of the apparent successful bidder shall be assessed against the bidder and shall be paid by the bidder at the time of billing by the state. Such investigation may be conducted by the department or the attorney general, and no contract may be signed until the investigation is completed. Investigators shall have peace officer authority during the period of investigation.

(4) No person, firm, association, or corporation contracting to supply services, equipment, or materials or gaming equipment or materials to the state for use in the operation of the state lottery shall be directly or indirectly connected with any person, firm, association, or corporation licensed as a sales agent under this part 2, any employee of the department of revenue, the director, or the members of the commission.

(5) No contract shall be formed with any supplier if:

(a) A person disclosed pursuant to paragraph (a) or (g) of subsection (1) of this section is a person who has been convicted of a felony or gambling-related offense, who has engaged in any form of illegal gambling, who is not of good character and reputation relevant to the secure and efficient operation of the lottery, or who has been convicted of a crime involving fraud or misrepresentation. However, when a felony conviction, other than a gambling-related offense, is an issue in the formation of a contract with a supplier, the director may determine that the supplier is otherwise of good character and reputation. The director's determination shall be submitted to a three-member panel who shall approve or reject such determination. The panel's decision shall constitute final agency

action for purposes of section 24-4-106. The panel shall be composed of the chairman of the lottery commission, the executive director of the department of revenue, and the secretary of state. Upon such determination and approval, the director may enter into a contract with the supplier.

(b) A disciplinary action disclosed pursuant to paragraph (e) of subsection (1) of this section was resolved adversely to the supplier.

(6) No contract for the supply of services, equipment, or materials or gaming materials or equipment for use in the operation of the state lottery shall be enforceable against the state if the provisions of this section are not complied with.

(7) In the case of any procurement for a contract for lottery tickets, lottery consulting services, or lottery terminals or equipment having a value of one hundred thousand dollars or more, or in the case of procurement for a contract for drawing equipment regardless of value, each prospective corporate supplier shall, prior to entering into a contract, provide a verified affidavit as to ownership, if any, of any interest, direct or indirect, in any operator of a casino, jai alai fronton, racetrack, or other gaming establishment, a current personal financial statement, and individual federal and state income tax returns from the past three years for each of its officers and each of the directors. The executive director of the department of revenue shall determine, depending upon the organization of each company, by rule or regulation, which officers of any parent, intermediary, and holding companies, and which directors of the supplier or of a parent, intermediary, or holding company, are affiliated with the lottery and are required to file a current personal financial statement and individual federal and state income tax returns from the past three years. The provision of said affidavit, financial statement, and tax returns shall not be required at the time of submission of the prospective corporate supplier's bid or proposal.

(8) (a) Any contractor that has entered into a contract to supply gaming materials or equipment to the lottery shall report to the division any change in, addition to, or deletion from the information disclosed to the division in accordance with the provisions of subsections (1) (a), (1) (d), (1) (e), (2), and (7) of this section. Such report shall be written and addressed to the division and shall be mailed or delivered to the division within thirty days of the date such change in, addition to, or deletion from the information takes place or becomes effective.

(b) Any costs associated with an investigation regarding the information disclosed in such report shall be paid by the contractor who shall remit such costs within thirty days of billing by the division.

(c) (I) If such report contains any information, or if the division receives any information from any source other than the contractor, which information would have prohibited the director from awarding the contract to the contractor if the information had been provided or had been effective before the director awarded the contract, the director may terminate the contract following an investigation.

(II) If such report contains any information, or if any information is discovered by the division from any source other than the contractor, which information would have given the director discretion to refuse to enter the contract had the information been provided or been effective before the director awarded the contract, the director, following an investigation, may terminate the contract.

(III) Any termination shall be accomplished in accordance with the termination provisions of the contract.

(9) Every contract for the supply of gaming equipment or material shall provide the following:

(a) The director shall exclude from lottery facilities an employee of a contractor who has been convicted of a felony.

(b) The director shall also exclude employees of a contractor from participating in activities involving the gaming materials or equipment supplied pursuant to the contract.

(10) (a) Each supplier, prior to entering into a contract to supply gaming materials or equipment, shall submit a set of fingerprints to the division. The division shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the supplier. Nothing in this subsection (10) shall preclude the division from making further inquiries into the background of the supplier.

(b) Notwithstanding any other provision of this section to the contrary, for purposes of this subsection (10), "supplier" means an individual or any person described in paragraph (a) or (g) of subsection (1) of this section.

(11) The requirements of the procurement code, articles 101 to 112 of this title, shall apply to all contracts entered into by the lottery. The executive director shall ensure that any competitive solicitation process conducted by the lottery is designed to encourage broad vendor competition.

(12) The evaluation team for any bid for a contract for services, equipment, or materials or for the purchase or lease of gaming equipment and materials, the amount of which bid is in excess of one million dollars, shall include an individual who is neither employed by nor affiliated with the division and who possesses specific expertise in the procurement of the services, equipment, or materials or in the purchase or lease of the gaming equipment or materials that are the subject of the bid. Such individual shall be selected by the executive director in accordance with the requirements of this subsection (12).

24-35-206. Licenses. (1) The director shall issue, suspend, revoke, and renew licenses for lottery sales agents pursuant to subsection (3) of this section and rules and

regulations adopted by the commission. Licensing rules and regulations shall include requirements relating to the financial responsibility of the licensee, the accessibility of the licensee's place of business or activity to the public, the sufficiency of existing licenses to serve the public interest, the volume of expected sales, the character of the licensee, the security and efficient operation of the lottery, the licensed agent recovery reserve authorized in section 24-35-219, and other matters necessary to protect the public interest and trust in the lottery and to further the sales of lottery tickets or shares. Rules and regulations shall also require that licenses be prominently displayed in areas visible to the public.

(2) (a) A license shall be revoked upon a finding that the licensee:

(I) Has provided false or misleading information to the division;

(II) Has been convicted of any gambling-related offense;

(III) Has endangered the security of the lottery;

(IV) Has become a person whose character is no longer consistent with the protection of the public interest and trust in the lottery; or

(V) Has intentionally refused to pay a prize in his possession to a person entitled to receive the prize under this article.

(b) A license may be suspended, revoked, or not renewed for any of the following causes:

(I) A change of business location;

(II) An insufficient sales volume;

(III) A delinquency in remitting money owed to the lottery;

(IV) The endangering of the efficient operation of the lottery;

(V) Any violation of this part 2 or any rule or regulation adopted pursuant to this part 2; or

(VI) Conviction of any felony.

(3) Procedures for issuance, suspension, revocation, and renewal of licenses shall be in accordance with article 4 of this title, and the director shall have all the powers and shall be subject to all the requirements of article 4 of this title in conducting any hearings relating to the granting, suspension, revocation, or renewal of licenses. When a felony conviction or a conviction involving fraud is an issue in the issuance, suspension, revocation, or renewal of a lottery sales agent's license, the director's determination shall be submitted to a three-member panel who shall approve or reject such determination. The panel's decision shall constitute final agency action for the purposes of section 24-4-106. The panel shall be composed of the chairman of the lottery commission, the executive director of the department of revenue, and the secretary of state.

(4) Licensed sales agents may include persons, firms, associations, or corporations, profit or nonprofit, but the following are ineligible for any license as a sales agent:

(a) Any person who will engage in business exclusively as a lottery sales agent;

(b) Any person who has been convicted of a gambling-related offense, notwithstanding the provisions of section 24-5-101;

(c) Any person who is or has been a professional gambler or gambling promoter;

(d) Any person who has engaged in bookmaking or any other form of illegal gambling;

(e) Any person who is not of good character and reputation, notwithstanding the provisions of section 24-5-101, in the community in which he resides;

(f) Any person who has been convicted of a crime involving misrepresentation, notwithstanding the provisions of section 24-5-101;

(g) Any firm or corporation in which a person defined in paragraph (b), (c), (d), (e), or (f) of this subsection (4) has a proprietary, equitable, or credit interest;

(h) Any organization in which a person defined in paragraph (b), (c), (d), (e), or (f) of this subsection (4) is an officer, director, or managing agent, whether compensated or not; or

(i) Any organization in which a person defined in paragraph (b), (c), (d), (e), or (f) of this subsection (4) is to participate in the management or sales of lottery tickets or shares.

(4.5) Licensed sales agents may include persons, firms, associations, or corporations, profit or nonprofit, but the following may be determined to be ineligible for any license as a sales agent:

(a) Any person who has been convicted of a felony or a crime involving fraud, notwithstanding the provisions of section 24-5-101;

(b) Any firm or corporation in which a person defined in paragraph (a) of this subsection (4.5) has a proprietary, equitable, or credit interest;

(c) Any organization in which a person defined in paragraph (a) of this subsection (4.5) is an officer, director, or managing agent, whether compensated or not; or

(d) Any organization in which a person defined in paragraph (a) of this subsection (4.5) is to participate in the management or sales of lottery tickets or shares.

(5) Each licensed sales agent shall keep a complete set of books of account, correspondence, and all other records necessary to show fully the lottery transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination of the division or its duly authorized representatives. The division may require any licensed sales agent to furnish such information as the division considers necessary for the proper administration of this part 2 and may require an audit to be made of such books of account and records on such occasions as the division considers necessary by an auditor, selected by the director, who shall likewise have access to all such books and records of the licensee, and the licensee may be required to pay the expense thereof.

(6) All licenses for lottery sales agents shall specify the place such sales shall take place, and no license shall be effective upon residential premises.

(7) The costs of any investigation into the background of an applicant seeking a license for a lottery sales agent shall be assessed against the applicant and shall be paid by the applicant at the time of billing by the state. Such investigation may be conducted by the division or the attorney general. Investigators shall have peace officer authority during the period of investigation.

(8) If there are more applications to operate lotto than there are outlets available, then at least one hundred locations will be decided by a drawing by lot with the balance of all lotto outlets to be located at the direction of the division. Any person licensed as a lottery sales agent pursuant to the provision of this section shall be eligible to enter into this drawing by lot to determine if such person will be allowed to operate a lotto game at the same location.

(9) If the rental payments for the business premises of any lottery sales agent are based in whole or in part on a percentage of retail sales, and the computation of retail sales in the rental agreement does not specifically include the sale of tickets or shares in the lottery, the compensation received by the sales agent, which compensation is determined by the commission pursuant to section 24-35-208 (2) (h), and not the gross revenues from the sale of lottery tickets or shares shall be the amount of the retail sale for the purpose of computing the rental payment.

(10) (a) Each applicant for a lottery sales agent license, with the submission of such application, shall submit a set of fingerprints to the division. The division shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the applicant. Nothing in this subsection (10) shall preclude the division from making further inquiries into the background of the applicant.

(b) For purposes of this subsection (10), "applicant" means an individual or each officer or director of a firm, association, or corporation that is applying for a license pursuant to this section.

24-35-207. Colorado lottery commission - creation. (1) There is hereby created, within the state lottery division, the Colorado lottery commission, consisting of five members, all of whom shall be citizens of the United States and residents of this state, appointed by the governor, with the consent of the senate. No member shall have been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101. No more than three of the five members shall be members of the same political party. A chairman and a vice-chairman of the commission shall be chosen from the membership by a majority of the members at the first meeting of each fiscal year.

(2) At least one member of the commission shall have been a law enforcement

officer for not less than five years; at least one member shall be an attorney admitted to the practice of law in Colorado for not less than five years; and at least one member shall be a certified public accountant who has practiced accountancy in Colorado for at least five years.

(3) Initial members shall be appointed to the commission by the governor as follows: One member to serve until July 1, 1983, one member to serve until July 1, 1984, one member to serve until July 1, 1985, and two members to serve until July 1, 1986. All subsequent appointments shall be for terms of four years, subject to continuation of the division pursuant to section 24-35-218. No member of the commission shall be eligible to serve more than two terms.

(4) Any vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment.

(5) Any member of the commission may be removed by the governor at any time and for any reason.

(6) Commission members shall receive as compensation for their services up to one hundred dollars per month for each month in which there is an official commission meeting and shall be reimbursed for necessary traveling and other reasonable expenses incurred in the performance of their official duties. Upon appointment, and prior to confirmation by the senate, each member shall file with the secretary of state a financial disclosure statement in the form required to be filed by elected state officials. Such statement shall be renewed as of each January 1 during the member's term of office. The chairperson of the lottery commission shall also be reimbursed for necessary traveling and other reasonable expenses incurred in the performance of his or her duties related to his or her participation on the three-member panel established in sections 24-35-205 (5) (a) and 24-35-206 (3).

(7) (a) The commission shall hold at least one meeting each month and such additional meetings as may be prescribed by rules of the commission. In addition, special meetings may be called by the chairman, any two commission members, or the director, upon delivery of seventy-two hours' written notice to each member. Notwithstanding the provisions of section 24-6-402, in emergency situations in which a majority of the commission certifies that exigencies of time require that the commission meet without delay, the requirements of public notice and of seventy-two hours' written notice to members may be dispensed with, and commission members as well as the public shall receive such notice as is reasonable under the circumstances.

(b) For purposes of part 4 of article 6 of this title, the commission shall be a state public body, as defined in section 24-6-402 (1) (d), regardless of whether the state lottery division and the Colorado lottery commission constitute an enterprise pursuant to section 24-35-202 (1).

(8) A majority of the commission shall constitute a quorum, and the concurrence of a majority of the commission shall be required for any final determination by the

commission. The commission shall keep a complete and accurate audio record of all its meetings for a period of at least three years.

24-35-208. Commission - powers and duties - rules. (1) In addition to any other powers and duties set forth in this part 2, the commission shall have the following powers and duties:

(a) To promulgate rules governing the establishment and operation of the lottery as it deems necessary to carry out the purposes of this part 2. The director shall prepare and submit to the commission written recommendations concerning proposed rules for this purpose.

(b) To conduct hearings upon complaints charging violations of this part 2 or rules and regulations promulgated pursuant to this part 2, other than any hearings relating to the granting, suspension, revocation, or renewal of licenses for lottery sales agents, and to conduct such other hearings as may be provided by rules of the commission;

(c) To carry on a continuous study and investigation of the lottery throughout the state for the purpose of ascertaining any defects in this part 2 or in the rules and regulations issued under this part 2 whereby any abuses in the administration and operation of the lottery or any evasion of this part 2 or the rules and regulations may arise or be practiced, for the purpose of formulating recommendations for changes in this part 2 and the rules and regulations to prevent such abuses and evasions, to guard against the use of this part 2 and the rules and regulations as a cloak for the carrying on of organized gambling and crime, and to insure that the law and rules and regulations shall be in such form and be so administered as to serve the true purposes of this part 2;

(d) To report immediately to the governor, the attorney general, the speaker of the house of representatives, the president of the senate, the minority leaders of both houses, and such other state officers, as from time to time the commission deems appropriate, any matters which it deems to require an immediate change in the laws of this state in order to prevent abuses and evasions of this part 2 or rules and regulations promulgated thereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery;

(e) To require such special reports from the director as it may consider desirable;

(f) Repealed.

(g) To authorize and issue revenue bonds pursuant to the provisions of section 24-35-221;

(h) To annually set the amount of the performance bond required of persons entering into contracts to provide materials, equipment, or supplies used in the operation of the lottery or to design or install games or lotteries; and

(i) To investigate and participate in multistate agreements and to regulate multistate lotteries. The director shall act as the commission's agent in such investigations

if the commission so directs.

(2) Except as provided in subsection (3) of this section, rules promulgated pursuant to subsection (1) of this section shall include, but shall not be limited to, the following:

(a) The types of lotteries to be conducted, but no lottery conducted under this part 2 other than instant scratch games shall be based upon the game of chance commonly known as bingo, nor shall any lottery be conducted that depends upon the outcome of any athletic contest except races at state-licensed dog or horse tracks if approved by the Colorado racing commission;

(b) The price of tickets or shares in the lottery;

(c) The numbers, sizes, and payment of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares. All drawings shall be held in public and witnessed by an independent auditor employed by a certified public accountant firm, and all drawing equipment used in such public drawings must be examined prior to and after each public drawing by an independent auditor employed by a certified public accountant firm.

(e) The frequency of the drawing or selection of winning tickets or shares, without limitation;

(f) Without limit to number, the types of locations at which tickets or shares may be sold;

(g) The method to be used in selling tickets or shares, but all sales shall be on a cash-only basis;

(h) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(i) The manner in which lottery sales revenues are to be collected;

(j) and (k) (Deleted by amendment, L. 2009, (HB 09-1002), ch. 31, p. 133, § 6, effective March 20, 2009.)

(3) (a) The commission shall promulgate rules pursuant to subsection (1) of this section for the general administration of all instant scratch games. The rules shall include, but shall not be limited to:

(I) The method to be used in selling instant scratch game tickets, but all sales shall be on a cash-only basis;

(II) The method of paying prizes on winning instant scratch game tickets; and

(III) The manner and amount of compensation, if any, to be paid to licensed sales agents necessary to provide for the adequate availability of instant scratch game tickets to prospective buyers and for the convenience of the public.

(b) (I) The commission shall establish and approve all instructions governing instant scratch games. The instructions shall include, but shall not be limited to:

(A) The method for determining instant scratch game winners;

(B) The establishment of claim periods;

(C) The price of instant scratch game tickets;

(D) The numbers and sizes of prizes; and

(E) The method for selecting and validating winning instant scratch game tickets.

(II) The commission shall publish all approved instructions governing instant scratch games in a clearly identifiable section on the official web site of the state lottery. The published instructions shall be binding on purchasers and claimants of instant scratch game tickets.

(III) The procedural rule-making requirements of section 24-4-103 shall not apply to the commission's duties specified in this paragraph (b).

24-35-209. Conflict of interest. (1) Members of the commission and employees of the division are declared to be positions of public trust and, therefore, in order to insure the confidence of the people of the state in the integrity of the division, its employees, and the commission, the following restrictions shall apply:

(a) No member of the commission or employee of the division, including the director, and no member of their immediate families, shall have any personal pecuniary interest in any lottery or in the sale of any lottery tickets or shares or in any corporation, association, or firm contracting with the state to supply gaming equipment or materials for use in the operation of the lottery or in any corporation, association, or firm licensed as a sales agent under this part 2. Employment by any political subdivision, or service on the governing body or on any board, agency, or commission of any political subdivision, which is entitled to receive a portion of the proceeds of the lottery shall not constitute an interest prohibited by this section, except for the purposes of appointment to or service on the commission.

(b) No member of the commission or employee of the division, including the director, and no member of their immediate families, shall receive any gift, gratuity, employment, or other thing of value from any person, corporation, association, or firm that contracts with or that offers services, supplies, materials, or equipment used by the division in the normal course of its operations.

(c) No member of the commission or employee of the division, including the director, and no member of their immediate families, shall purchase any ticket for any lottery conducted under this part 2; except that lottery investigators may purchase lottery tickets when authorized to do so by the director for investigative purposes. No person described in this paragraph (c) shall be eligible to receive any prize awarded in such a lottery.

(d) No person, corporation, or firm that contracts with the division or that offers services, supplies, materials, or equipment used by the division in the normal course of its operations shall offer any gift, gratuity, employment, or other thing of value to any

commission member, employee of the division, or members of their immediate families except as authorized by rules and regulations promulgated pursuant to paragraph (b) of this subsection (1).

(e) (Deleted by amendment, L. 2004, p. 1140, § 5, effective July 1, 2004.)

(f) No member of the commission or employee of the division who terminates his or her relationship with the commission or the division shall, for a period of one year from the date of termination of membership on the commission or employment with the division, as applicable, accept employment with any lottery vendor or represent any lottery vendor before the division or the commission.

(g) The commission shall adopt by rule a code of ethics that shall be binding upon all of its members. Each member of the commission shall complete training at least once each year on the code and shall further certify on an annual basis that he or she is knowledgeable about the code and has no conflicts of interest proscribed by this section.

24-35-210. Lottery fund. (1) There is hereby created, in the office of the state treasurer, the lottery fund. The initial appropriation to the division, and all subsequent revenues of the division not earlier paid as prizes, shall be paid into the lottery fund. All expenses of the division, including the expenses of organized crime investigation and prosecution relating to the lottery, shall be paid from the lottery fund. For the purposes of this section and section 24-35-208, "expenses" do not include amounts expended for lottery prizes. Prizes for the lottery shall be paid only from the lottery fund or from moneys collected from the sale of lottery tickets or shares. Amounts for prizes and expenses are hereby appropriated to the division, except as provided in subsection (2) of this section.

(1.5) The division shall deposit all liquidated damages into the lottery fund, and any revenues received from liquidated damages shall not be expended by the division unless appropriated by the general assembly. The division shall not receive any goods or services in lieu of an assessment of liquidated damages, nor shall the division require a vendor to purchase goods and services in lieu of an assessment of liquidated damages.

(2) Expenses of the division shall be paid from the lottery fund only as appropriated by the general assembly.

(3) Upon request, it is the duty of the state treasurer to report to the director or the commission the amount of money on hand in the lottery fund. All accounts and expenditures from the lottery fund shall be certified by the director and paid by the state treasurer upon warrants drawn by the controller. The controller is authorized as directed to draw warrants payable out of the lottery fund upon vouchers therefor properly certified.

(4) Repealed.

(4.1) (a) The amount to be transferred from the lottery fund to the conservation trust fund shall be forty percent of the net proceeds of the lottery for the preceding fiscal

quarter after payment of the expenses of the division and any prizes for the lottery and after reserving sufficient moneys, as of the end of the fiscal year, to ensure the operation of the lottery for the ensuing fiscal year. The moneys reserved by the lottery shall be held in cash and investments. Beginning with the fourth quarter of fiscal year 1998-99, and each fiscal year thereafter, distributions of net lottery proceeds to the conservation trust fund shall be made in accordance with the provisions of section 33-60-104 (1) (a), C.R.S.

(b) (I) Beginning with the first quarter of fiscal year 1998-99 and each fiscal year thereafter, distributions of net lottery proceeds to the division of parks and wildlife shall be made in accordance with the provisions of paragraph (b) of subsection (1) of section 33-60-104, C.R.S.

(II) The appropriation of moneys from the state lottery for capital construction shall be consistent with part 13 of article 3 of title 2, C.R.S., until such time as said part 13 is repealed.

(c) The lottery money available for appropriation to the division of parks and wildlife pursuant to paragraph (b) of this subsection (4.1) shall be appropriated and expended for the acquisition and development of new state parks, new state recreation areas, or new recreational trails, for the expansion of existing state parks, state recreation areas, or recreational trails, or for capital improvements of both new and existing state parks, state recreation areas, or recreational trails. Except as provided in section 33-60-105, C.R.S., in addition to appropriation for the division's capital construction budget, said lottery money may be appropriated for the division's operating budget for expenditures attributable to the maintenance and operation of state parks, state recreation areas, or recreational trails, or any portions thereof, that have been acquired or developed with lottery money.

(d) This subsection (4.1) shall become effective on September 1, 1998, or on any earlier date on which the lease-purchase obligations undertaken by the state pursuant to subsection (4) of this section are discharged.

(5) Repealed.

(6) The state treasurer shall invest the moneys in the lottery fund so long as said moneys are timely available to pay the expenses of the division, to pay the prizes to the lottery winners, to make authorized transfers to the conservation trust fund, and to fund the annual appropriations authorized by subsection (4.1) of this section. Investments shall be those otherwise permitted by state law, and interest or any other return on the investments shall be paid into the lottery fund.

(7) The division shall be operated so that, after the initial state appropriation, it shall be self-sustaining.

(8) No claim for the payment of any expense of the division or the payment of any lottery prize can be made unless it is against the lottery fund or against moneys collected from the sale of lottery tickets or shares. No other moneys of the state of Colorado shall be used or obligated to pay the expenses of the division or prizes of the lottery.

(9) The total disbursements for lottery prizes shall be no less than fifty percent of the total revenue accruing from the sale of lottery tickets or shares.

(10) (a) (I) (Deleted by amendment, L. 2005, p. 279, § 11, effective August 8, 2005.)

(II) Net lottery proceeds to be distributed to the conservation trust fund, as computed pursuant to this section, shall be transferred to the conservation trust subaccount of the lottery fund, which subaccount is hereby created, once each month. Such transfers shall be made from net lottery proceeds reflected in the monthly statement required to be filed pursuant to section 24-35-204 (3) (k) for the period ending sixty days prior to each monthly distribution. The state treasurer shall invest all moneys in the conservation trust subaccount in investments permitted by state law. Notwithstanding subsection (6) of this section, interest or any other return on such investments shall be distributed to the conservation trust fund with other moneys in the conservation trust subaccount pursuant to section 33-60-103, C.R.S.

(III) Beginning with the first quarter of fiscal year 1998-99, distributions shall be made on a quarterly basis in accordance with the provisions of section 33-60-104, C.R.S., with the distribution of net lottery proceeds for the first quarter occurring on December 1 of such fiscal year, distribution of net lottery proceeds for the second quarter occurring on March 1 of such fiscal year, distribution of net lottery proceeds for the third quarter occurring on June 1 of such fiscal year, and distribution of net lottery proceeds for the fourth quarter occurring on September 1 following the close of such fiscal year.

(b) Repealed.

(11) The general assembly may establish priorities in the general appropriation act for expenditures for projects to be financed from net lottery proceeds appropriated for capital construction. Such priorities shall govern the use of quarterly distributions from the lottery fund in order to assure that available revenues are used to fund higher priority projects before they are used to fund lower priority projects.

24-35-211. Audits and annual reports. (1) The lottery fund shall be audited at least annually by or under the direction of the state auditor, who shall submit a report of the audit to the legislative audit committee. The annual audit shall include compliance with section 3 of article XXVII of the state constitution. The expenses of the audit shall be paid from the lottery fund.

(2) The commission and director shall make an annual report by March 1 of each year to the governor, the legislative audit committee, and the joint budget committee that shall include a summary of the division's activities for the previous year, a detailed statement of lottery revenues, prize disbursements, expenses of the division, allocation of remaining revenues, and any recommendations for change in the statutes that the commission or director deems necessary or desirable. The report shall be public.

(3) The director shall evaluate the lottery's expenditures to determine areas where the expenditures may be reduced with the goal of increasing net proceeds as a percentage of sales paid to the beneficiaries. Not later than July 1, 2005, the director shall report to the governor, the legislative audit committee, and the joint budget committee on any recommendations he or she desires to make based upon the evaluation.

24-35-212. Prizes. (1) The right of any person to a prize is not assignable; except that payment of any prize may be paid to:

(a) The estate of a deceased prizewinner; or

(b) Any person pursuant to a voluntary assignment of the right to receive future annual prize payments, in whole or in part, if the assignment is made pursuant to an appropriate judicial order of the district court located in the city and county of Denver or the judicial district where the assignor resides or where the commission's headquarters are located.

(1.5) (a) A copy of the petition for an order described in paragraph (b) of subsection (1) of this section and of all notices of any hearing in the matter shall be served on the executive director no later than ten days prior to any hearing or entry of any order.

(b) The commission may intervene as of right in any such proceeding solely to protect the interests of the commission but shall not be deemed an indispensable or necessary party.

(c) The court receiving the petition is authorized to issue an order approving the assignment and directing the executive director to pay to the assignee all future prize payments so assigned upon finding that all of the following conditions have been met:

(I) The assignment has been memorialized in writing and executed by the assignor and is subject to Colorado law;

(II) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress; and

(III) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to subsection (5) of this section, unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) Within ten days of receipt of a certified copy of a court order granted pursuant to this subsection (1.5), the executive director shall acknowledge in writing to both the assignor and the assignee the executive director's agreement to make the payments in accordance with the provisions of the order. The executive director shall make such

payments pursuant to said order.

(e) The commission shall not adopt rules and regulations for the implementation of this subsection (1.5) that are more restrictive than the provisions of this subsection (1.5), that impose requirements in addition to those set forth in this subsection (1.5), or that are inconsistent with the expressed intent of the general assembly.

(f) The executive director is authorized to establish a reasonable fee to defray any administrative expenses of the executive director associated with assignments made pursuant to this section. The fee amounts shall reflect the direct and indirect costs associated with processing the assignments.

(1.6) (Deleted by amendment, L. 2009, (HB 09-1002), ch. 31, p. 135, § 7, effective March 20, 2009.)

(2) Notwithstanding any provision of this part 2 to the contrary, the commission may authorize licensed sales agents to retain all prizes pursuant to the rules of the commission for the persons entitled to such prizes for one hundred eighty days after the termination dates of the lottery games for which the prizes were won. Such prizes shall be held in trust on behalf of the division for payment to the persons so entitled. No separate accounting of such prizes needs to be made by the licensed sales agent unless requested by the director. Any person who fails to claim a prize during the one-hundred-eighty-day period shall forfeit all rights to the prize, and the amount of the prize shall become the property of the licensee. All other unclaimed prizes shall be retained by the division for the persons entitled to such prizes for the one-hundred-eighty-day period. Any person who fails to claim a prize which is held by the division or its designee during such time shall forfeit all rights to the prize, and the amount of the prize shall remain in the lottery fund.

(3) The division shall be discharged of all liability upon the payment of any prize pursuant to this part 2.

(4) Any prize won by a person under eighteen years of age who purchased a winning ticket in violation of section 24-35-214 (1) (c) shall be forfeited. If a person otherwise entitled to a prize or a winning ticket is under eighteen years of age, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor.

(5) (a) Prior to the payment of any lottery cash prize or non-cash prize required by rule and regulation of the commission to be paid only at the lottery offices and subject to state and federal tax reporting, the department of revenue shall require the winner to submit the winner's social security number and federal employer identification number, if applicable, and shall check the social security number of the winner with those certified by the department of human services for the purpose of the state lottery winnings offset as provided in section 26-13-118, C.R.S. For a lottery cash prize, beginning January 1, 2012, the department of revenue shall also check the social security number of the winner with those certified by the department of personnel for the purpose of the state lottery winnings

offset as provided in section 24-30-202.7. The social security number and the federal employer identification number shall not become part of the public record of the department of revenue. If the social security number of a lottery winner appears among those certified by the department of human services, the department of revenue shall obtain the current address of the winner, notify the department of human services, and suspend the payment of the cash prize or non-cash prize until the requirements of section 26-13-118, C.R.S., are met. If, after consulting with the department of human services, the department of revenue determines that the lottery winner owes a child support debt or child support costs pursuant to section 14-14-104, C.R.S., or owes child support arrearages as part of an enforcement action pursuant to article 5 of title 14, C.R.S., or owes child support arrearages or child support costs which are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S., then the department of revenue shall withhold from the amount of the cash prize paid to the lottery winner an amount equal to the amount of child support debt, child support arrearages, and child support costs which are due or, if the amount of the cash prize is less than or equal to the amount of child support debt, arrearages, and costs due, shall withhold the entire amount of the lottery cash prize. Any cash prize so withheld for the department of human services shall be transmitted to the state treasurer for disbursement by the department of human services as directed in section 26-13-118, C.R.S. If the social security number of a lottery cash prize winner appears among those certified by the department of personnel, the department of revenue shall obtain the current address of the winner, notify the department of personnel, and suspend the payment of the cash prize until the requirements of section 24-30-202.7 are met. If, after consulting with the department of personnel, the department of revenue determines that the lottery winner owes an outstanding debt that has been certified pursuant to section 24-30-202.7, then the department of revenue shall withhold from the amount of the cash prize paid to the lottery winner an amount equal to the amount of the outstanding debt or, if the amount of the cash prize is less than or equal to the amount of the outstanding debt, shall withhold the entire amount of the lottery cash prize. Any cash prize so withheld for the department of personnel shall be transmitted to the state treasurer for disbursement in accordance with section 24-30-202.7 (4).

(b) A lottery winner of a non-cash prize who owes child support debt, child support arrearages, or child support costs shall forfeit the prize, unless:

(I) (A) All of the child support debt, child support arrearages, and child support costs are paid by the lottery winner within ten working days after claiming the suspended non-cash prize; and

(B) The department of human services has notified the department of revenue that payment has been received; or

(II) An administrative review is requested pursuant to section 26-13-118 (2), C.R.S., and the requirements set forth in paragraph (c) of this subsection (5) are met.

(c) If an administrative review is requested pursuant to section 26-13-118 (2), C.R.S., the non-cash prize shall remain suspended until the department of human services notifies the department of revenue that the administrative review process has been completed pursuant to rules of the state board of human services. If at the administrative review it is determined that the winner owes child support debt, child support arrearages, or child support costs, the winner shall forfeit the non-cash prize unless:

(I) The winner pays the child support debt, child support arrearages, and child support costs in full within ten days after the date of the letter informing the lottery winner of the results of the administrative review; and

(II) The department of human services notifies the department of revenue that payment has been received.

(d) If forfeited by the lottery winner, the non-cash prize shall be sold at fair market value. The proceeds of the sale shall be transmitted to the state treasurer for disbursement in accordance with the requirements of section 26-13-118 (3), C.R.S.

(e) (I) Notwithstanding any provision of this subsection (5) to the contrary, if, in addition to owing an outstanding debt, a lottery winner owes either restitution as described in section 24-35-212.5 or a child support debt or arrearages or child support costs as described in this subsection (5), any lottery winnings offset against such restitution or child support debt or arrearages or child support costs shall take priority and be applied first. If, in such instance, the lottery winner owes both types of debts, both offsets shall take priority and the provisions of section 24-35-212.5 (3) shall apply.

(II) The remaining lottery winning moneys, if any, after the offsets described in subparagraph (I) of this paragraph (e) shall be applied toward the payment of outstanding debt and processed in accordance with this section.

(6) Notwithstanding any provision of this section to the contrary, all or any part of a prize won by a person may be pledged as collateral for a loan; however, the pledging of all or any part of such prize creates no liability to the state of Colorado.

24-35-212.5. Prizes - lottery winnings offset for restitution. (1) Prior to the payment of any lottery winnings required by rule and regulation of the commission to be paid only at the lottery offices, the department of revenue shall require the winner to submit the winner's social security number and federal employer identification number, if applicable, and shall check the social security number of the winner with those certified by the judicial department for the purpose of the state lottery winnings offset as provided in section 16-18.5-106.5, C.R.S. The social security number and the federal employer identification number shall not become part of the public record of the department of revenue.

(2) If the social security number of a lottery winner appears among those certified by the judicial department, the department of revenue shall suspend the payment of such

winnings until the requirements of section 16-18.5-106.5, C.R.S., are met. If, after consulting with the judicial department, the department of revenue determines that the lottery winner is obligated to pay the amounts certified under 16-18.5-106.5, C.R.S., then the department of revenue shall withhold from the amount of winnings paid to the lottery winner an amount equal to the amount of restitution which is due or, if the amount of winnings is less than or equal to the amount of restitution due, shall withhold the entire amount of the lottery winnings. Any moneys so withheld shall be transmitted to the state treasurer for disbursement as directed in section 16-18.5-106.5 (3), C.R.S.

(3) If a lottery winner owes a child support debt or arrearages or child support costs as described in section 24-35-212 (5), and also owes restitution as described in this section, the lottery winnings offset against the child support debt or arrearages or costs shall take priority and be applied first. The remaining lottery winning moneys, if any, shall be applied toward the payment of outstanding restitution and processed in accordance with this section.

24-35-213. Legal services. (1) The attorney general shall provide legal services for the division and the commission at the request of the director or the commission. The attorney general shall make reasonable efforts to ensure that there is continuity in the legal services provided and that the attorneys providing legal services to the division and the commission have expertise in such field.

(2) The director shall cause the attorney general to make investigations and to prosecute and defend, on behalf of and in the name of the division, suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the division.

(3) Expenses of the attorney general incurred in the performance of his responsibilities under this section shall be paid from the lottery fund.

24-35-214. Unlawful acts. (1) It is unlawful for any person:

(a) To sell a lottery ticket or share at a price greater than or less than that fixed by the commission; however, a lottery ticket or share which is offered at no additional charge in conjunction with the sale of a product or service shall not be deemed to violate this section unless the offer is made to a person under eighteen years of age;

(b) To sell a lottery ticket or share unless authorized or licensed by the director to do so, but this shall not prevent lottery tickets or shares from being given as gifts;

(c) To sell a lottery ticket or share to any person under eighteen years of age or for any person under eighteen years of age to purchase a lottery ticket or share, but this shall not prevent receipt of a lottery ticket or share given as a gift to a person under eighteen years of age;

(d) To sell a lottery ticket or share at any place other than that place authorized and specified on the license.

24-35-215. Penalties. (1) In addition to any other penalties which may apply, any person violating any of the provisions of section 24-35-214 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person violating the sale restrictions of section 24-35-214 (1) (c) may also be proceeded against pursuant to section 18-6-701, C.R.S., for contributing to the delinquency of a minor.

(3) Any person issuing, suspending, revoking, or renewing contracts pursuant to section 24-35-205 or licenses pursuant to section 24-35-206 for any personal pecuniary gain or any thing of value as defined in section 18-1-901 (3) (r), C.R.S., or any person violating any of the provisions of section 24-35-209, commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(4) Any person violating any of the provisions of this part 2 relating to disclosure by providing any false or misleading information commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-35-216. Advertising. Any promotional advertising regarding the lottery shall set forth the odds of winning and the average return on the dollar in prize money to the public. All promotional advertising expenses shall be paid from the lottery fund.

24-35-217. Other laws inapplicable. Any other state or local law in conflict with this part 2 shall be inapplicable, but this section shall not be construed to supersede or affect the provisions of article 9 of title 12, C.R.S.

24-35-218. Division subject to termination. (1) (a) Unless continued or reestablished by the general assembly acting by bill, the division shall terminate on July 1, 2024.

(b) (I) The state auditor shall conduct annual financial audits of the division.

(II) At least once every five years, and more frequently in the state auditor's discretion, the state auditor shall conduct an analysis and evaluation of the performance of the division and shall submit a written report, together with such supporting materials as may be requested, to the general assembly. The first such report shall be completed by January 1, 2004.

(c) In conducting the analysis and evaluation required by subparagraph (II) of

paragraph (b) of this subsection (1), the state auditor shall take into consideration, but not be limited to considering, the following factors:

(I) The amount of revenue generated by the lottery for its beneficiaries as specified in article XXVII of the state constitution;

(II) The administrative and other expense of lottery dollar collections as compared to revenue derived;

(III) An evaluation of the contracts, and compliance with such contracts, of lottery equipment contractors and licensed sales agents;

(IV) Whether there has been an increase in organized crime related to gambling within the state;

(V) (Deleted by amendment, L. 2004, p. 1142, § 9, effective July 1, 2004.)

(VI) A report on the results of the analysis prepared by the division on the socioeconomic profile of persons who play the lottery, including information comparing the results of past analyses to assess the movement of persons from various categories;

(VII) Whether the commission encourages public participation in its decisions rather than participation only by the people whom it regulates;

(VIII) An evaluation of the effectiveness and efficiency of the division's complaint, investigation, and disciplinary procedures;

(IX) Whether the division performs its statutory duties efficiently and effectively;

(X) Whether administrative or statutory changes are necessary to improve the operation of the lottery in the best interests of the state's citizens;

(XI) Any other matters of concern about the operation and functioning of the lottery; and

(XII) A report on any gifts and gratuities received by members of the commission and employees of the division.

(d) Prior to any revision of the division's functions, a committee of reference in each house of the general assembly shall hold a public hearing thereon to consider the report provided by the state auditor, as required by subparagraph (II) of paragraph (b) of this subsection (1). The hearing shall include the factors set forth in paragraph (c) of this subsection (1).

(2) Repealed.

24-35-219. Licensed agent recovery reserve - payments from reserve - revocation of license. (1) There is hereby created in the lottery fund the licensed agent recovery reserve, which shall be used under the direction of the division in the manner prescribed in this section.

(2) (a) Beginning January 1, 1988, each licensed sales agent shall pay to the division a fee.

(b) The amount of such fee and the frequency with which it shall be collected

shall be established by the commission pursuant to rule and regulation.

(c) All fees collected by the division pursuant to paragraph (b) of this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the lottery fund, which fees shall be maintained administratively as part of the licensed agent recovery reserve. Any interest earned on the investment of such fees in the fund shall be credited at least annually to said reserve.

(d) No moneys shall be appropriated from the general fund for the payment of any expenses incurred under this section, and no such expenses shall be charged against the state.

(3) When a licensed sales agent has failed to remit any moneys owed to the lottery under rule and regulation, the division shall transfer moneys in the amount equivalent to the unpaid amount from the licensed agent recovery reserve to the lottery fund.

(4) If the division is required to make a transfer pursuant to subsection (3) of this section, the director shall revoke the sales agent's license in accordance with the provisions of section 24-35-206 (3). If the license is revoked, the sales agent shall not be eligible to be licensed again until he has repaid in full the amount paid from the licensed agent recovery reserve.

24-35-220. Additional facilities. (Repealed)

24-35-221. Revenue bonds - authority - issuance - requirements - covenants. (1) (a) The commission may, by resolution which meets the requirements of subsection (2) of this section, authorize and issue revenue bonds in an amount not to exceed ten million dollars in the aggregate for expenses of the division. Such bonds may be issued only after approval by both houses of the general assembly either by act or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution. Such bonds shall be payable only from moneys allocated to the division for expenses of the division pursuant to section 24-35-210 (1).

(b) All bonds issued by the commission shall provide that:

(I) No holder of any such bond may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bond does not constitute a debt of the state and is payable only from the net revenues allocated to the division for expenses as designated in such bond.

(2) (a) Any resolution authorizing the issuance of bonds under the terms of this section shall:

(I) State the date of issuance of the bonds;

(II) State a maturity date or dates during a period not to exceed thirty years from the date of issuance of the bonds;

(III) State the interest rate or rates on, and the denomination or denominations of, the bonds;

(IV) State the medium of payment of the bonds and the place where the bonds will be paid.

(b) Any resolution authorizing the issuance of bonds under the terms of this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds;

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(3) Any bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the commission shall advertise the sale in such manner as the commission deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest to the date of delivery.

(4) Notwithstanding any provisions of the law to the contrary, all bonds issued pursuant to this section are negotiable.

(5) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) Any resolution made pursuant to the terms of this section shall be deemed a contract with the holders of the bonds, and the duties of the commission under such resolution shall be enforceable by any appropriate action in a court of competent jurisdiction.

(6) Bonds issued under this section and bearing the signatures of members of the commission in office on the date of the signing thereof shall be valid and binding obligations, regardless of whether, prior to the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon have ceased to be members of the commission.

(7) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net revenues pledged therefor. The commission may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by such commission over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery,

by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

24-35-222. Immunity. A lottery sales agent licensed pursuant to section 24-35-206 shall not be liable for monetary damages or otherwise for the sale of a lottery ticket that complies with this part 2, rules promulgated pursuant to this part 2, or orders issued by the director.

PART 3

REGISTRATION OF TRADE NAMES

24-35-301 to 24-35-305. (Repealed)

PART 4

LIQUOR ENFORCEMENT DIVISION AND
STATE LICENSING AUTHORITY - FUNDING

24-35-401. Liquor enforcement division and state licensing authority cash fund. There is hereby created in the state treasury the liquor enforcement division and state licensing authority cash fund. The fund shall consist of moneys transferred thereto in accordance with sections 12-46-105 (2) and 12-47-502 (1), C.R.S. The general assembly shall make annual appropriations from the fund for a portion of the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of articles 46, 47, and 48 of title 12, C.R.S. Any money remaining in the fund at the end of each fiscal year shall remain in the fund and shall not revert to the general fund or any other fund. The fund shall be maintained in accordance with section 24-75-402.

PART 5

REGULATION OF TOBACCO SALES TO MINORS

24-35-501. Legislative declaration. (1) The general assembly finds that:

(a) The use of tobacco creates dangerous risks to the health of the people of the state of Colorado;

(b) Studies have shown that most people who use tobacco started using it when

they were minors; and

(c) The costs of health care for persons suffering from diseases caused by the use of tobacco are borne by all of the people of the state of Colorado.

(2) The general assembly also recognizes that:

(a) Federal regulations now require states through designated state agencies to develop programs to reduce the use of tobacco by minors as demonstrated by random inspection of businesses that sell tobacco at retail;

(b) As of January 1, 1998, there is no state agency specifically assigned the responsibility of enforcing the statutes of the state of Colorado prohibiting the sale of tobacco to minors or coordinating the inspection of businesses that sell tobacco;

(c) The liquor enforcement division of the department of revenue has experience in enforcing laws relating to the sale of liquor to minors; and

(d) The liquor enforcement division would be the most cost-effective state agency to enforce state laws relating to the sale of tobacco to minors.

24-35-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Department" means the department of revenue.

(2) "Division" means the division of liquor enforcement within the department.

(3) "Hearing officer" means a person designated by the executive director of the department to conduct hearings held pursuant to section 24-35-505.

(4) "Minor" means a person under eighteen years of age.

(5) "Retailer" means a business of any kind at a specific location that sells cigarettes or tobacco products to a user or consumer.

(6) "Tobacco product" has the same meaning as provided in section 18-13-121, C.R.S.

24-35-503. Sale of cigarettes or tobacco products to minors or in vending machines prohibited - warning sign - small quantity sales prohibited. (1) No retailer shall sell or permit the sale of cigarettes or tobacco products to a minor; except that it shall not be a violation if the retailer establishes that the person selling the cigarette or tobacco product was presented with and reasonably relied upon a photographic identification that identified the person purchasing the cigarette or tobacco product as being eighteen years of age or older.

(2) No retailer shall sell or offer to sell any cigarettes or tobacco products by use of a vending machine or other coin-operated machine; except that cigarettes may be sold at retail through vending machines only in:

(a) Factories, businesses, offices, or other places not open to the general public;

(b) Places to which minors are not permitted access; or

(c) Establishments where the vending machine dispenses cigarettes through the operation of a device that enables an adult employee of the establishment to prevent the dispensing of cigarettes to minors.

(3) Any person who sells or offers to sell any cigarettes or tobacco products shall display a warning sign, as specified in this subsection (3). The warning sign shall be displayed in a prominent place in the building and on any vending or coin-operated machine at all times, shall have a minimum height of three inches and a width of six inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A $100.00 FINE MAY BE IMPOSED.

(4) No retailer shall sell or offer to sell individual cigarettes, or any pack or container of cigarettes containing fewer than twenty cigarettes, or roll-your-own tobacco in any package containing less than 0.60 ounces of tobacco.

24-35-504. Enforcement authority - designation of agency - coordination - sharing of information. (1) The division shall have the power to enforce all state statutes relating to the prohibition of the sale of cigarettes and tobacco products to minors. The division is designated as the lead state agency for the enforcement of state statutes in compliance with federal laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

(2) The division shall coordinate the enforcement of state laws relating to the prohibition of the sale of cigarettes and tobacco products to minors by multiple state agencies to avoid duplicative inspections of the same retailer by multiple state agencies.

(3) (a) The division shall work with the department of human services and the department of public health and environment to ensure compliance with federal regulations for continued receipt of all federal funds contingent upon compliance with laws related to the prohibition of the sale of cigarettes and tobacco products to minors.

(b) The division shall perform at least the minimum number of random inspections of businesses that sell cigarettes and tobacco products at retail as required by federal regulations.

(c) In order to pay for the inspections required by paragraph (b) of this subsection (3), the division shall apply for a grant from the tobacco education, prevention, and cessation program established in part 8 of article 3.5 of title 25, C.R.S.

(4) In order to enforce laws relating to the prohibition of the sale of cigarettes and tobacco products to persons under eighteen years of age, the department of revenue is

authorized to share information on the identification and address of retailers that sell cigarettes and tobacco products with any state agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes and tobacco products to minors.

24-35-505. Hearings. (1) Subject to the limitations contained in section 24-35-506, the division, on its own motion or on a complaint from another governmental agency responsible for the enforcement of laws relating to the prohibition of the sale of cigarettes and tobacco products to minors, shall have the power to penalize retailers for violations of section 24-35-503.

(2) (a) A retailer accused of violating section 24-35-503 shall be entitled to written notice of the time and place of the hearing personally delivered to the retailer at the actual retail location or mailed to the retailer at the last known address as shown by the records of the department. The retailer is also entitled to be represented by counsel, to present evidence, and to cross-examine witnesses.

(b) A retailer that does not claim an affirmative defense pursuant to section 24-35-506 (2) may waive their right to a hearing and pay the appropriate fine.

(3) A hearing pursuant to this section shall be conducted at a location designated by the division before a hearing officer. The hearing officer shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of documents relating to any alleged violation of section 24-35-503.

(4) If the hearing officer finds, by a preponderance of the evidence, that the retailer violated section 24-35-503, the hearing officer may issue a written order or levy a fine against the retailer, subject to the provisions of section 24-35-506.

(5) The findings of the hearing officer shall be a final agency order. Any appeal of the decision of the hearing officer shall be filed with the Colorado court of appeals pursuant to section 24-4-106 (11).

(6) Any unpaid fine levied pursuant to this section together with reasonable attorney fees may be collected in a civil action filed by the attorney general.

(7) Any fines collected for violations of section 24-35-503 shall be forwarded to the state treasurer who shall credit the same to the tobacco use prevention fund created in section 24-35-507.

24-35-506. Limitation on fines. (1) For a violation of section 24-35-503 (1) or (4), the penalty shall be as follows:

(a) A written warning for a first violation committed within a twenty-four-month period;

(b) A fine of two hundred fifty dollars for a second violation within a twenty-four-month period;

(c) A fine of five hundred dollars for a third violation within a twenty-four-month

period;

(d) A fine of one thousand dollars for a fourth violation within a twenty-four-month period; and

(e) A fine of between one thousand dollars and fifteen thousand dollars for a fifth or subsequent violation within a twenty-four-month period.

(2) Notwithstanding the provisions of subsection (1) of this section, no fine for a violation of section 24-35-503 (1) shall be imposed upon a retailer that can establish an affirmative defense to the satisfaction of the division or the hearing officer that, prior to the date of the violation, it:

(a) Had adopted and enforced a written policy against selling cigarettes or tobacco products to persons under the age of eighteen years;

(b) Had informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons under the age of eighteen years;

(c) Required employees to verify the age of cigarette or tobacco product customers by way of photographic identification; and

(d) Had established and imposed disciplinary sanctions for noncompliance.

(3) The affirmative defense established in subsection (2) of this section may be used by a retailer only twice at each location within any twenty-four-month period.

(4) For a violation of section 24-35-503 (2) or (3), the penalty shall be as follows:

(a) (I) For a violation of section 24-35-503 (2), a fine of twenty-five dollars for a first violation committed within a twenty-four-month period;

(II) For a violation of section 24-35-503 (3), a written warning for a first violation committed within a twenty-four-month period;

(b) A fine of fifty dollars for a second violation within a twenty-four-month period;

(c) A fine of one hundred dollars for a third violation within a twenty-four-month period;

(d) A fine of two hundred fifty dollars for a fourth violation within a twenty-four-month period; and

(e) A fine of between two hundred fifty dollars and one thousand dollars for a fifth or subsequent violation within a twenty-four-month period.

24-35-507. Tobacco use prevention fund - grants. (1) There is hereby created in the state treasury the tobacco use prevention fund, referred to in this section as the "fund". Moneys in the fund shall be subject to annual appropriation by the general assembly. Any interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended or unencumbered moneys remaining in the fund at the end of any fiscal year shall remain in the fund and shall not revert or be transferred to the general fund or any other fund of the state.

(2) Subject to annual appropriations by the general assembly, the department of human services may make grants from the fund to programs designed to develop training materials for retailers related to the prohibition of the sale of cigarettes and tobacco products to minors or to programs designed to prevent the use of cigarettes and tobacco products by minors.

24-35-508. Repeal of part. (Repealed)

PART 6

GAMBLING PAYMENT INTERCEPT ACT

24-35-601. Short title. This part 6 shall be known and may be cited as the "Gambling Payment Intercept Act".

24-35-602. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Parents should provide financial support to their minor children who cannot care for themselves.

(b) The state should intervene when parents fail to meet their support obligations.

(c) Children are adversely affected when parents divert their financial support to limited gaming and pari-mutuel wagering.

(d) A parent's winnings from money diverted from a child's support should be applied to the parent's outstanding support obligations.

(e) Section 12-47.1-102 (1) (c), C.R.S., of the "Limited Gaming Act of 1991" recognizes that the limited gaming industry must be assisted in protecting the general welfare of the people of the state.

(f) Victims of crime and all the people of the state are adversely affected when criminal offenders divert restitution to limited gaming and pari-mutuel wagering.

(g) A criminal offender's winnings from money diverted from restitution should be applied to the offender's outstanding criminal court obligations.

(h) An uncollected debt to the state should be deducted from a person's winnings.

24-35-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Licensee" means a licensee as defined in section 12-60-102 (17), C.R.S., or an operator or retail gaming licensee under section 12-47.1-501 (1) (b) or (1) (c), C.R.S.

(2) (a) "Outstanding debt" means:

(I) Unpaid child support debt or child support costs to the state pursuant to section 14-14-104, C.R.S., and arrearages of child support requested as part of an enforcement action pursuant to article 5 of title 14, C.R.S., or arrearages of child support that are the subject of enforcement services provided pursuant to section 26-13-106, C.R.S.;

(II) Restitution that a person has been ordered to pay pursuant to section 18-1.3-603 or 19-2-918, C.R.S., regardless of the date that the restitution was ordered; and

(III) Any unpaid debt due to the state that is referred pursuant to section 24-30-202.4 (2) to the state controller or the central collection services section of the division of finance and procurement, or any successor section, in the department of personnel, and including the collection fee and any allowable fees and costs pursuant to section 24-30-202.4 (8). "Outstanding debt" does not include any debt collected by the department of personnel for a political subdivision of the state.

(b) Notwithstanding any provision of paragraph (a) of this subsection (2), an outstanding debt shall not be less than three hundred dollars.

(3) "Payment" means cash winnings from limited gaming or from pari-mutuel wagering on horse or greyhound racing payable by a licensee for which the licensee is required to file form W-2G, or a substantially equivalent form, with the United States internal revenue service.

(4) "Registry" means the registry created and maintained by or for the department of revenue pursuant to section 24-35-604.

(5) "Registry operator" means the department of revenue or the private entity that maintains the registry under the direction and control of the department.

24-35-604. Registry - creation - information. (1) The department of revenue shall create and maintain, or contract with a private entity pursuant to section 24-35-607 to create and maintain, the registry in accordance with this section.

(1.5) On and after the date that the judicial department receives notice from the department of revenue pursuant to section 24-35-605.5 (2) (b) (I), the judicial department shall certify to the registry operator the information indicated in subsection (4) of this section regarding persons with an outstanding debt as specified in section 24-35-603 (2) (a) (II).

(2) The department of human services shall certify to the registry operator the information indicated in subsection (4) of this section regarding each child support obligor with an outstanding debt as specified in section 24-35-603 (2) (a) (I).

(2.5) On and after January 1, 2012, the department of personnel shall certify to the registry operator the information indicated in subsection (4) of this section regarding each person with an outstanding debt as specified in section 24-35-603 (2) (a) (III).

(3) The registry operator shall enter in the registry the information certified to the

registry operator by the judicial department, the department of human services, and the department of personnel pursuant to subsections (1.5), (2), and (2.5) of this section.

(4) The registry shall contain the following information:

(a) The name of each person with an outstanding debt;

(b) The social security number of each person with an outstanding debt;

(c) The account or case identifier assigned to the outstanding debt by the department that certified the information to the registry operator;

(d) The name, telephone number, and address of the department that certified the information to the registry operator regarding each person with an outstanding debt; and

(e) The amount of the outstanding debt.

(5) On and after the date that the judicial department receives notice from the department of revenue pursuant to section 24-35-605.5 (2) (b) (I), the registry operator shall add a fee of twenty-five dollars to each outstanding debt certified by a department pursuant to this section.

24-35-605. Payments - limited gaming and pari-mutuel wagering licensees - procedures. (1) On and after July 1, 2008:

(a) A licensee shall have the means to communicate with the registry operator.

(b) Before making a payment to a winner, the licensee shall obtain the name, address, and social security number of the winner from form W-2G, or a substantially equivalent form, to be filed with the United States internal revenue service and submit the required information to the registry operator. The registry operator shall inform the licensee whether the winner is listed in the registry. The licensee shall comply with subsection (2) of this section.

(2) (a) If the registry operator replies that the winner is not listed in the registry or if the licensee is unable to receive information from the registry operator after attempting in good faith to do so, the licensee may make the payment to the winner.

(b) If the registry operator replies that the winner is listed in the registry:

(I) The reply from the registry operator to the licensee shall indicate the name, telephone number, and address of the department that certified the information to the registry and the amount of the winner's outstanding debt.

(II) The licensee shall withhold from the amount of the payment an amount equal to the amount certified pursuant to section 24-35-604. If the amount of the payment is less than or equal to the amount certified, the licensee shall withhold the entire amount of the payment. The licensee shall refer the winner to the department that reported the outstanding debt to the registry.

(III) Within twenty-four hours after withholding a payment pursuant to subparagraph (II) of this paragraph (b), the licensee shall send the amount withheld to the registry operator and report to the registry operator the full name, address, and social

security number of the winner, the account or case identifier assigned by the department that reported the outstanding debt to the registry, the date and amount of the payment, and the name and location of the licensee.

(IV) The registry operator shall send to the certifying department the moneys and information received from a licensee pursuant to subparagraph (III) of this paragraph (b). If more than one department certified a winner, the registry operator shall send the information to each certifying department and distribute the moneys among the departments as follows:

(A) The registry operator shall send to the department of human services any amount certified by the department of human services.

(B) Of any moneys remaining after the distribution, if any, to the department of human services pursuant to sub-subparagraph (A) of this subparagraph (IV), the registry operator shall send to the judicial department any amount certified by the judicial department.

(C) Of any moneys remaining after the distribution, if any, to the judicial department pursuant to sub-subparagraph (B) of this subparagraph (IV), the registry operator shall send to the department of personnel any amount certified by the department of personnel.

(V) The department of human services shall process moneys received from the registry operator pursuant to subparagraph (IV) of this paragraph (b) in accordance with section 26-13-118.7, C.R.S. The judicial department shall process moneys received from the registry operator pursuant to subparagraph (IV) of this paragraph (b) in accordance with the rules of the department. The department of personnel shall process moneys received from the registry operator pursuant to subparagraph (IV) of this paragraph (b) in accordance with the rules of the department of personnel, with the understanding that any state agency or state-supported institution of higher education debt will be paid before any debt for a political subdivision of the state assigned to central collection services.

(3) The registry operator shall deduct an amount equal to the fee added to the outstanding debt pursuant to section 24-35-604 (5) from each payment received from a licensee and forward such amount to the state treasurer for deposit in the gambling payment intercept cash fund created in section 24-35-605.5.

24-35-605.5. Gambling payment intercept cash fund - creation - gifts, grants, donations - intercepts for restitution. (1) There is hereby created in the state treasury the gambling payment intercept cash fund, referred to in this section as the "fund". The fund shall consist of any moneys deposited in the fund pursuant to section 24-35-605 (3), any allocations made to the fund pursuant to section 24-33.5-506 (1) (c.5) (I), any other moneys appropriated to the fund by the general assembly, and any gifts, grants, or donations from private or public sources, which the department of revenue is hereby

authorized to seek and accept for the purposes set forth in this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. The state treasurer shall also credit to the fund any moneys that are allocated thereto pursuant to section 24-33.5-506 (1) (c.5) (I).

(2) (a) The moneys in the fund shall be continuously appropriated to the department of revenue for the purpose of expanding the program established by this part 6 to include intercepts of restitution that a person has been ordered to pay pursuant to section 18-1.3-603 or 19-2-918, C.R.S., as certified by the judicial department. As soon as there are sufficient moneys in the fund, the department of revenue shall expand the program for such purpose.

(b) Once the intercept program has been expanded as described in paragraph (a) of this subsection (2):

(I) The department of revenue shall notify the judicial department and the registry operator that the judicial department may begin certifying outstanding debt pursuant to section 24-35-604 (1.5); and

(II) Moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this part 6.

(c) Any moneys in the fund not expended for the purposes set forth in paragraphs (a) and (b) of this subsection (2) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred or revert to the general fund or any other fund.

24-35-606. Liability - immunity. (1) A licensee that fails to comply with the provisions of section 24-35-605 shall be subject to sanctions by its licensing authority pursuant to sections 12-47.1-525 (1) and 12-60-507 (1), C.R.S.

(2) A licensee that makes a payment to a winner in violation of section 24-35-605 shall not be liable to the person to whom the winner owes an outstanding debt.

(3) Except as provided in section 24-35-606, a licensee shall be immune from civil and criminal liability for acting in compliance with the provisions of this part 6.

24-35-607. Contracting authority - memoranda of understanding - rules. (1) The executive director of the department of revenue may enter into a contract with a private entity, in accordance with the "Procurement Code", articles 101 to 112 of this title, to create and maintain the registry.

(2) The department of revenue may enter into memoranda of understanding with the judicial department, the department of human services, and the department of personnel to implement this part 6. If the registry is operated by a private entity pursuant

to this section, the registry operator may enter into memoranda of understanding with the judicial department, the department of human services, and the department of personnel to implement this part 6.

(3) The executive director of the department of revenue shall promulgate rules in accordance with article 4 of this title to implement this part 6. The rules shall include, but need not be limited to, rules regarding:

(a) The removal from the registry of information regarding persons who satisfy their outstanding debts;

(b) The manner in which a licensee shall communicate with the registry, including the information a licensee shall submit to the registry and the procedures to be followed if the registry is inaccessible due to technical or other problems;

(c) The protection of the confidentiality of information in the registry; and

(d) The circumstances and means by which an outstanding debt may be collected from a licensee pursuant to section 24-35-605 (2) (b) (IV).

(4) The executive director of the department of revenue shall promulgate a rule in accordance with article 4 of this title allowing a licensee to retain at least thirty dollars of each payment withheld pursuant to this part 6 to cover the licensee's costs of compliance with this part 6, which amount shall be added to the debtor's outstanding debt.

24-35-608. Conditional repeal of part. (Repealed)

ARTICLE 36

Department of the Treasury

24-36-101. State treasurer head of department. The state treasurer is the chief executive officer of the department of the treasury. He has all of the powers, duties, and obligations conferred upon him by the state constitution and is the official custodian of all state moneys and securities, unless otherwise expressly provided by law.

24-36-102. Function of department - employees. (1) The principal function of the treasury department is to receive all state moneys collected by or otherwise coming into the hands of any officer, department, institution, or agency of the state government as required in section 24-36-103 (1) and to deposit and disburse the same in the manner prescribed by law. It shall have no tax collection or enforcement functions whatsoever.

(2) Employees of the treasury department shall be appointed pursuant to the

provisions of section 24-2-102, except for one deputy permitted by law, who shall be appointed by the state treasurer.

24-36-103. All state moneys to be transmitted to department. (1) It is the duty of every officer, department, institution, and agency of the state government charged with the responsibility of collecting the various taxes, licenses, fees, and permits imposed by law and of collecting or accepting tuition, rentals, receipts from the sale of property, and moneys of any other nature accruing to the state from any source whatsoever to transmit the same to the treasury department in such manner and under such procedures as may be prescribed by law or by fiscal rule of the controller.

(2) Where a department, institution, or agency collects or receives moneys of a trust or quasi-trust nature, or moneys derived from the operation of a business-type enterprise, or moneys in which the interest, share, or proportion of the state has not yet been determined, such department, institution, or agency may, upon application to the office of the state controller and upon the written approval of the controller and the state treasurer, deposit such moneys in any depository authorized in section 24-75-603, under the same conditions as required in articles 10.5 and 47 of title 11, C.R.S., with respect to the deposit of other state moneys. Such department, institution, or agency shall file such reports as shall be required by fiscal rules adopted by the controller.

(3) Repealed.

(4) The treasury department shall be the transaction-approving authority for all moneys transmitted to and received by it. One copy of the transaction shall be retained in the files of the department.

24-36-104. Moneys to be deposited. (1) All moneys received by the treasury department shall be promptly deposited in such national or state banks doing business in this state as the state treasurer shall select. Accounts in such depositories shall be carried in the name of "Treasurer, State of Colorado", and withdrawals therefrom shall be made and signed in such manner as the state treasurer shall direct. The state treasurer may make payments, without appropriation, of all actual and necessary charges made by such depositories for expenses related to the deposit and withdrawal of moneys received by the treasury department in accordance with the constitution or statutes of Colorado. Such payments shall be made from investment income or any other available revenues. The state treasurer shall contract for all such bank services in accordance with the provisions of the "Procurement Code", articles 101 to 112 of this title. The state treasurer shall make the criteria used in selecting a vendor for bank services available to the finance committees of both houses of the general assembly prior to the award of a contract and shall make all contracts submitted or entered into pursuant to this section available for

public inspection in accordance with the provisions of part 2 of article 72 of this title.

(1.5) As used in this article:

(a) "Deposit" means the payment and reconciliation of moneys received by the treasury department or an authorized department, institution, or agency by means of cash, check, draft, or alternative forms of payment, as defined in section 24-19.5-101 (1).

(b) "Withdrawal" means the disbursement and reconciliation of moneys received by the treasury department or an authorized department, institution, or agency by means of cash, check, draft, or alternative forms of payment, as defined in section 24-19.5-101 (1).

(2) The state treasurer may authorize any department, institution, or agency collecting or otherwise receiving state moneys to deposit the same to his credit in any such depository in lieu of transmitting the same to the treasury department under procedures approved jointly by himself and the controller.

(2.5) Notwithstanding the provisions of section 11-10.5-111, C.R.S., and section 24-75-202, at the discretion of the state treasurer and the state controller, state moneys may be deposited in bank accounts in other states and in foreign countries to enable a state agency or institution, including institutions of higher education, to operate projects located in other states and foreign countries. Such state agencies and institutions, including institutions of higher education, shall exercise due regard and have full responsibility for the safety of deposits under this article, and the state shall not assume liability for any risk, casualty, or loss of such deposits.

(3) For the purpose of managing deposits of state moneys, the state treasurer may, on a daily basis only, borrow moneys from any such depository to cover advances made by any depository to the state on state warrants paid by the depository but not yet reimbursed by the state and on uncollected deposits. The state treasurer may negotiate a line of credit with any such depository sufficient to cover anticipated requirements for such advances in the current fiscal year. The state treasurer may pay interest on such moneys borrowed at a rate to be negotiated by the state treasurer and the lending depository and may take such measures as are necessary to implement the provisions of this subsection (3). All such moneys borrowed shall be repaid, together with any interest, before the end of the fiscal year in which the moneys are borrowed, and the state shall not be liable to repay such moneys borrowed from revenues of any later fiscal year. This subsection (3) shall not be construed to expressly or impliedly authorize the state treasurer to do any act or take any action with respect to deposits of state moneys, or with respect to the moneys of any department or agency of the state, other than the acts specifically authorized by this subsection (3). The profitability of the procedure authorized in this subsection (3) shall be reported in the state treasurer's annual report for fiscal years 1981-82, 1982-83, 1983-84, and 1984-85.

(4) The state treasurer is authorized to receive and deposit moneys from the United States government. Such federal moneys shall be transmitted to the treasury

department as required in section 24-36-103 (1) and deposited as provided in subsection (1) of this section. The state treasurer is authorized to make payments, without appropriation, of interest to the United States government on such federal moneys deposited with the state treasurer in accordance with the federal "Cash Management Improvement Act of 1990", as amended, 31 U.S.C. sec. 6501 et seq. Such payments shall be made from investment income or any other available revenues. The interest rate payable on such deposits shall be the federal discount rate or such other rate established by federal law.

24-36-105. Accounts to be kept - daily report. (1) The treasury department shall keep adequate accounts in which shall be recorded all moneys received and disbursed.

(2) As of the close of business each day, a report of the amount of all receipts and disbursements during said day shall be furnished to the office of the state controller; except that the receipts and disbursements shall not be reported by category as to the several funds created by law and the accounts within such funds.

24-36-106. Record of warrants - order of payment - paid warrants - validation. (1) The treasury department shall maintain a list of all warrants drawn upon the state treasurer by the office of the state controller and of those warrants issued and outstanding. Such lists shall be open during regular business hours for the inspection and examination of every person desiring to inspect or examine the same.

(2) Warrants shall be paid in the order in which presented to the treasury department for payment. The state treasurer may validate any warrant presented for payment after six months from its date of issue for a period of time not longer than thirty days from the date upon which it is so presented.

(3) All paid warrants shall be cancelled and, after being microfilmed or copied through image technology such as optical storage and other recognized state-of-the-art storage technologies, shall be destroyed pursuant to part 1 of article 80 of this title. The treasury department is authorized to enter into an arrangement which allows any bank holding cancelled warrants to microfilm or copy through other recognized state-of-the-art storage technologies and to store said warrants for the benefit and use of the treasury department, but no bank shall destroy any cancelled warrant without written authorization from the treasury department. Any bank producing microfilm or using other recognized state-of-the-art storage technologies pursuant to this subsection (3) shall transmit such microfilm or the product of such other recognized state-of-the-art storage technologies to the treasury department, where it shall be kept and stored. The treasury department is not authorized to enter into such an arrangement if the cost of the service charged by the bank exceeds the cost which the state would incur by providing the same service.

24-36-107. Warrants endorsed when not paid - exception. (1) Whenever upon presentation for payment of any issued and outstanding warrant there are insufficient funds in the state treasury to pay the same, the state treasurer shall endorse thereon the following: "Presented for payment (insert date). Insufficient funds. This warrant shall draw interest from this date at the rate of six percent per annum." and shall return such warrant to the person presenting it for payment.

(2) Noninterest-bearing general fund warrants lawfully issued pursuant to the provisions of section 24-75-208 shall be exempt from the provisions of this section.

24-36-108. Notice of payment - when interest ceases. (1) The treasury department shall maintain a record of the number and amount of each warrant presented for payment and endorsed by the state treasurer as provided in section 24-36-107. Whenever there are sufficient moneys in the state treasury to pay part or all of such endorsed warrants, the state treasurer shall give notice of the date of payment of the same through publication, twice, in some newspaper published in Denver, listing the numbers and amounts of the warrants which he is prepared to pay on said date. Interest on the warrants so listed shall cease at the expiration of fifteen days from the last date of publication of said notice.

(2) The state treasurer is authorized to pay interest on any such warrant at the rate endorsed thereon out of any moneys in the state treasury to the credit of the general fund or such other fund out of which the warrant is payable and to charge the amount of interest so paid to such fund.

(3) Interest paid on any such warrant shall be receipted for thereon by the payee or assignee thereof.

24-36-109. Time deposits. (1) Subject to the requirements of subsection (2) of this section, the state treasurer is authorized to deposit state moneys with national or state banks doing business in this state for fixed periods of time, not exceeding two years, at such rate of interest as may be negotiated from time to time. For the purpose of making such deposits, the state treasurer may, in his or her discretion, appoint in writing one or more persons to act as custodians of the moneys. Such persons shall give surety bonds in such amounts and form and for such purposes as the state treasurer requires.

(2) (a) The state treasurer shall deposit state moneys for fixed periods in national or state banks that have applied and are eligible as depositories for state moneys pursuant to subsection (1) of this section and pursuant to the time deposit rules established by the department of the treasury that are in effect at that time in accordance with the procedure established in paragraph (b) of this subsection (2) or in paragraph (c) of this subsection

(2). Such procedure utilized shall be at the discretion of the treasurer.

(b) (I) Except as provided in paragraph (c) of this subsection (2), when state moneys become available for time deposits pursuant to subsection (1) of this section, the state treasurer shall announce the interest rate at which such moneys may be deposited for a fixed period in eligible national or state banks but shall not disclose the amount of state moneys available for deposit.

(II) An eligible national or state bank may request the state treasurer to deposit a specified amount of state moneys with that bank at the interest rate announced by the treasurer. Except as otherwise provided by subparagraph (III) of this paragraph (b), the treasurer shall deposit all or a portion of the state moneys available for deposit with any eligible national or state bank or banks making such a request in an amount equal to the amount requested by that bank.

(III) In the event that the total amount of state moneys requested for deposit by all eligible national or state banks pursuant to subparagraph (II) of this paragraph (b) exceeds the amount of state moneys available for deposit, the state treasurer shall determine the total amount of state moneys that all such banks requested for deposit and calculate the percentage of such total that each eligible national or state bank requested. The state treasurer shall deposit with each eligible national or state bank an amount equal to the product of such percentage multiplied by the total amount of state moneys available for deposit.

(c) (I) In the alternative to paragraph (b) of this subsection (2), when state moneys become available for time deposits pursuant to subsection (1) of this section, the state treasurer shall announce the amount of state moneys available for deposit for a fixed period in any eligible national or state bank but shall not announce the interest rate at which such moneys shall be deposited.

(II) Except as provided by subparagraph (III) of this paragraph (c), any eligible national or state bank may submit a bid to the state treasurer specifying the interest rate that such bank will pay if state moneys are deposited in such bank and the amount of such moneys the bank will accept for deposit at that interest rate. The bank submitting a bid with the highest interest rate shall be awarded the deposit of state moneys in the full amount requested or the full amount available for deposit at that time, whichever is less.

(III) In the event that two or more eligible national or state banks submit the highest bid for the same interest rate and the total amount requested for deposit by the banks exceeds the amount of state moneys available for deposit at that time, the state treasurer shall determine the total amount of state moneys that all such banks requested for deposit and calculate the percentage of such total that each eligible national or state bank requested. The state treasurer shall deposit with each eligible national or state bank an amount equal to the product of such percentage multiplied by the total amount of state moneys available for deposit.

(IV) In the event that depositing state moneys in the highest bidding eligible

national or state bank or banks does not exhaust the total amount of state moneys available for deposit at that time, the state treasurer shall deposit the remaining state moneys in other eligible banks giving priority to the highest remaining bidders.

(V) The state treasurer shall have the authority to establish a minimum acceptable bid for an interest rate. The rate shall be announced before the start of the bidding by any eligible national or state bank.

24-36-110. Surety bond or collateral security required. (Repealed)

24-36-111. Authority to accept deposits. Any state bank or any national bank having its principal office in this state is authorized to accept and hold deposits of state moneys as provided in sections 24-36-104 and 24-36-109 and to give surety bonds or pledge collateral security as provided in article 10.5 of title 11, C.R.S.

24-36-111.5. Authority to invest in real property owned by a school district. Whenever there are moneys in the state treasury that are not immediately required to be disbursed, the state treasurer may, in the state treasurer's discretion, invest such moneys in real property owned by a school district pursuant to the provisions of section 22-54-110 (2) (d), C.R.S. The state treasurer shall ensure that the investment in real property shall yield a fair and equitable return to the state; except that this requirement shall not apply to an investment in real property that is related to a loan agreement entered into prior to July 1, 2003.

24-36-112. Deposits in savings and loan associations. (1) Subject to the requirements of subsection (4) of this section, the state treasurer is authorized to deposit state moneys with any state-chartered savings and loan association, or federally chartered savings and loan association having its principal office in this state, for fixed periods of time not exceeding three years, at such rate of interest as may be negotiated from time to time, but in no event shall any such deposit be in excess of the amount insured by the federal deposit insurance corporation or its successor, unless such savings and loan association has been designated as an eligible public depository by the state commissioner of financial services, pursuant to the provisions of article 47 of title 11, C.R.S.

(2) Any such savings and loan association is authorized to accept deposits of state moneys to the extent permitted in this section.

(3) For the purpose of making such deposits, the state treasurer may, in his discretion, appoint in writing one or more persons to act as custodians of the moneys.

Such persons shall give surety bonds in such amounts and form and for such purposes as the state treasurer requires.

(4) (a) The state treasurer shall deposit state moneys for fixed periods in state-chartered or federally chartered savings and loan associations that have applied and are eligible as depositories for state moneys pursuant to subsection (1) of this section and pursuant to the time deposit rules established by the department of the treasury that are in effect at that time in accordance with the procedure established in paragraph (b) of this subsection (4) or in paragraph (c) of this subsection (4). Such procedure utilized shall be at the discretion of the treasurer.

(b) (I) Except as provided in paragraph (c) of this subsection (4), when state moneys become available for time deposits pursuant to subsection (1) of this section, the state treasurer shall announce the interest rate at which state moneys may be deposited for a fixed period in eligible state-chartered or federally chartered savings and loan associations but shall not disclose the amount of state moneys available for deposit.

(II) An eligible state-chartered or federally chartered savings and loan association may request the state treasurer to deposit a specified amount of state moneys in that savings and loan association at the interest rate announced by the treasurer. Except as otherwise provided by subparagraph (III) of this paragraph (b), the treasurer shall deposit all or a portion of the state moneys available for deposit with any eligible state-chartered or federally chartered savings and loan association or associations making such a request in an amount equal to the amount requested by that savings and loan association.

(III) In the event that the total amount of state moneys requested for deposit by all eligible state-chartered or federally chartered savings and loan associations pursuant to subparagraph (II) of this paragraph (b) exceeds the amount of state moneys available for deposit, the state treasurer shall determine the total amount of state moneys that all such savings and loan associations requested for deposit and calculate the percentage of such total that each eligible state-chartered or federally chartered savings and loan association requested. The state treasurer shall deposit with each eligible state-chartered or federally chartered savings and loan association an amount equal to the product of such percentage multiplied by the total amount of state moneys available for deposit.

(c) (I) In the alternative to paragraph (b) of this subsection (4), when state moneys become available for time deposits pursuant to subsection (1) of this section, the state treasurer shall announce the amount of state moneys available for deposit for a fixed period in any eligible state-chartered or federally chartered savings and loan associations but shall not announce the interest rate at which such moneys shall be deposited.

(II) Except as provided by subparagraph (III) of this paragraph (c), any eligible state-chartered or federally chartered savings and loan association may submit a bid to the state treasurer specifying the interest rate that the eligible savings and loan association will pay if state moneys are deposited in such savings and loan association and the amount of such moneys the savings and loan association will accept for deposit at that

interest rate. The savings and loan association submitting a bid with the highest interest rate shall be awarded the deposit of state moneys in the full amount requested or the full amount available for deposit at that time, whichever is less.

(III) In the event that two or more eligible state-chartered or federally chartered savings and loan associations submit the highest bid for the same interest rate and the total amount requested for deposit by the eligible savings and loan associations exceeds the amount of state moneys available for deposit at that time, the state treasurer shall determine the total amount of state moneys that all such savings and loan associations requested for deposit and calculate the percentage of such total that each eligible state-chartered or federally chartered savings and loan association requested. The state treasurer shall deposit with each eligible state-chartered or federally chartered savings and loan association an amount equal to the product of such percentage multiplied by the total amount of state moneys available for deposit.

(IV) In the event that depositing state moneys in the highest bidding eligible state-chartered or federally chartered savings and loan association or associations does not exhaust the state moneys available for deposit at that time, the state treasurer shall deposit the remaining moneys in other eligible savings and loan associations giving priority to the highest remaining bidders.

(V) The state treasurer shall have the authority to establish a minimum acceptable bid for an interest rate. The rate shall be announced before the start of the bidding by any eligible state-chartered or federally chartered savings and loan association.

24-36-113. Investment of state moneys - limitations. (1) (a) Whenever there are moneys in the state treasury that are not immediately required to be disbursed, the state treasurer is authorized to invest the same in fixed income securities denominated in United States dollars. In making such investments, the state treasurer shall use prudence and care to preserve the principal and to secure the maximum rate of interest consistent with safety and liquidity. The state treasurer shall formulate investment policies regarding liquidity, maturity, and diversification appropriate to each fund or pool of funds in the state treasurer's custody available for investment.

(b) (I) If the state treasurer invests state moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the state treasurer whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the state treasurer and because of such agreement the investment firm:

(A) Had received compensation for investment banking services within the most recent twelve months; or

(B) May receive compensation for investment banking services within the next three consecutive months.

(II) For the purposes of this paragraph (b), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(2) Such moneys may be invested, without limitation, in debt obligations of the United States treasury, any agency of the United States government, or United States government-sponsored corporations.

(2.5) The state treasurer may, in the state treasurer's discretion, invest such moneys in municipal bonds rated in one of the two highest rating categories by a nationally recognized rating organization.

(3) The state treasurer may, in the state treasurer's discretion, invest such moneys in repurchase agreements, in banker's acceptances or bank notes issued by banks rated at least investment grade by a nationally recognized rating organization, in commercial paper of prime quality as so classed by a nationally recognized rating organization, and in money market funds that are registered as an investment company under the federal "Investment Company Act of 1940", as amended.

(3.5) The state treasurer may, in the state treasurer's discretion, invest such moneys in corporate debt obligations rated at least investment grade by a nationally recognized rating organization.

(3.6) The state treasurer may, in the state treasurer's discretion, invest such moneys in asset-backed securities and covered bonds rated in one of the two highest rating categories by a nationally recognized rating organization.

(3.7) The state treasurer may, in the state treasurer's discretion, invest such moneys in securities that are issued or guaranteed by the world bank, the inter-American development bank, the Asian development bank, or the African development bank or for which the credit of the world bank, the inter-American development bank, the Asian development bank, or the African development bank is pledged for payment and that are rated in one of the two highest rating categories by a nationally recognized rating organization.

(3.8) The state treasurer may, in the state treasurer's discretion, invest such moneys in mortgage pass-through securities and collateralized mortgage obligations that are issued by any agency of the United States government or a United States government-sponsored corporation or that are rated in one of the two highest rating categories by a nationally recognized rating organization.

(3.9) The state treasurer may, in the state treasurer's discretion, invest such moneys in debt obligations backed by the full faith and credit of the state of Israel that are rated in one of the two highest rating categories by a nationally recognized rating organization.

(4) The state treasurer may make such arrangements for the custody, safekeeping,

and registration of all investment securities as will enable the state treasurer to make prompt delivery thereof upon maturity or in the event of sale.

(5) The state treasurer may engage in reverse repurchase agreements and securities lending programs for any securities in the state treasurer's custody and may purchase loans if, in the state treasurer's discretion, the purchase of loans will yield a fair and equitable return to the state.

(6) Notwithstanding any restrictions on the investment of state moneys set forth in this section or in any other provision of law, the state treasurer may authorize the escrow agent appointed pursuant to section 1 of the escrow agreement entered into in connection with, and attached as exhibit B to, the master settlement agreement entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver, to invest any tobacco litigation settlement moneys held in escrow for the state of Colorado pursuant to the master settlement agreement and the escrow agreement in any manner permitted by section 5 of the escrow agreement.

(7) Notwithstanding any restrictions on the investment of state moneys set forth in this section or in any other provision of law, the state treasurer may invest moneys transferred on July 5, 2002, from the tobacco litigation settlement trust fund to the general fund pursuant to section 24-75-201.5 (1) (d) in any manner in which the trust fund moneys may be invested pursuant to section 24-22-115.5 (3) (a).

24-36-114. How interest earnings credited - management fee. (1) All interest derived from the deposit and investment of state moneys shall be credited to the general fund unless otherwise expressly provided by law.

(2) and (3) Repealed.

24-36-115. Moneys not immediately creditable - special purpose moneys. Moneys received by the treasury department which are not immediately creditable to a particular fund or account or moneys received which are designated by law for a special purpose shall be held in custody by the state treasurer and may be subsequently withdrawn from his custody upon warrants drawn pursuant to law.

24-36-116. Moneys paid under protest - disposition. (1) Moneys in the form of taxes, licenses, fees, or permits imposed by law which are paid under protest shall

nonetheless be transmitted to the treasury department, which shall credit the same to an account designated "moneys paid under protest".

(2) If any person paying such moneys under protest has not filed a claim for refund of the same in the manner provided by law or has not commenced an action in a court of competent jurisdiction for recovery of the same within one year from the date of payment or within one year from April 24, 1971, whichever date occurs later, then the amount so paid shall be credited forthwith to the fund or account to which it would have been credited had it not been paid under protest.

(3) If a claim for refund of such money is filed and subsequently disallowed and an action is not commenced in a court of competent jurisdiction for recovery of the same within six months from the date of such disallowance, then the amount so paid shall be credited forthwith to the fund or account to which it would have been credited had it not been paid under protest.

24-36-117. Governor may make examination. The governor may at any time examine, or cause to be examined, the books, records, and warrants kept in the treasury department and the securities held in the custody of the state treasurer, and for such purpose he shall be permitted full and free access.

24-36-118. Applications for licenses - authority to suspend licenses - rules. (1) Every application by an individual for a license issued by the department of the treasury or any authorized agent of such department shall require the applicant's name, address, and social security number.

(2) The department of the treasury or any authorized agent of the department shall deny, suspend, or revoke any license pursuant to the provisions of section 26-13-126, C.R.S., and any rules promulgated in furtherance thereof, if the department or agent thereof receives a notice to deny, suspend, or revoke from the state child support enforcement agency because the licensee or applicant is out of compliance with a court or administrative order for current child support, child support debt, retroactive child support, child support arrearages, or child support when combined with maintenance or because the licensee or applicant has failed to comply with a properly issued subpoena or warrant relating to a paternity or child support proceeding. Any such denial, suspension, or revocation shall be in accordance with the procedures specified by rule of the department of the treasury, rules promulgated by the state board of human services, and any memorandum of understanding entered into between the department of the treasury or an authorized agent thereof and the state child support enforcement agency for the implementation of this section and section 26-13-126, C.R.S.

(3) (a) The department of the treasury shall enter into a memorandum of

understanding with the state child support enforcement agency, which memorandum shall identify the relative responsibilities of the department of the treasury and the state child support enforcement agency in the department of human services with respect to the implementation of this section and section 26-13-126, C.R.S.

(b) The appropriate rule-making body of the department of the treasury is authorized to promulgate rules to implement the provisions of this section.

(4) For purposes of this section, "license" means any recognition, authority, or permission that the department of the treasury or any authorized agent of such department is authorized by law to issue for an individual to practice a profession or occupation or for an individual to participate in any recreational activity. "License" may include, but is not necessarily limited to, any license, certificate, certification, letter of authorization, or registration issued for an individual to practice a profession or occupation or for an individual to participate in any recreational activity.

24-36-119. State pension obligation notes - state-assisted firefighters' and police officers' old hire pension plans - legislative declaration. (Repealed)

24-36-120. Authority to assess transaction fees. (1) Except as provided in subsection (4) of this section, for the 2002-03 fiscal year and each fiscal year thereafter, the state treasurer is authorized to assess a fee for each eligible transaction performed by the state treasurer on behalf of state departments and agencies. Notwithstanding any other provision of law, the state treasurer shall deduct the fee from the interest earnings attributable to the fund for which the transaction was performed.

(2) The amount of the fee assessed pursuant to subsection (1) of this section shall be determined annually by dividing an amount equal to the total amount appropriated to the department of the treasury for administration in the annual general appropriations act for the current fiscal year by the total number of eligible transactions performed by the state treasurer in the immediately preceding fiscal year.

(3) The fees deducted by the state treasurer pursuant to subsection (1) of this section shall be subject to annual appropriation by the general assembly to the department of the treasury to fund the administration of the department.

(4) The state treasurer shall not assess a fee for an eligible transaction involving any of the following funds:

(a) The state education fund created in section 17 (4) of article IX of the state constitution;

(b) The highway users tax fund created in section 43-4-201, C.R.S.;

(c) The great outdoors Colorado trust fund created in section 2 of article XXVII of the state constitution;

(d) The public school fund described in section 3 of article IX of the state constitution;

(e) The old age pension fund created in section 1 of article XXIV of the state constitution;

(f) Any other fund against which the assessment of a fee would be contrary to the state constitution; and

(g) The college opportunity fund created in article 18 of title 23, C.R.S.

(5) The state treasurer shall notify each state department and agency for which the state treasurer performs eligible transactions of the amount of fees that will be deducted from any fund managed by the state department or agency no later than July 1 of the fiscal year in which the fees will be deducted.

(6) As used in this section, "eligible transaction" means any cash management transaction that affects a cash balance, including, but not limited to, electronic fund transfers, payroll and other automated disbursements, payments, cash receipts, warrant transactions, and journal entries.

24-36-121. Authority to manage state public financing - state public financing cash fund - rules - legislative declaration - definitions. (1) The general assembly hereby finds, determines, and declares that:

(a) The state's public financing matters are currently decentralized. Many state agencies incur financial obligations and directly or indirectly pledge or use the credit of the state without centralized management.

(b) Centralized management could have a positive impact on the state's credit rating because credit rating agencies would have a centralized point of contact with the state for state public financing matters;

(c) The issuance and incurrence of financial obligations and the state's outstanding financial obligations should be managed as a whole, by personnel with financial experience and securities market understanding, so that the issuance and incurrence of state financial obligations and the state's outstanding financial obligations can be managed as efficiently and cost effectively as possible, allowing the state to maximize refinancing opportunities;

(d) Centralized management provides a better method of ensuring that federal tax and securities law post-issuance compliance requirements for state financial obligations are met by the state;

(e) Due to changes in the public securities market, increased regulatory requirements, evolving credit criteria, recent technological developments, recent downgrading of certain government credit ratings, and the benefits set forth in this subsection (1), it is necessary to designate the state treasurer as a centralized manager for the issuance and incurrence of financial obligations by the state acting by and through a

state agency;

(f) It is also important that the state treasurer develop and promulgate a state public financing policy and, in so doing, collaborate with various experts, including but not limited to the state controller, the office of state planning and budgeting, bond counsel, and the attorney general. Such a policy demonstrates a commitment to long-term financial planning, identifies policy goals, provides for appropriate financing structures, and improves the quality of decision-making. Furthermore, credit rating agencies, the federal internal revenue service, and the federal securities and exchange commission view the existence of state public financing policies favorably.

(g) Senate Bill 12-150, enacted in 2012, is not intended to grant the state treasurer any authority that supersedes a state agency's authority to enter into or incur a financial obligation, nor is Senate Bill 12-150 intended to affect other state laws regarding the general assembly's approval of any capital lease or lease-purchase agreement over five hundred thousand dollars.

(2) Nothing in this section authorizes the state treasurer or any other public agency to waive an election otherwise required under section 20 of article X or article XI of the state constitution or to hold an election inconsistent with the election requirements of said section 20 of article X. References to financial obligations, debt, or bonds in this section are for reference only and shall not be construed to create debt or a multiple fiscal-year financial obligation contrary to section 20 of article X or article XI of the state constitution.

(3) As used in this section, unless the context otherwise requires:

(a) (I) "Financial obligation" means any financial contract, note, warrant, bond, certificate, instrument, debenture, or other security, the principal amount of which is one million dollars or more, that is authorized to be issued or entered into by the state acting by and through a state agency under the laws of this state, that is fully or partially secured by any state revenues, and that is directly or indirectly related to the state's credit rating. "Financial obligation" includes, but is not limited to:

(A) Any capital lease or lease-purchase agreement the principal amount of which is one million dollars or more authorized pursuant to section 24-82-102 and part 8 of article 82 of this title; and

(B) Any payment obligation constituting a portion of or related to an energy performance contract as defined in section 24-30-2001 (1) or a capital project financed through a utility cost-savings contract authorized by section 24-38.5-106.

(II) Notwithstanding subparagraph (I) of this paragraph (a), for purposes of the department of transportation, "financial obligation" does not include:

(A) Any financial contract, note, warrant, bond, certificate, instrument, debenture, or other contract, agreement, or security that is authorized to be issued or entered into by or in support of such obligations of the high-performance transportation enterprise created in section 43-4-806 (2), C.R.S.; and

(B) Any financial contract, note, warrant, bond, certificate, instrument, debenture, or other contract, agreement, or security that is authorized to be issued or entered into by or in support of such obligations of the statewide bridge enterprise created in section 43-4-805 (2), C.R.S.

(b) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended, and any regulations thereunder.

(c) (I) "State agency" means a department, board, bureau, commission, division, institution, quasi-governmental entity, or other agency or instrumentality of the state, including a state institution of higher education. "State agency" also includes an enterprise, as defined in section 24-77-102 (3), a nonprofit corporation organized under the laws of this state and created solely for the purpose of issuing financial obligations on behalf of the state acting by and through a state agency, and a trust that may be formed by the state or a state agency to implement capital lease or lease-purchase financing.

(II) "State agency" does not include:

(A) A county or city and county;

(B) A municipality;

(C) A school district;

(D) A charter school;

(E) A water conservancy district;

(F) Collegeinvest as described in section 23-3.1-205.5, C.R.S.;

(G) A district or authority organized or acting pursuant to the provisions of title 29, 30, 31, or 32, C.R.S.;

(H) A special purpose authority listed in section 24-77-102 (15) (b); or

(I) Any other political subdivision of the state or other entity that constitutes a local public body as defined in section 24-6-402 (1) (a).

(d) "State institution of higher education" has the same meaning as set forth in section 23-18-102 (10), C.R.S. For purposes of this section,"state institution of higher education" also includes the Auraria higher education center established in article 70 of title 23, C.R.S.

(e) "State revenues" means all income of the state that is received into the state treasury from taxes, fees, and other sources and appropriated for the payment of the state's expenses.

(4) (a) (I) Notwithstanding any other law to the contrary and except as provided in subparagraph (II) of this paragraph (a), for the 2012-13 state fiscal year and each state fiscal year thereafter, when a state agency obtains the required approval for the financing of a capital project as specified in law, the state treasurer shall act as the issuing manager, subject to the criteria established in the state public financing policy promulgated as specified in subsection (5) of this section, for all approved financial obligations of the state acting by and through a state agency. The state treasurer has the sole discretion to manage the issuance or incurrence of financial obligations of the state acting by and

through a state agency, including all post-issuance compliance with federal and state tax and securities laws, such as arbitrage, rebate, and remedial action requirements. The state treasurer's duties with respect to the management of the issuance or incurrence of financial obligations include, but are not limited to, the following:

(A) Determining the financing structure and term;

(B) Deciding the market timing;

(C) Selecting or hiring, as applicable, the state financing team, including, where appropriate, the lessor, purchaser, underwriter, bond or disclosure counsel, trustee, escrow agent, paying agent, credit enhancer, rating agency, placement agent, liquidity provider, credit support provider, interest rate exchange agreement counterparty, and financial advisor;

(D) Determining the advisability of a state agency entering into an interest rate exchange agreement pursuant to article 59.3 of title 11, C.R.S.; and

(E) Determining whether to enter into competitive or negotiated sales of financial obligations.

(II) For a state institution of higher education, for the 2012-13 state fiscal year and each state fiscal year thereafter, the state treasurer shall act as the issuing manager, subject to the criteria established in the state public financing policy promulgated as specified in subsection (5) of this section, for any lease-purchase agreement similar to those authorized in section 23-1-106.3, C.R.S., and any financial contract, note, warrant, bond, certificate, instrument, debenture, or other security, the principal amount of which is one million dollars or more, that is authorized under the laws of this state to be issued or entered into by the state acting by and through a state agency other than a state institution of higher education and that finances improvements that benefit a state institution of higher education. The state treasurer has the sole discretion to manage the issuance or incurrence of such financial obligations for a state institution of higher education and shall manage the issuance or incurrence of such financial obligations in accordance with the duties set forth in sub-subparagraphs (A) to (E) of subparagraph (I) of this paragraph (a). The state treasurer shall not act as the issuing manager for any bonds subject to the higher education revenue bond intercept program established in section 23-5-139, C.R.S.

(b) (I) (A) Not less than sixty days prior to the date on which a state agency expects that a financial obligation of the state acting by and through the state agency will be incurred, a state agency shall provide written notice to the state treasurer of that expectation.

(B) Not less than thirty days prior to the date on which a state agency expects that a refinancing of a financial obligation of the state acting by and through the state agency will be incurred, a state agency shall provide written notice to the state treasurer of that expectation.

(II) The state agency shall provide the state treasurer with the information that the

state treasurer considers necessary to act as the issuing manager for the issuance or incurrence of the financial obligation, including, if necessary, assumptions of underlying cash flow projections associated with the repayment of the financial obligation. The state agency shall provide the state treasurer with the information that the state treasurer considers necessary to comply with federal and state tax and securities laws and contractual covenants.

(c) In performing his or her duties as the issuing manager, the state treasurer shall consider any relevant factors that the state treasurer considers necessary to protect the financial integrity of the state.

(d) The state treasurer is the elected representative for the purpose of approving the issuance or incurrence of financial obligations by the state acting by and through a state agency when such approval is required under the internal revenue code and is the required signatory on all forms required by the federal internal revenue service to be filed in connection with the issuance or incurrence of financial obligations by the state acting by and through a state agency.

(5) No later than ninety days after May 24, 2012, the state treasurer shall promulgate by rule, in accordance with article 4 of this title, a state public financing policy, and, in so doing, shall collaborate with various experts, including but not limited to the state controller, the office of state planning and budgeting, bond counsel, and the attorney general. The state treasurer shall present the state public financing policy to the capital development committee at the earliest meeting of the capital development committee at which time is available in the meeting schedule after the policy is finalized and shall provide a copy of the final state public financing policy to the joint budget committee. The state treasurer shall notify the capital development committee and the joint budget committee, in writing, of any substantive changes that are subsequently made to the state public financing policy. For purposes of this subsection (5), the attorney general is the legal advisor to the state treasurer. The state public financing policy shall include, but shall not be limited to, the following components:

(a) The use of moral obligation pledges;

(b) The criteria for the issuance or incurrence of financial obligations by the state acting by and through a state agency;

(c) The use of derivatives;

(d) The use of variable rate financial obligations;

(e) Credit objectives;

(f) The structuring practices for each type of financial obligation, including, but not limited to, information about the term, maturity, and type of interest;

(g) Acceptable methods of sale;

(h) Policies for determining when selection of external financial professionals is appropriate;

(i) Policies related to the refunding of financial obligations;

(j) Policies related to primary and continuing disclosure requirements for financial obligations;

(k) Policies related to post-issuance compliance with federal and state tax and securities laws, including arbitrage, rebate, and remedial action requirements; and

(l) Policies for investment of proceeds where not otherwise covered by law.

(6) (a) No later than ten days after a state institution of higher education enters into or issues a financial obligation in a principal amount of one million dollars or more that is secured in whole or in part by state revenues or revenues of the institution and that the state treasurer does not manage pursuant to subsection (4) of this section, including any bonds subject to the higher education revenue bond intercept program established in section 23-5-139, C.R.S., the state institution of higher education shall notify the state treasurer that it has entered into the financial obligation. The notification shall include at least the following information:

(I) A copy of any official statement or other offering document for the issuance or incurrence of the financial obligation;

(II) A copy of any filings or correspondence with the federal internal revenue service with respect to the issuance or incurrence, including, if applicable, a copy of each form 8038 or form 8038G;

(III) A copy of the continuing disclosure undertaking; and

(IV) Any other information that is described in the state public financing policy promulgated pursuant to subsection (5) of this section related to the issuance or incurrence.

(b) No later than ten days after the high-performance transportation enterprise created in section 43-4-806 (2), C.R.S., or the statewide bridge enterprise created in section 43-4-805 (2), C.R.S., enters into the financial contracts or instruments specified in sub-subparagraphs (A) and (B) of subparagraph (II) of paragraph (a) of subsection (3) of this section, the enterprises shall notify the state treasurer that they have entered into or issued such a financial contract or instrument. The notification shall include at least the following information:

(I) A copy of any official statement or other offering document for the issuance or incurrence of such a financial contract or instrument;

(II) A copy of any filings or correspondence with the federal internal revenue service with respect to the issuance or incurrence, including, if applicable, a copy of each form 8038 or form 8038G;

(III) A copy of the continuing disclosure undertaking; and

(IV) Any other information that is described in the state public financing policy promulgated pursuant to subsection (5) of this section related to the issuance or incurrence.

(7) (a) On and after July 1, 2012, the issuance or incurrence of every financial obligation by the state acting by and through a state agency that the state treasurer

manages pursuant to subsection (4) of this section shall include, to the extent allowed by the internal revenue code, an amount determined by the state treasurer not to exceed the lesser of one hundred thousand dollars or two percent of the principal proceeds of the issuance or incurrence to be paid to the state treasurer. The state treasurer shall credit the moneys to the state public financing cash fund, which is hereby created in the state treasury. The fund consists of moneys deposited in the fund pursuant to this paragraph (a) and shall be used solely for the purposes described in paragraph (b) of this subsection (7). The moneys in the fund are continuously appropriated to the state treasurer. All unexpended and unencumbered moneys in the fund and all interest and income earned on the deposit and investment of moneys in the fund shall remain in the fund and shall not revert to the general fund or any other fund at the end of a fiscal year.

(b) To the extent permitted by bond counsel, the moneys in the state public financing cash fund shall be used to reimburse the state treasurer for verifiable costs incurred in performing or overseeing the state's primary issuance compliance and post-issuance compliance responsibilities over the term of a financial obligation, including complying with or monitoring compliance with the requirements of the internal revenue code, making public disclosures or continuing disclosure undertakings required pursuant to federal securities laws or ensuring that such disclosures are made, and performing or coordinating requirements in connection with the financial obligation.

(8) No later than ninety days after May 24, 2012, the state treasurer shall create and maintain a correct and current inventory of all state-owned real property described in section 24-30-1303.5 that is leased property or collateral in any type of financial obligation. The state treasurer shall annually provide a copy of the inventory to the capital development committee.

GOVERNOR'S OFFICE

ARTICLE 37

Office of State Planning and Budgeting

PART 1

OFFICE CREATED

24-37-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Director" means the director of the office of state planning and budgeting.

(2) "Office" means the office of state planning and budgeting.

24-37-102. Office of state planning and budgeting - creation. There is hereby created in the office of the governor an office of state planning and budgeting, the head of which shall be the director of the office of state planning and budgeting, who shall be appointed by the governor and who shall serve at the pleasure of the governor.

24-37-103. Director - duties. (1) The director shall:

(a) Develop the annual executive planning, programming, and budgeting cycle, consistent with the provisions of this article;

(b) Develop long-range plans for both operating and capital construction budgets and for the state revenue structure;

(c) Review pending legislation and determine the economic impact, if any, of such legislation upon the people of this state. The director shall report his or her findings, together with any projections he or she deems necessary, to the governor.

(d) Publish an annual performance report as specified in section 2-7-204, C.R.S.; and

(e) Approve or disapprove, after consultation with the joint budget committee, requests for moneys from the community supervision supplemental fund created pursuant to section 17-1-114, C.R.S.

24-37-104. Acceptance of gifts and grants. The office, with the approval of the governor, is specifically empowered to receive and expend all grants, gifts, and bequests, where such grants, gifts, or bequests involve no state funds for acquisition, construction, or operation, including federal funds available for the purposes for which the office exists, and to contract with the United States and all other legal entities with respect thereto. The office may provide, where such funds are specifically appropriated, matching funds wherever funds, grants, gifts, bequests, and contractual assistance are available on such basis. The office shall provide such information, reports, and services as may be necessary to secure such financial aid.

24-37-105. Transfer of functions. (1) The office shall, on and after July 1, 1984, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the office of state planning and budgeting as a principal department prior to said date concerning the duties and functions transferred to the office pursuant to this article. On and after July 1, 1984, the officers and employees of the office of state planning and budgeting as a principal department prior to said date whose duties and functions concerned the duties and functions transferred to the office pursuant to this

article and whose employment in the office is deemed necessary by the director to carry out the purposes of this article shall be transferred to the office and become employees thereof. Such employees shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(2) On July 1, 1984, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the office of state planning and budgeting as a principal department prior to said date pertaining to the duties and functions transferred to the office pursuant to this article, are transferred to the office and become the property thereof.

(3) Whenever the office of state planning and budgeting is referred to or designated by a contract or other document in connection with the duties and functions transferred to the office pursuant to this article, such reference or designation shall be deemed to apply to the office created pursuant to this article. All contracts entered into by the office of state planning and budgeting as a principal department prior to July 1, 1984, in connection with the duties and functions transferred to the office pursuant to this article are hereby validated, with the office created by this article succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to the office created by this article for the payment of such obligations.

PART 2

STATE PLANNING - RESPONSIBILITIES

24-37-201. State planning - responsibilities. (1) The office of state planning and budgeting shall:

(a) Coordinate the preparation and maintenance of long-range master plans which recommend executive and legislative actions for achieving desired state objectives and which include recommended methods for evaluation;

(b) Stimulate, encourage, and assist state agencies to engage in long-range and short-range planning in their respective areas of responsibility;

(c) Review and coordinate the planning efforts of state agencies, including the relationship of such efforts with federal and local governmental programs;

(d) Furnish state agencies with data, projections, and other technical assistance needed to discharge their planning responsibilities and coordinate the exchange of relevant reports, data, and projections among state agencies;

(e) From time to time, conduct public hearings to encourage maximum public

understanding and agreement as to factual data and assumptions upon which projections and analyses are based and also to receive suggestions as to types of projections and analyses that are needed;

(f) Participate in comprehensive interstate planning and other activities related thereto;

(g) Make studies and inquiries relevant to state planning of the resources of the state and of the problems of agriculture, industry, and commerce, as well as population and urban growth, local government, and related matters affecting the development of the state;

(h) Prepare, and from time to time revise, an inventory, in collaboration with the appropriate state and federal agencies, of the public and private natural resources, of major public and private works, and of other facilities and information which are deemed of importance in planning for the development of the state, not pertaining to cartography;

(i) Supply to the public available information developed pursuant to this subsection (1);

(j) Accept and receive grants and services relevant to state planning from the federal government, other state agencies, local governments, and private and civic sources;

(k) Act as reviewing authority or otherwise provide cooperative services under any federal-state planning programs.

(2) The office of state planning and budgeting shall exercise care so as not to duplicate the projections from data of state agencies and nonstate agencies and shall utilize such projections to the maximum extent possible.

24-37-202. Prison utilization study - repeal. (1) (a) The office shall contract for a department of corrections system-wide analysis by July 1, 2012, or as soon as possible thereafter, that identifies the most appropriate and cost-effective uses of the available public and private inmate beds that house the department of corrections' jurisdictional population. The office shall not select a vendor to perform the contract if the vendor has a known conflict of interest that may interfere with its ability to produce an objective report. The analysis shall consider different possible scenarios of population growth or decline and changes in the composition of the inmate population including level of risk, length of sentence, and associated programmatic needs. The office is encouraged to convene an advisory group of interested stakeholders and persons with correctional expertise to assist the office in developing the options required by paragraph (b) of this subsection (1). If an advisory group is formed, the individuals selected will serve voluntarily and without compensation. In addition, the office shall provide an opportunity for public comment regarding developing the options required by paragraph (b) of this subsection (1).

(b) Using the results of the analysis in paragraph (a) of this subsection (1), the office, in consultation with the joint budget committee and any advisory group convened pursuant to paragraph (a) of this subsection (1), shall identify, evaluate, and prioritize options for five fiscal years, beginning with fiscal year 2013-14, for the best use of available public and private inmate beds that house the department of corrections' jurisdictional population. The options may include, but need not be limited to, reduction in prison beds, decommissioning prison facilities, optimizing staffing levels, or repurposing existing facilities.

(c) The office shall provide the joint budget committee with quarterly updates on the progress of the analysis and engage the joint budget committee in discussions regarding developing the options required by paragraph (b) of this subsection (1).

(d) The office shall provide a status report to the judiciary committees of the house of representatives and senate by January 31, 2013.

(2) In developing the options pursuant to subsection (1) of this section, the office and the joint budget committee shall consider the following factors:

(a) Public safety;

(b) The operational needs of the department of corrections;

(c) Facility characteristics including, but not limited to, the location, physical plant, mission, custody level, and potential for repurposing;

(d) Inmate classifications, rights, and needs;

(e) Efficiency and cost of operations;

(f) Impact on the local community with emphasis on economic impact and impact to public school funding;

(g) Impact on the public and private workforce;

(h) Impact of staffing levels on safety, outcomes, turnover rates, and payroll practices, including overtime and compensation policies;

(i) Impact on relevant stakeholders;

(j) Effectiveness of programming and outcomes;

(k) State constitutional limitations related to the state personnel system; and

(l) Any other relevant factors.

(3) This section is exempt from the requirements of section 2-3-303.3, C.R.S.

(4) This section is repealed, effective July 1, 2014.

PART 3

BUDGETING - RESPONSIBILITIES

24-37-301. Executive budget responsibility. The governor, as chief executive, shall annually evaluate the plans, policies, and programs of all departments of the state government. He shall direct the formulation of his decisions into a financial plan

encompassing all sources of revenue and expenditure. He shall propose this plan for the consideration of the general assembly in the form of an annual executive budget consisting of operating expenditures, capital construction expenditures, estimated revenues, and special surveys. Proposed expenditures in the budget shall not exceed estimated moneys available. After legislative review and modification, if any, of the budget and appropriation of the moneys therefor, the governor shall administer the budget.

24-37-302. Responsibilities of the office of state planning and budgeting. (1) The office of state planning and budgeting shall assist the governor in his or her responsibilities pertaining to the executive budget. Specifically, it shall:

(a) Design and prepare, in coordination with the joint budget committee of the general assembly, the forms and instructions to be used in preparation of all budget requests except those pertaining to higher education. Such budget requests shall include, but shall not be limited to, an analysis of costs, revenues, fund balances, and performance indicators for all programs notwithstanding the source of funds.

(b) Review and approve the forms and instructions for higher education budget requests which are prescribed by the Colorado commission on higher education;

(c) Develop an annual executive planning, programming, and budgeting cycle;

(d) Develop, in coordination with the Colorado commission on higher education, for state-supported institutions of higher education, the annual executive budget timetable;

(e) Make recommendations to the governor on appointees to the governor's revenue-estimating advisory group; preside over meetings of and provide the staff for that group; and, with the advice of the group, assist in developing the general fund revenue estimates required by section 24-75-201.3;

(f) Conduct annual executive budget hearings on the plans, programs, policies, and budget requests of all state agencies in the executive department;

(g) Develop recommendations for the governor in his formulation of budget proposals to the general assembly and prepare for the governor the annual executive budget proposals to the general assembly, together with the proposed legislative bills embodying such proposals;

(h) Design, develop, and present briefings to the joint budget committee and the members of the general assembly, the general public, and other interested parties on the annual executive budget proposals;

(i) Make available to the governor-elect, if there is a governor-elect who is not the governor, complete details about the budget and the information upon which it is based;

(j) and (k) Repealed.

(k.1) Review for the governor all work programs recommended by the controller;

(k.2) Repealed.

(l) Develop procedures governing the submission of state agency requests to nonstate agencies for funds to be used for state purposes and problems; review for the governor all such requests requiring the commitment or expenditure of state funds; and advise the joint budget committee of the general assembly, prior to submission for approval, of any such requests committing the state to a program which has not theretofore had the approval of the general assembly;

(m) Continually review and recommend revisions of the plans, policies, and programs of the state agencies; propose alternative methods for accomplishing the objectives of state programs and policies; and develop and implement, in coordination with the controller, a system for evaluating the results of and measuring the effectiveness of governmental expenditures;

(n) Develop long-range fiscal plans for both operating and capital construction budgets and for the state revenue structure, such plans to be consistent with the policies and objectives of state planning.

(2) The director shall have such authority, with the approval of the governor, as is necessary to discharge the responsibilities set forth in subsection (1) of this section, including but not limited to the publication of administrative regulations and the acceptance of gifts and grants.

(3) (a) Notwithstanding any other provision of law to the contrary, the director of the office of state planning and budgeting shall require that all state agency budget submissions be distributed in an electronic format either by delivery of a compact disc or by the sending of an electronic notification that includes an attached budget submission or a hyperlink to the web site where the budget submission is posted.

(b) The department of state, the department of the treasury, the department of law, the judicial department, the office of state public defender, the office of alternate defense counsel, the independent ethics commission, and the office of the child's representative shall use the state agency budget submissions described in paragraph (a) of this subsection (3) as a guideline for the submission of their budgets to the joint budget committee.

24-37-303. Governor has final authority. The final authority and decision in all matters relating to the executive budget is hereby vested in the governor.

24-37-304. Additional budgeting responsibilities. (1) In addition to the responsibilities enumerated in section 24-37-302, the office of state planning and budgeting shall:

(a) Annually evaluate plans, policies, programs, and budget requests of all

departments, institutions, and agencies of the executive branch of state government. The office of state planning and budgeting shall develop a financial plan encompassing all sources of revenue and expenditure. It shall propose this plan for the budget, consisting of operating expenditures, capital construction expenditures, estimated revenues, and special surveys. Budget requests shall include a description of one or more measurable annual objectives in the areas of operational efficiency and effectiveness for each department, institution, and agency. Proposed expenditures in the budget shall not exceed estimated moneys available.

(b) Ensure submission to the joint budget committee of the general assembly by the deadlines set forth in section 2-3-208, C.R.S., of all agency requests for the upcoming year;

(b.5) Ensure submission to the joint budget committee of the general assembly by the deadlines set forth in section 2-3-208, C.R.S., of all agency requests for supplemental appropriations for the current fiscal year;

(c) Repealed.

(c.3) (I) Except for projects authorized pursuant to section 23-1-106 (9) or (10), C.R.S., ensure submission of all capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than September 1 of each year;

(II) Submit the recommended priority of funding of capital construction projects of all state departments, institutions, and agencies to the capital development committee no later than November 1 of each year;

(III) Ensure submission of all requests for supplemental appropriations for capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than December 10 of each year.

(d) Execute the appropriations acts or other acts having fiscal implications in such a manner as to assure compliance with the expenditure limitation, by source of funds, personnel authorizations, contingency and performance requirements, and legislative intent;

(e) Repealed.

(f) Develop, or cause to be developed, current operational master plans for each state institution and agency, except state schools, colleges, and universities as provided in section 23-1-106, C.R.S., for submission to and approval by the general assembly;

(g) Develop and enforce a method of internal audit that will assure compliance with appropriations provisions and executive orders;

(h) Carry out such other functions and duties as may be directed by the governor.

ARTICLE 37.3

24-37.3-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) In September 2009, the federal centers for disease control and prevention reported that no state in the United States was meeting national goals for the amount of fruits and vegetables that Americans should be eating. As a result, the centers for disease control and prevention identified the creation of food policy councils, consisting of multi-stakeholder organizations, as an effective way to support system changes to improve local, regional, and state food economies.

(b) Food councils formed in other states have been effective in bringing together a broad array of food-related government and nongovernment constituencies to employ a food systems approach that facilitates evaluation and program development at every stage of the food process from farm to table;

(c) Formation of a state food advisory council is intended to benefit Colorado agriculturists and others involved in all aspects of agricultural production;

(d) Creation of a state food advisory council will provide increased focus on the economic development opportunities of Colorado's food system along with improvements to agricultural production, community well-being, and public health;

(e) Nothing in this article is intended to impede, cause harm to, or limit conventionally produced agricultural products or the persons who produce them.

(2) The general assembly further finds that building local, regional, and state food economies will create jobs, stimulate statewide economic development, and circulate money from local food sales within local communities. The general assembly finds that building robust, resilient, and long-term local food economies in Colorado will preserve and protect the natural environment, increase consumer access to fresh, healthy, and safe foods, and provide greater food security for all Coloradans.

24-37.3-102. Colorado food systems advisory council - created - membership - terms - vacancies. (1) There is hereby established in the department of agriculture the Colorado food systems advisory council, referred to in this article as the "council". The council is created as an advisory committee to foster a healthy food supply available to all Colorado residents while enhancing the state's agricultural and natural resources, encouraging economic growth, expanding the viability of agriculture, and improving the health of our communities and residents. The council's role is to make recommendations to the general assembly and to the appropriate regulatory agencies, not to create policy. The council shall use a method of dialogue and consensus decision-making to arrive at its

recommendations.

(2) The council consists of fifteen members as follows:

(a) The executive director, or his or her designee, of each of the following state departments:

(I) The department of public health and environment;

(II) The department of agriculture;

(III) The department of human services;

(IV) The department of education;

(b) Eleven members appointed by the governor who represent and have expertise in one of seven functional areas of food systems, as follows:

(I) Two members who represent nutrition and health;

(II) Three members who represent agricultural production, at least one of whom represents a large producer and one a small producer;

(III) One member who represents small food wholesalers or food retailers and one member who represents large food wholesalers or food retailers, of which one of the two members may represent both small and large food wholesalers or food retailers;

(IV) One member who represents anti-hunger and food assistance programs;

(V) One member who is knowledgeable about a local, state, or federal agency and who has expertise in rural community and regional development programs or community and economic development programs.

(VI) One member from an academic institution who specializes in economic systems, agriculture, or health care;

(VII) The director of the Colorado state university extension services program or his or her designee.

(3) In making appointments to the council, the governor shall ensure that the membership of the council includes geographic representation from all areas of the state. The governor shall also consider appointing persons who have expertise in more than one functional area. No more than five members of the council appointed by the governor shall be members of the same political party.

(4) Each member of the council who is appointed pursuant to subsection (2) of this section shall serve at the pleasure of the appointing authority who appointed the member. Each member of the council shall serve a three-year term; except that the governor shall appoint four members to serve two-year terms.

(5) The appointing authorities shall make their initial appointments to the council no later than October 1, 2010.

(6) Any vacancy on the council shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term of the member whose term is vacant.

(7) A majority of the members of the council shall elect a chair and a vice-chair who shall serve for two-year terms. A member of the council who is an executive director

of a state department or his or her designee may be elected to be a chair or a vice-chair of the council, but both positions shall not be held at the same time by members who are executive directors of state departments or their designees.

(8) Each member of the council shall serve without compensation, but may be reimbursed from the food systems advisory council fund created in section 24-37.3-105 for actual and necessary subsistence and travel expenses incurred in the performance of his or her duties as a member of the council.

(9) The chair shall call the meetings and notify the members of each meeting being called at least seven days in advance. Meetings shall be held as often as the chair deems necessary, but not less than four times each calendar year. A quorum for the transaction of business consists of seven members of the council.

24-37.3-103. Council - purpose and duties. (1) The purpose of the council is to:

(a) Identify and use existing studies of the food system and examples of best practices, whenever possible;

(b) Work with other task forces, committees, or organizations that are pursuing initiatives or studies similar to the purposes and duties outlined in this article and develop relationships with other task forces, committees, or organizations to collaborate on similar efforts;

(c) Develop local food recommendations that promote the building of robust, resilient, and long-term local food economies;

(d) Develop recommendations regarding hunger and food access;

(e) Collaborate with, serve as a resource to, and receive input from local and regional food policy councils in the state;

(f) Collaborate with the department of agriculture in promoting the marketing program known as "Colorado Proud", which helps consumers, restaurants, and retailers to identify and purchase Colorado food and agricultural products; and

(g) Develop recommendations for actions that state and local governments, businesses, agriculturists, and consumers can take to build robust, resilient, and long-term local food economies.

(2) In developing its recommendations, the council shall consider, but not be limited to, the following areas of interest:

(a) (I) An examination of foods made available to children, including those in public schools, and consideration of ways to improve the nutritional quality of those foods and increase children's access to locally grown foods.

(II) In designing recommendations to improve school nutrition and increase access to locally grown foods, the council shall incorporate input from, and coordinate with the work of, the Colorado campaign to end childhood hunger by 2015, initiated by executive order of the governor.

(b) A study of efforts to make local, healthy, and safe foods available under public assistance programs, including the possibility of using electronic benefit cards for the supplemental nutrition assistance program (SNAP) and federal farmers' market nutrition program (FMNP) coupons at local farmers' markets;

(c) An in-depth examination of local and regional efforts to strengthen and develop robust, resilient, and long-term local food economies by supporting and promoting urban, suburban, and rural agricultural production; identifying and developing solutions to regulatory and policy barriers; and strengthening local infrastructure and entrepreneurial efforts;

(d) The potential impacts that the production of local, healthy, and safe foods would have on economic development in Colorado, including both the direct impacts for the producers of local food and the actual and potential indirect impacts, such as encouraging restaurants to feature locally raised agricultural products and promoting food and wine tourism; and

(e) Any other issues the council, by consensus, considers pertinent.

24-37.3-104. Subcommittees of the council. (1) (a) The council may create subcommittees, as the council deems necessary, to carry out the work of the council. These subcommittees may include but are not limited to:

(I) Local and regional food councils;

(II) Local government;

(III) School districts, the members of which shall include persons with expertise in nutrition and in school financing; and

(IV) A coordination subcommittee to collaborate with other task forces, committees, and organizations, including the interagency farm-to-school coordination task force created in section 22-82.6-104, C.R.S.

(b) The subcommittees shall include representatives of the council and may include persons appointed by the chair and the vice-chair of the council who are not members of the council.

(2) The council may engage in any other activity the council determines is necessary to accomplish the purposes outlined in this article.

24-37.3-105. Fund - acceptance of gifts, grants, or donations. (1) For the purposes of carrying out the duties of the council, the council is authorized to seek and accept gifts, grants, or donations, including in-kind donations, from private or public sources for the purposes of this article; except that the council may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this article or any other law of the state. The council may accept in-kind donations of staff services from the

private sector to staff the council. The council is also authorized to accept and expend federal funds available for food policy councils. All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the food systems advisory council fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund must be continuously appropriated by the general assembly to the department of agriculture for allocation to the council for the direct and indirect costs associated with implementing this article. Any moneys in the fund not expended for the purpose of this article may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert or be credited or transferred to the general fund or another fund; except that, if, at the time this article is repealed pursuant to section 24-37.3-107, the fund contains a balance of unencumbered and unexpended moneys, those moneys shall revert to the general fund.

(2) Moneys in the fund may be used for the following purposes:

(a) The actual and necessary expenses incurred by members of the council for serving on the council;

(b) The costs of staffing the council; and

(c) The costs of preparing and submitting the annual report required by section 24-37.3-106.

(3) It is the intent of the general assembly that no moneys from the general fund be appropriated for the council. It is also the intent of the general assembly that no state employees be hired to implement this article and that the administrative costs of providing fiscal support to the council be absorbed by the department of agriculture.

(4) If the council does not receive sufficient moneys through gifts, grants, and donations pursuant to subsection (1) of this section to carry out the duties of the council, the council shall not meet and shall not prepare an annual report pursuant to section 24-37.3-106 until such time as sufficient moneys become available.

24-37.3-106. Reports - recommendations. Commencing October 1, 2011, and on or before October 1 of each year thereafter, the council shall report its findings and recommendations, including any legislative proposals or proposals for administrative action, to the general assembly, the governor, and the commissioner of agriculture pursuant to section 24-1-136 (9). No later than January 31, 2012, and every January thereafter, the council shall also report its findings and recommendations, including any legislative proposals, to the house health and human services committee; the senate health and human services committee; the house agriculture, livestock, and natural resources committee; and the senate agriculture and natural resources committee or their successor

committees.

24-37.3-107. Repeal of article. This article is repealed, effective September 1, 2018. Prior to such repeal, the food systems advisory council shall be reviewed as provided for in section 2-3-1203, C.R.S.

ARTICLE 37.5

Office of Information Technology

PART 1

OFFICE CREATED

24-37.5-101. Legislative declaration - findings. (1) The general assembly hereby finds and declares that:

(a) Communication and information resources in the various agencies of state government are valuable strategic assets belonging to the people of Colorado that must be managed accordingly;

(a.5) It is imperative that the long-term sustainability and eventual retirement of information technology systems be considered when initiating a major information technology project and that project plans include the various components that will result in project success;

(b) Technological and theoretical advances in the area of communication and information use are recent in origin, immense in scope and complexity, and progressing rapidly;

(c) The nature of these advances presents Colorado with the opportunity to provide higher quality, more timely, and more cost-effective governmental services;

(d) Agencies independently acquire uncoordinated and duplicative information resource technologies that are more appropriately acquired as part of a coordinated effort for maximum cost effectiveness and use;

(e) The sharing of communication and information resource technologies among agencies is often the most cost-effective method of providing the highest quality and most timely governmental services that would otherwise be cost prohibitive;

(f) Considerations of both cost and the need for the transfer of information among the various agencies and branches of state government in the most timely and useful form possible require a uniform policy and coordinated system for the use and acquisition of

communication and information resource technologies; and

(g) It is the policy of this state to coordinate and direct the use of communication and information resources technologies by state agencies and to provide as soon as possible the most cost-effective and useful retrieval and exchange of information both within and among the various state agencies and branches of government and from the state agencies and branches of government to the people of Colorado. To that end, the office of information technology is created.

24-37.5-102. Definitions - repeal. As used in this article, unless the context otherwise requires:

(1) "Chief information officer" means the chief information officer appointed pursuant to section 24-37.5-103.

(1.3) (a) "Collaboration, office productivity, and electronic mail software" or "COPE" means software that is delivered via an SaaS model and offered as a specific service by the statewide internet portal authority or any private sector provider of information technology resources.

(b) This subsection (1.3) is repealed, effective July 1, 2014.

(1.5) "Disaster recovery" means the provisioning of services for operational recovery, readiness, response, and transition of information technology applications, systems, or resources.

(1.7) "Enterprise facility" means an enterprise facility for providing information technology services.

(1.8) "Independent verification and validation" means ensuring that a product, service, or system meets required specifications and that it fulfills its intended purpose. The review of such product, service, or system is typically performed by an independent third party.

(1.9) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) Prevent improper information modification or destruction;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(2) "Information technology" means information technology and computer-based equipment and related services designed for the storage, manipulation, and retrieval of data by electronic or mechanical means, or both. The term includes but is not limited to:

(a) Central processing units, servers for all functions, network routers, personal computers, laptop computers, hand-held processors, and all related peripheral devices configurable to such equipment, such as data storage devices, document scanners, data

entry equipment, specialized end-user terminal equipment, and equipment and systems supporting communications networks;

(b) All related services, including feasibility studies, systems design, software development, system testing, external off-site storage, and network services, whether provided by state employees or by others;

(c) The systems, programs, routines, and processes used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, application testing capabilities, storage system software, hand-held device operating systems, and computer networking programs; and

(d) The application of electronic information processing hardware, software, or telecommunications to support state government business processes.

(2.3) "Joint technology committee" means the joint technology committee created in section 2-3-1702, C.R.S.

(2.5) "Local government" means the government of any county, city and county, home rule or statutory city, town, special district, or school district.

(2.6) (a) "Major information technology project" means a project of state government that has a significant information technology component, including, without limitation, the replacement of an existing information technology system.

(b) As used in this subsection (2.6), "significant" means the project has a specific level of business criticality and manifests either a security risk or an operational risk as determined by a comprehensive risk assessment performed by the office.

(3) "Office" means the office of information technology created pursuant to section 24-37.5-103.

(3.2) "Project manager" means a person who is trained and experienced in the leadership and management of information technology projects from the commencement of such projects through their completion.

(3.5) (a) "Software as a service" or "SaaS" means a model of software deployment via the internet that:

(I) Allows a customer to use the software as a service on demand through a subscription or a pay-as-you-go model;

(II) Does not require the user to purchase hardware or software directly to run an information technology application since the application is accessible via the internet; and

(III) May be utilized for various information technology applications, including but not limited to electronic mail, video conferencing, instant messaging, office productivity applications, and electronic calendaring.

(b) This subsection (3.5) is repealed, effective July 1, 2014.

(4) "State agency" means all of the departments, divisions, commissions, boards, bureaus, and institutions in the executive branch of the state government. "State agency" does not include the legislative or judicial department, the department of law, the

department of state, the department of the treasury, or state-supported institutions of higher education.

24-37.5-103. Office of information technology - creation. There is hereby created in the office of the governor an office of information technology, the head of which shall be the chief information officer, who shall be appointed by the governor and who shall serve at the pleasure of the governor.

24-37.5-104. Transfer of functions - change of name - continuity of existence - legislative declaration - rules. (1) The office shall, on and after July 1, 1999, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the commission on information management as a commission in the department of personnel prior to said date concerning the duties and functions transferred to the office pursuant to this section.

(2) (a) On and after July 1, 1999, the officers and employees of the commission on information management prior to said date whose duties and functions concerned the duties and functions transferred to the office pursuant to this section and whose employment in the office is deemed necessary by the chief technology officer to carry out the purposes of this article shall be transferred to the office and become employees thereof.

(b) Any such employees who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(3) On July 1, 1999, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the commission on information management prior to said date pertaining to the duties and functions transferred to the office pursuant to this section, are transferred to the office and become the property thereof.

(4) Whenever the commission on information management is referred to or designated by a contract or other document in connection with the duties and functions transferred to the office pursuant to this article, such reference or designation shall be deemed to apply to the office created pursuant to this section. All contracts entered into by the commission on information management prior to July 1, 1999, in connection with the duties and functions transferred to the office pursuant to this section are hereby validated, with the office created by section 24-37.5-103 succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to

satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to the office created by section 24-37.5-103 for the payment of such obligations.

(5) (a) The general assembly hereby finds and declares that:

(I) Upon creation of this article, the name "office of innovation and technology" best reflected the activities of such office in the governor's office in connection with the coordination and direction of the use of communication and information resources technologies by state agencies.

(II) To better reflect the current activities of this office, the office should be referred to as the "office of information technology".

(III) The name of the office in the governor's office that coordinates and directs the use of communication and information resources technologies by state agencies should accordingly be changed from the "office of innovation and technology" to the "office of information technology".

(b) On and after July 1, 2006, the office of information technology shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the office of innovation and technology prior to July 1, 2006, and all employees of the office of innovation and technology shall be transferred to the office of information technology and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 2006, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the office of innovation and technology are transferred to the office of information technology and shall become the property thereof.

(d) Whenever the office of innovation and technology is referred to or designated by any contract or other document, such reference or designation shall be deemed to apply to the office of information technology. All contracts entered into by the office of innovation and technology prior to July 1, 2006, are hereby validated, with the office of information technology succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the office of information technology for the payment of such obligations.

(e) On and after July 1, 2006, when any provision of the Colorado Revised Statutes refers to the office of innovation and technology, said law shall be construed as referring to the office of information technology. The revisor of statutes is authorized to change all references in the Colorado Revised Statutes to the office of innovation and technology to refer to the office of information technology.

(6) (a) The office shall, on and after July 1, 2008, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 2008, in the general government computer center within the department of personnel, in telecommunications coordination within the department of personnel, and in the office of the chief information security officer in the office of the governor.

(b) (I) On and after July 1, 2008, all positions of employment in the general government computer center within the department of personnel, in telecommunications coordination within the department of personnel, and in the office of the chief information security officer in the office of the governor concerning the powers, duties, and functions transferred to the office pursuant to this subsection (6) and whose employment in the office is deemed necessary to carry out the purposes of this article by the chief information officer shall be transferred to the office and shall become employment positions therein. The chief information officer shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the office and the chief information officer.

(II) On and after July 1, 2008, all employees of the general government computer center within the department of personnel, in telecommunications coordination within the department of personnel, and in the office of the chief information security officer in the office of the governor whose duties and functions concerned the powers, duties, and functions transferred to the office pursuant to this subsection (6), regardless of whether the position of employment in which the employee served was transferred, shall be considered employees of the office for purposes of section 24-50-124. Any such employees who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of the state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(c) On July 1, 2008, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the general government computer center within the department of personnel, in telecommunications coordination within the department of personnel, and in the office of the chief information security officer in the office of the governor pertaining to the duties and functions transferred to the office pursuant to this subsection (6), are transferred to the office and shall become the property thereof.

(d) On and after July 1, 2008, whenever the general government computer center within the department of personnel, whenever telecommunications coordination within the department of personnel, and whenever the office of the chief information security officer in the office of the governor is referred to or designated by a contract or other document in connection with the duties and functions transferred to the office pursuant to this subsection (6), such reference or designation shall be deemed to apply to the office

created pursuant to this article. All contracts entered into by the general government computer center within the department of personnel, by telecommunications coordination within the department of personnel, and by the office of the chief information security officer in the office of the governor prior to July 1, 2008, in connection with the duties and functions transferred to the office pursuant to this subsection (6), are hereby validated, with the office succeeding to all rights and obligations of the contracts. Any appropriations of moneys from prior fiscal years open to satisfy obligations incurred pursuant to the contracts are hereby transferred and appropriated to the office for the payment of such obligations.

(e) On and after July 1, 2008, unless otherwise specified, whenever any provision of law refers to the department of personnel in connection with the general government computer center, to telecommunications coordination, or to the office of the governor in connection with the office of the chief information security officer, the law shall be construed as referring to the office.

(f) All rules and orders of the department of personnel or the office of the governor in connection with the powers, duties, and functions transferred to the office shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. On and after July 1, 2008, the chief information officer shall adopt rules necessary for the administration of such powers, duties, and functions.

(g) The revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the department of personnel and office of the governor as appropriate and with respect to the powers, duties, and functions transferred to the office. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to this section.

(7) (a) There is hereby created in the office the enterprise facility for operational recovery, readiness, response, and transition services.

(b) On July 1, 2010, the enterprise facility for operational recovery, readiness, response, and transition services within the department of state, in coordination with participating state agencies, is transferred to the office.

(c) (I) On and after July 1, 2010, all positions of employment in the enterprise facility as it existed within the department of state concerning the powers, duties, and functions transferred to the office pursuant to this subsection (7) that are deemed necessary to carry out the purposes of this article by the chief information officer shall be transferred to the office and shall become employment positions therein. The chief information officer shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the office and the chief information officer.

(II) On and after July 1, 2010, all employees of the enterprise facility as it existed within the department of state whose duties and functions concerned the powers, duties,

and functions transferred to the office pursuant to this subsection (7) shall be considered employees of the office for purposes of section 24-50-124, regardless of whether the position of employment in which the employee served was transferred to the office. Any such employees who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of the state, and their service shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules.

(d) On July 1, 2010, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the enterprise facility as it existed within the department of state pertaining to the duties and functions transferred to the office pursuant to this subsection (7) are transferred to the office and shall become the property thereof.

(e) On and after July 1, 2010, whenever the enterprise facility for operational recovery, readiness, response, and transition services within the department of state, in coordination with participating state agencies, is referred to or designated by a contract or other document in connection with the duties and functions transferred to the office pursuant to this subsection (7), such reference or designation shall be deemed to apply to the office created pursuant to this article. All contracts entered into by the enterprise facility as it existed within the department of state prior to July 1, 2010, in connection with the duties and functions transferred to the office pursuant to this subsection (7) are hereby validated, with the office succeeding to all rights and obligations of the contracts. Any appropriations of moneys from prior fiscal years open to satisfy obligations incurred pursuant to the contracts are hereby transferred and appropriated to the office for the payment of such obligations.

(f) On and after July 1, 2010, unless otherwise specified, whenever any provision of law refers to the department of state in connection with the enterprise facility, the law shall be construed as referring to the office.

(g) All rules and orders of the department of state or the office of the governor in connection with the powers, duties, and functions transferred to the office pursuant to this subsection (7) shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. On and after July 1, 2010, the chief information officer shall adopt rules necessary for the administration of such powers, duties, and functions.

(h) On and after July 1, 2010, the enterprise facility shall be funded as follows:

(I) For state fiscal year 2010-11, one hundred percent by moneys appropriated by the general assembly from the department of state cash fund created in section 24-21-104 (3) (b);

(II) For state fiscal year 2011-12, sixty-seven percent by moneys appropriated by the general assembly from the department of state cash fund created in section 24-21-104 (3) (b) and thirty-three percent by moneys appropriated by the general assembly from the

information technology revolving fund established in section 24-37.5-112 (1) (a);

(III) For state fiscal year 2012-13, thirty-three percent by moneys appropriated by the general assembly from the department of state cash fund created in section 24-21-104 (3) (b) and sixty-seven percent by moneys appropriated by the general assembly from the information technology revolving fund established in section 24-37.5-112 (1) (a); and

(IV) For state fiscal year 2013-14 and for each state fiscal year thereafter, one hundred percent by moneys appropriated by the general assembly from the information technology revolving fund established in section 24-37.5-112 (1) (a).

24-37.5-105. Office - responsibilities - rules - repeal. (1) The office is empowered to receive and expend grants, gifts, and bequests, specifically including state and federal funds and other funds available, and to contract with the United States and any other legal entities with respect thereto.

(2) Contributions of advanced technology equipment, grants, gifts, or bequests from private sources, including but not limited to advanced technology companies, individuals, and foundations, may be designated by the office to a specific state entity or may be nondesignated.

(3) The office shall:

(a) (Deleted by amendment, L. 2006, p. 1727, § 5, effective June 6, 2006.)

(b) Develop and encourage a world wide web-based state government and facilitate the dissemination of information onto the web;

(c) Evaluate and streamline systemwide business practices for the purpose of finding methods for the enhanced utilization of technology;

(d) to (f) (Deleted by amendment, L. 2006, p. 1727, § 5, effective June 6, 2006.)

(g) Coordinate with and provide assistance, advice, and expertise in connection with business relationships between state agencies and private sector providers of information technology resources. Such assistance shall include efforts that strengthen and create efficiencies in those business relationships.

(h) Oversee and supervise the maintenance of information, information technology, and the initiation of any information technology updates or projects for state agencies;

(i) Initiate or approve all procurements of information technology resources for state agencies and enter into any agreement or contract in connection with such a procurement on behalf of a state agency or agencies;

(j) Provide information and expertise, to the extent possible, regarding interoperable and emergency communications planning, technology, training, and funding opportunities to state, regional, tribal, and local agencies and emergency personnel and all other stakeholders, including but not limited to public, private, and nongovernmental organizations;

(k) Develop a comprehensive risk assessment that will be applied to every new information technology project to assess risk levels related to the project and determine whether the project should be classified as a major information technology project; and

(l) Assist the joint technology committee as necessary to facilitate the committee's oversight of the office.

(3.5) (a) If the office initiates any COPE services in a state agency on or after January 1, 2010, through an agreement with the statewide internet portal authority or any private sector provider of information technology resources, it shall file a report with the joint budget committee, the joint technology committee, and the legislative audit committee no later than thirty days after the last day of the fiscal quarter in which the COPE service was initiated. Such report shall include the following:

(I) An implementation plan for the COPE services in the state agency that includes the estimated completion date for such implementation;

(II) A cost-benefit analysis for implementing the COPE services showing the cost savings to the state agency from such implementation; and

(III) An analysis demonstrating that implementation of the COPE services are in conformance with the state agency's information security plan developed pursuant to section 24-37.5-404 and that appropriate information security safeguards exist to ensure that the communication and information resources of the agency are not vulnerable to a security incident resulting from such implementation.

(b) Following the report described in paragraph (a) of this subsection (3.5), the office shall file a quarterly report with the joint budget committee and the joint technology committee no later than thirty days after the last day of each subsequent fiscal quarter for a period of two years containing information on the progress of the implementation of the COPE services in the state agency and the cost savings to the state agency from such implementation. No further quarterly reporting shall thereafter be required pursuant to this paragraph (b).

(c) This subsection (3.5) is repealed, effective July 1, 2014.

(4) (a) The office shall establish policies and procedures for acceptable project plans, project budgets, and feasibility studies for projects of all sizes, including major information technology projects.

(b) (Deleted by amendment, L. 2008, p. 1115, § 4, effective May 22, 2008.)

(c) As part of any major information technology project by a state agency, classified as such according to a comprehensive risk assessment performed by the office, the project plan at a minimum shall include:

(I) The identification of a project manager;

(II) A business case for the project that is in alignment with the strategic goals of the state agency;

(III) Business requirements for the project developed in collaboration with the state agency and end users;

(IV) Information security requirements and best practices;

(V) A disaster recovery plan;

(VI) Consideration of and inclusion in the business continuity plan of the state agency;

(VII) Independent verification and validation of the project; and

(VIII) A funding strategy for the ongoing maintenance and eventual disposal of the information technology system.

(d) In connection with any major information technology project that it plans to undertake, a state agency shall:

(I) Consult with the office on the development of the project plan for any major information technology project;

(II) Submit and obtain approval from the office of the project plan for any major information technology project before commencing work on the project;

(III) (A) Consult with and obtain approval from the office of significant changes to the plan or budget of any major information technology project.

(B) As used in this subparagraph (III), "significant changes" means the removal of, or any additions or substantial changes to, any of the project plan's components listed in paragraph (c) of this subsection (4).

(IV) Consult with and obtain approval from the office for changes to the funding strategy for the ongoing maintenance and eventual disposal of a major information technology system.

(5) to (7) (Deleted by amendment, L. 2008, p. 1115, § 4, effective May 22, 2008.)

(8) Notwithstanding any other provision of law, any emergency acquisition or purchase of information technology resources by the office shall not be subject to the provisions of the "Procurement Code", articles 101 to 112 of this title. The chief information officer, in consultation with and with the approval of the executive director of the department of personnel, shall promulgate rules pursuant to article 4 of this title specifying the criteria for such emergency acquisitions or purchases. On or before September 1, 2009, and on or before September 1 each year thereafter, the chief information officer shall report to the state, veterans, and military affairs committees of the senate and house of representatives, or any successor committees, to the joint technology committee, and to the joint budget committee the following information for each emergency acquisition or purchase of information technology resources made in the preceding fiscal year:

(a) The information technology resources purchased or acquired;

(b) The amount of such purchase or acquisition; and

(c) The emergency serving as the basis for such purchase or acquisition.

(9) State agencies shall cooperate with the chief information officer and office in developing and implementing processes for the sharing of data and information with the office and between state agencies. The office shall determine and implement statewide

efforts to standardize information technology resources to the extent possible and shall determine the ownership of information technology resources among state agencies.

(10) (a) For purposes of carrying out the provisions of subsection (9) of this section, the office may, beginning on April 15, 2010, through June 30, 2014, negotiate amendments to existing contracts entered into by any state agency for information technology resources. Contract amendments may include, but need not be limited to, expanding the scope of the contract to include additional state agencies, extending the term of the contract, and improving cyber security. Any amendment negotiated pursuant to this section shall not be considered a solicitation or award of a contract.

(b) An existing contract entered into by any state agency for information technology resources may be amended pursuant to this subsection (10) only if:

(I) All contractors who are parties to the existing contract agree to the amendment;

(II) The existing contract was awarded in compliance with the "Procurement Code", articles 101 to 112 of this title;

(III) The existing contract was not initially awarded through a sole source or emergency procurement;

(IV) The amendment to the existing contract does not jeopardize the availability of federal funding or any other source of funding used to meet state obligations under the existing contract;

(V) The amendment to the existing contract establishes a standard for the specific information technology resources for state agencies; and

(VI) The amendment complies with all other requirements of this subsection (10).

(c) The office may review existing information technology resources contracts entered into by any state agency to determine whether the state can improve the cost-effectiveness of its technology investment and meet the business needs of the state by amending the existing contracts in accordance with this subsection (10). In determining whether a contract should be amended, the office may consider technical feasibility, technical enhancement, state-of-the-art technology in the applicable industry, fiscal advantages, synergistic advantages from multi-agency use, funding sources, and the business needs of and impacts to the contracting agency under the existing contract.

(d) If the office makes a preliminary determination that the state might benefit from an amendment to the existing contract for information technology resources, the office shall publish on its web site and on the department of personnel's public on-line solicitation site public notice of its intent to negotiate an amendment.

(e) The office shall confer with any provider that notifies the office of its interest in the existing contract for information technology resources and reasonably asserts that it is able to provide the goods and services provided under the contract in a manner more favorable to the state. Nothing in this paragraph (e) shall be construed to allow the office or any state agency to make unilateral changes to an existing contract or to cancel a contract unless the change or cancellation is in accordance with the terms of the existing

contract.

(f) The office shall consult and negotiate with each contractor who is a party to the existing contract to obtain terms and conditions more favorable to the state. During any such negotiations, the office shall continue to consult with agencies that are parties to the existing contract or that may benefit from becoming parties to the contract. The office shall also notify and consult with any agency that is responsible for ensuring that any specific information technology resource complies with any law or rule that imposes requirements other than those related to technology.

(g) The office, any agency that is a party to the existing contract for information technology resources, and any affected agency may negotiate the terms and conditions of the amended contract with the contractor, and the office shall enter into the amended contract on behalf of all affected state agencies.

(h) No existing contract for information technology resources shall be amended without the approval of each agency of state government that is a party to the contract. If an agency does not approve, it shall provide the office with a written statement of its objections and the reasons therefor. In the event of a dispute between the office and an agency that does not approve of the amendment, the governor, or his or her designee, shall make the final decision by concurring in or overriding the agency's disapproval.

(i) No sooner than thirty calendar days after providing notice as required by paragraph (d) of this subsection (10), the office may make a final determination to amend the existing contract for information technology resources.

(j) Notwithstanding any other provision of law, a contract amendment pursuant to this subsection (10) shall not be subject to the provisions of the "Procurement Code", articles 101 to 112 of this title; except that a contract amendment pursuant to this subsection (10) shall be subject to the provisions of article 109 of this title.

(k) Nothing contained in this subsection (10) shall be construed to authorize the office to enter into a new contract with a new provider without complying with the applicable provisions of the "Procurement Code", articles 101 to 112 of this title.

(l) The office shall create a process and procedures to implement this subsection (10) in a transparent and open manner, including procedures for notifying interested parties and allowing opportunities for parties to submit comments or objections.

(m) This subsection (10) is repealed, effective July 1, 2014.

(11) (a) By November 1, 2010, the office shall conduct a feasibility and requirements study to determine the cost to build an electronic budgeting system for the state.

(b) The electronic budgeting system should, at minimum:

(I) Allow access by the principal departments of the executive branch of state government, as specified in section 24-1-110, the legislative branch agencies, the judicial department, the office of state public defender created in section 21-1-101, C.R.S., the office of alternate defense counsel created in section 21-2-101, C.R.S., the independent

ethics commission established in section 24-18.5-101 (2) (a), the office of the child's representative created in section 13-91-104, C.R.S., the office of state planning and budgeting, and the joint budget committee staff;

(II) Allow for the confidential development of the governor's annual budget request and the annual budget requests of the legislative branch agencies, the judicial department, the office of state public defender created in section 21-1-101, C.R.S., the office of alternate defense counsel created in section 21-2-101, C.R.S., the independent ethics commission established in section 24-18.5-101 (2) (a), and the office of the child's representative created in section 13-91-104, C.R.S.;

(III) Allow for the confidential electronic communication of budget requests from each principal department of the executive branch of state government to the office of state planning and budgeting;

(IV) Allow for the electronic communication of the governor's annual budget request and the annual budget requests of the legislative branch agencies, the judicial department, the office of state public defender created in section 21-1-101, C.R.S., the office of alternate defense counsel created in section 21-2-101, C.R.S., the independent ethics commission established in section 24-18.5-101 (2) (a), and the office of the child's representative created in section 13-91-104, C.R.S., to the joint budget committee staff;

(V) Allow the office of state planning and budgeting to confidentially edit and finalize the budget requests of the principal departments of the executive branch of state government;

(VI) Allow the joint budget committee staff to view the final version of the governor's annual budget requests and the budget requests of the legislative branch agencies, the judicial department, the office of state public defender created in section 21-1-101, C.R.S., the office of alternate defense counsel created in section 21-2-101, C.R.S., the independent ethics commission established in section 24-18.5-101 (2) (a), and the office of the child's representative created in section 13-91-104, C.R.S.;

(VII) Include security features that lock certain users from accessing the system at certain points during the budget preparation cycle;

(VIII) Allow the joint budget committee staff to use the system to track supplemental appropriation bills, the annual general appropriation act, and any substantive budget legislation being considered by the general assembly; and

(IX) Allow the office of state planning and budgeting to use the system to track supplemental appropriation bills, the annual general appropriation act, and any substantive budget legislation being considered for signature by the governor.

(c) The feasibility and requirements study should also assess the cost and feasibility to implement the following potential system components:

(I) A web-based interface that will allow the principal departments of the executive branch of state government to upload and submit budget documents and requests to the office of state planning and budgeting;

(II) A web-based interface that will allow the legislative branch agencies, the judicial department, the office of state public defender created in section 21-1-101, C.R.S., the office of alternate defense counsel created in section 21-2-101, C.R.S., the independent ethics commission established in section 24-18.5-101 (2) (a), and the office of the child's representative created in section 13-91-104, C.R.S., to upload and submit budget documents and requests to the joint budget committee staff;

(III) The ability to produce a draft and final annual general appropriation act by the joint budget committee staff;

(IV) Compatibility with the joint budget committee's current budget preparation system; and

(V) Potential incorporation of or interaction with other state human resources and financial systems for data collection and tracking, including but not limited to the Colorado financial reporting system.

(d) The office shall provide a copy of its feasibility and requirements study to the joint budget committee no later than November 15, 2010. The office shall make a request for funding to the joint budget committee, if necessary, by November 1, 2010.

24-37.5-106. Chief information officer - duties and responsibilities - broadband inventory fund created - repeal. (1) The chief information officer shall:

(a) Monitor trends and advances in information technology resources, direct and approve a comprehensive, statewide, four-year planning process, and plan for the acquisition, management, and use of information technology. The statewide information technology plan shall be updated annually and submitted to the governor, the joint technology committee, the speaker of the house of representatives, and the president of the senate.

(b) Require state agencies to participate with and advise the office on the creation of an information technology plan for such agency as part of the state's planning and budgeting process. Such plans shall:

(I) Be in compliance with the state's annual information technology plan;

(II) Specify the state agency's information technology procurement and system acquisition plans for the planning period; and

(III) Identify risks, issues, and concerns with the agency's information technology infrastructure.

(c) Coordinate and direct the formulation and promulgation of policies, standards, specifications, and guidelines for information technology in state agencies including but not limited to those required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies;

(d) Direct the development of policies and procedures, in consultation with the

office of state planning and budgeting, that are integrated into the state's strategic planning and budgeting processes and that state agencies shall follow in developing information technology plans and technology-related budget requests;

(e) Coordinate and direct the development of policies and procedures for the effective management of technology investments throughout their entire life cycle including but not limited to project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement;

(e.5) Develop a staged review process for information technology projects that ensures a project meets specific requirements and complies with the project plan approved by the office;

(f) In consultation with the office of state planning and budgeting, prepare and submit budget requests for all information technology resources to be utilized by state agencies;

(f.5) Approve a set of minimum standards to control purchases of information technology resources by the office for state agencies and approve criteria to be used in approving or rejecting state agency requests for procurements of information technology resources;

(g) Direct the development of policies and procedures for state agency requests for information technology procurements, agreements, or contracts;

(h) Aggregate information technology procurements for one or more state agencies;

(i) Coordinate and direct the establishment of statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the state;

(j) In consultation with the executive director of the department of personnel, evaluate the feasibility of outsourcing information technology resources and services and outsource those resources and services that would be beneficial to the state;

(k) Monitor the status and timeliness of information technology projects and procurements for state agencies and advise on any risk management issues in connection with those projects and procurements;

(l) (Deleted by amendment, L. 2008, p. 1117, § 5, effective May 22, 2008.)

(m) Advise the joint technology committee and the joint budget committee on requested or ongoing information technology projects, including the adherence of the office to the budget, amounts appropriated, and relevant contract deadline dates or schedules for those projects;

(n) Adopt standards and criteria for the procurement of adaptive technology by state agencies for the use of individuals who are blind or visually impaired as specified in article 85 of this title;

(o) Supervise the chief information security officer appointed pursuant to section 24-37.5-403 (1);

(p) Hire or retain such contractors, subcontractors, advisors, consultants, and agents as the chief information officer may deem advisable or necessary, in accordance with the relevant procedures, statutes, and rules and may make and enter into contracts necessary or incidental to the exercise of the powers and performance of the duties of the office and the chief information officer. The chief information officer may specifically hire or retain such contractors, subcontractors, advisors, consultants, and agents as the chief information officer may deem advisable and necessary.

(q) In consultation with the government data advisory board created in section 24-37.5-703, adopt rules and procedures that a state agency, as defined in section 24-37.5-702 (7), shall follow in requesting, or responding to a request for, data from another state agency;

(r) In consultation with the government data advisory board created in section 24-37.5-703, adopt rules and procedures for responding to data requests submitted by an entity outside of state government;

(s) In consultation with the government data advisory board created in section 24-37.5-703, adopt a schedule of fees that the office may charge to state agencies to supervise and administer interdepartmental and external data requests, that a state agency may charge another state agency in responding to an interdepartmental data request, and that a state agency may charge to respond to a data request submitted by an entity outside of state government. The chief information officer shall ensure that the amount of the fees does not exceed the direct and indirect costs incurred by the office or by the state agency that is responding to a data request.

(t) (I) Monitor the Colorado benefits management system improvement and modernization project and report quarterly to the joint technology committee and the joint budget committee pursuant to the provisions of section 24-37.5-113.

(II) This paragraph (t) is repealed, effective July 1, 2014.

(u) Assist the joint technology committee as necessary to facilitate the committee's oversight of the office.

(1.5) All of the policies, procedures, standards, specifications, guidelines, or criteria that are developed or approved pursuant to subsection (1) of this section may be promulgated as rules pursuant to article 4 of this title by and enforced by the chief information officer.

(1.7) The chief information officer may enter into contracts with any local government, state agency, or political subdivision of the state, including the legislative and judicial departments, the department of law, the department of state, the department of treasury, or state-supported institutions of higher education, for the purpose of providing disaster recovery services.

(2) (Deleted by amendment, L. 2006, p. 1728, § 6, effective June 6, 2006.)

(3) Repealed.

(4) The position of chief information officer shall be commensurate with the

position of head of a principal department and shall be a member of the governor's cabinet.

24-37.5-107. Work eligibility verification portal. The office shall, within existing resources and no later than December 1, 2006, submit a report to the joint budget committee of the general assembly that sets forth an implementation plan for the establishment of a work eligibility verification portal that, on and after January 1, 2008, will enable a person to access a database to verify whether a taxpayer identification number is valid. The report shall include an analysis of the anticipated costs of establishing and operating the portal and descriptions and analyses of databases and programs available for use in verifying taxpayer identification numbers including, at a minimum, the taxpayer identification number matching program administered by the internal revenue service and at least two databases or programs administered by nongovernmental entities.

24-37.5-108. Statewide communications and information infrastructure - establishment - duties. (1) With regard to the statewide communications and information infrastructure, the office shall have the following duties:

(a) To acquire and manage the statewide communications and information infrastructure based on present and future user applications;

(b) To review existing portions of the statewide communications and information infrastructure to determine the areas of the state in which they exist and whether the existing portions are adequate and usable for present and future user applications;

(c) To manage the ongoing use of the statewide communications and information infrastructure;

(d) To advise state agencies on the risks, issues, and concerns related to the agency's information technology infrastructure that the agency has identified in the information technology plan prepared pursuant to section 24-37.5-106 (1) (b).

24-37.5-109. Status of state agencies. (1) State agencies shall:

(a) Consult with and advise the office on information technology systems and requirements;

(b) Comply with the rules, standards, plans, policies, and directives of the office;

(c) Comply with information requests of the office, the general assembly, the joint technology committee, and the joint budget committee;

(d) Upon request of the general assembly, the joint technology committee, or the joint budget committee, provide satisfactory evidence of said compliance; and

(e) In connection with any major information technology project that a state agency plans to undertake, satisfy the requirements set forth in section 24-37.5-105 (4) (d).

24-37.5-110. Technology coordination. (1) (a) On July 1, 2008, the chief information officer of each state agency and on or after July 1, 2008, but on or before July 1, 2012, the employees of such state agencies designated pursuant to subsection (2) of this section shall be transferred to the office and shall become employees of the office. Each officer transferred to the office pursuant to this subsection (1) and his or her successor may continue to act as the officer for the state agency from which he or she was transferred and shall maintain any duties or responsibilities related to the information technology resources of such agency. Each officer transferred to the office shall report to and be under the immediate supervision of the chief information officer of the office.

(b) The employees of an agency that support the information technology functions of such agency shall continue to be under the supervision of the chief information officer of such agency until the chief information officer of the office determines that it is necessary for those positions or functions to come under the control and supervision of the office.

(2) The chief information officer of the office and the executive director and chief information officer of each state agency shall jointly identify the positions and functions affiliated with the management and administration of such agency's information technology resources and enterprises that will be transferred to and centralized in the office pursuant to subsection (1) of this section.

(3) Any such officer or employees who are classified employees in the state personnel system at the time of the transfer shall retain all rights to the personnel system and retirement benefits pursuant to the laws of the state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules for the purposes of section 24-50-124.

(4) A chief information officer and the employees under the supervision of the officer transferred pursuant to this section may continue operations at the location of such officer's state agency. Nothing in this subsection (4) shall require the relocation of an officer or employees under the supervision of the officer or such operations. The chief information officer of the office may relocate an officer and select employees in furtherance of centralizing the management of information technology in state agencies.

24-37.5-111. Geographic information system - coordinator - statewide plan. On and after July 1, 2008, all duties and responsibilities for statewide geographic

information system coordination shall be transferred from the department of local affairs to the office. The office shall develop a statewide geographic information system plan on or before July 1, 2010, and submit such plan to the governor and to the state, veterans, and military affairs committees of the senate and the house of representatives, or their successor committees.

24-37.5-112. Information technology revolving fund. (1) (a) There is hereby established in the state treasury the information technology revolving fund. Except as otherwise provided in subsection (2) of this section, moneys shall be appropriated to the fund each year by the general assembly in the annual general appropriation act for the direct and indirect costs of the office.

(b) The office shall develop a method for billing users of the office's services the full cost of the services, including materials, depreciation related to capital costs, labor, and administrative overhead. The billing method shall be fully implemented for all users of the office's services on or before July 1, 2013.

(c) All interest earned on the investment of moneys in the fund shall be credited to the fund. Moneys in the revolving fund shall be continuously appropriated to the office of information technology to pay the costs of consolidation and information technology maintenance and upgrades. Any moneys credited to the revolving fund and unexpended and unencumbered at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Notwithstanding any law to the contrary, any moneys appropriated from the general fund to the office or a state agency for the 2008-09 fiscal year and for each fiscal year thereafter, for the procurement of information technology resources or major automation system projects that are unexpended or unencumbered as of the close of the fiscal year as a result of savings achieved by the office or state agency in connection with such procurements, shall not revert to the general fund and shall be transferred by the state treasurer and the controller to the information technology revolving fund created in subsection (1) of this section.

24-37.5-113. Colorado benefits management system improvement and modernization project - appropriation - reporting - repeal. (1) The general assembly shall appropriate moneys for the Colorado benefits management system improvement and modernization project, referred to in this section as the "CBMS project".

(2) (a) Commencing June 1, 2012, and continuing on a quarterly basis, thereafter, including September 1, December 1, and March 1 of each year, the chief information officer shall report to the joint technology committee and the joint budget committee, pursuant to the provisions of section 24-1-136, concerning the CBMS project. Each

quarterly report shall include the information described in subsection (3) of this section. If a meeting is necessary for the reports required in this paragraph (a), the meeting shall be a joint meeting of the joint technology committee and the joint budget committee.

(3) Each quarterly report shall include:

(a) An overview of the management structure in the governor's office of information technology for the CBMS project, including leadership, project management, and internal oversight;

(b) An overview of the CBMS project work plan, including:

(I) A list of all scheduled project components;

(II) The actual or anticipated start and end dates for each project component;

(III) The amount budgeted for each project component; and

(IV) The amount expended for each project component;

(c) A list and description of any major changes, additions, deletions, or modifications to project components;

(d) An overview of the project status indicator for each component of the project work plan currently completed, in progress, or scheduled to commence within the quarter following the date of the report, including:

(I) Overall project status;

(II) Scope of project;

(III) Resources of project;

(IV) Budget of project;

(V) Risk of project;

(VI) Schedule of project; and

(VII) Deliverables of project;

(e) A detailed update for each component of the project work plan currently completed, in progress, or scheduled to commence within the quarter following the date of the report, including, for each component:

(I) The rating;

(II) The percentage complete;

(III) Descriptive information on the overall status;

(IV) Schedule status;

(V) Scope status;

(VI) Budget status;

(VII) Key accomplishments associated with the component;

(VIII) Work plan for the next quarter;

(IX) Critical dependencies associated with the component;

(X) Issues and concerns relating to the component; and

(XI) How the project component is affecting or will affect the delivery of state-supervised public assistance programs facilitated by the CBMS, county department staff, and citizens applying for or enrolled in state-supervised public assistance programs.

(4) This section is repealed, effective July 1, 2014.

24-37.5-114. Colorado financial reporting system modernization project - reporting. In the event that the executive committee of the legislative council, the joint budget committee, or the legislative audit committee deem certain functionality of the Colorado financial reporting system to be of particular importance to the legislative branch, this will be conveyed in writing to the office and the governor. The office must ensure that such functionality is incorporated or must promptly explain why such functionality cannot be incorporated. If the functionality cannot be included because such a change would require additional appropriations, the office must explain why additional appropriations are necessary. The office must report to the joint budget committee and the capital development committee regarding its progress on the project in a format and at time intervals specified by the joint budget committee and the capital development committee in writing. If a meeting is necessary for any report required by this section, when possible the meeting may be a joint meeting of the joint budget committee and the capital development committee.

PART 2

COMMISSION ON INFORMATION MANAGEMENT

24-37.5-201. Commission on information management - creation - membership. (Repealed)

24-37.5-202. Commission's purposes, powers, and duties. (Repealed)

24-37.5-203. Statewide communications and information infrastructure - establishment - duties. (Repealed)

24-37.5-203.5. Statewide internet portal - definitions. (Repealed)

24-37.5-204. Status of state agencies. (Repealed)

24-37.5-205. Annual report by commission. (Repealed)

PART 3

TASK FORCE ON INFORMATION POLICY

24-37.5-301 to 24-37.5-304. (Repealed)

PART 4

INFORMATION SECURITY

24-37.5-401. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Communication and information resources in the various public agencies of the state are strategic and vital assets belonging to the people of Colorado. Coordinated efforts and a sense of urgency are necessary to protect these assets against unauthorized access, disclosure, use, and modification or destruction, whether accidental or deliberate, as well as to assure the confidentiality, integrity, and availability of information.

(b) State government has a duty to Colorado's citizens to ensure that the information the citizens have entrusted to public agencies is safe, secure, and protected from unauthorized access, unauthorized use, or destruction.

(c) Securing the state's communication and information resources is a statewide imperative requiring a coordinated and shared effort from all departments, agencies, and political subdivisions of the state and a long term commitment to state funding that ensures the success of such efforts.

(d) Risks to communication and information resources must be managed, and the integrity of data and the source, destination, and processes applied to data must be assured.

(e) Information security standards, policies, and guidelines must be promulgated and implemented throughout public agencies to ensure the development and maintenance of minimum information security controls to protect communication and information resources that support the operations and assets of those agencies.

(f) The extensive information security expertise in Colorado's private sector should be utilized for the long-term benefit of Colorado's citizens and public agencies.

24-37.5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Availability" means the timely and reliable access to and use of information

created, generated, collected, or maintained by a public agency.

(2) Repealed.

(3) "Confidentiality" means the preservation of authorized restrictions on information access and disclosure, including the means for protecting personal privacy and proprietary information.

(4) "Department of higher education" means the Colorado commission on higher education, collegeinvest, the Colorado student loan program, the Colorado college access network, the private occupational school division, and the state historical society.

(5) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) Prevent improper information modification or destruction;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(6) "Information security plan" means the plan developed by a public agency pursuant to section 24-37.5-404.

(7) "Institution of higher education" means a state-supported institution of higher education.

(8) "Integrity" means the prevention of improper information modification or destruction and ensuring information nonrepudiation and authenticity.

(8.5) "Joint technology committee" means the joint technology committee created in section 2-3-1702, C.R.S.

(9) "Public agency" means every state office, whether executive or judicial, and all of its respective offices, departments, divisions, commissions, boards, bureaus, and institutions. "Public agency" does not include institutions of higher education or the general assembly.

(10) "Security incident" means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources.

24-37.5-403. Chief information security officer - duties and responsibilities. (1) The chief information officer shall appoint a chief information security officer who shall serve at the pleasure of the chief information officer. The security officer shall report to and be under the supervision of the chief information officer. The security officer shall exhibit a background and expertise in security and risk management for communications and information resources. In the event the security officer is unavailable to perform the duties and responsibilities under this part 4, all powers and authority granted to the security officer may be exercised by the chief

information officer.

(2) The chief information security officer shall:

(a) Develop and update information security policies, standards, and guidelines for public agencies;

(b) Promulgate rules pursuant to article 4 of this title containing information security policies, standards, and guidelines;

(c) Ensure the incorporation of and compliance with information security policies, standards, and guidelines in the information security plans developed by public agencies pursuant to section 24-37.5-404;

(d) Direct information security audits and assessments in public agencies in order to ensure program compliance and adjustments;

(e) Establish and direct a risk management process to identify information security risks in public agencies and deploy risk mitigation strategies, processes, and procedures;

(f) Approve or disapprove and review annually the information security plans of public agencies;

(g) Conduct information security awareness and training programs;

(h) In coordination and consultation with the office of state planning and budgeting and the chief information officer, review public agency budget requests related to information security systems and approve such budget requests for state agencies other than the legislative department; and

(i) Coordinate with the Colorado commission on higher education for purposes of reviewing and commenting on information security plans adopted by institutions of higher education that are submitted pursuant to section 24-37.5-404.5 (3).

(3) It is the intent of the general assembly that the cost of the services provided by the chief information security officer to a public agency be adequately funded in fiscal years commencing on and after July 1, 2007, through an appropriation to the public agency to pay for such services.

24-37.5-404. Public agencies - information security plans. (1) On or before July 1 of each year, each public agency shall develop an information security plan utilizing the information security policies, standards, and guidelines developed by the chief information security officer. The information security plan shall provide information security for the communication and information resources that support the operations and assets of the public agency.

(2) The information security plan shall include:

(a) Periodic assessments of the risk and magnitude of the harm that could result from a security incident;

(b) A process for providing adequate information security for the communication and information resources of the public agency;

(c) Regularized security awareness training to inform the employees and users of the public agency's communication and information resources about information security risks and the responsibility of employees and users to comply with agency policies, standards, and procedures designed to reduce those risks;

(d) Periodic testing and evaluation of the effectiveness of information security for the public agency, which shall be performed not less than annually;

(e) A process for detecting, reporting, and responding to security incidents consistent with the information security standards, policies, and guidelines issued by the chief information security officer; and

(f) Plans and procedures to ensure the continuity of operations for information resources that support the operations and assets of the public agency in the event of a security incident.

(3) On or before July 15 of each year, each public agency shall submit the information security plan developed pursuant to this section to the chief information security officer for approval.

(4) In the event that a public agency fails to submit to the chief information security officer an information security plan on or before July 15 of each year or such plan is disapproved by the chief information security officer, the officer shall notify the governor, the chief information officer, and the head of the public agency of noncompliance with this section. If no plan has been approved by September 15 of each year, the chief information security officer shall be authorized to temporarily discontinue or suspend the operation of a public agency's communication and information resources until such plan has been submitted to or is approved by the officer.

(5) and (6) (Deleted by amendment, L. 2011, (SB 11-062), ch. 128, p. 430, § 7, effective April 22, 2011.)

24-37.5-404.5. Institutions of higher education - information security plans. (1) Each institution of higher education, in coordination with the department of higher education, shall develop an information security program. The information security program shall provide information security for the communication and information resources that support the operations and assets of the institution of higher education.

(2) The information security program shall include:

(a) Periodic assessments of the risk and magnitude of the harm that could result from a security incident;

(b) A process for providing adequate information security for the communication and information resources of the institution of higher education;

(c) Information security awareness training to inform the employees, administrators, and users at the institution of higher education about the information security risks and the responsibility of employees, administrators, and users to comply

with the institution's information security program and the policies, standards, and procedures designed to reduce the security risks;

(d) Periodic testing and evaluation of the effectiveness of information security for the institution of higher education, which shall be performed not less than annually;

(e) A process for detecting, reporting, and responding to security incidents consistent with the information security policy of the institution of higher education. The institutions of higher education, the Colorado commission on higher education, and the chief information security officer shall establish the terms and conditions by which the institutions of higher education shall report information security incidents to the chief information security officer.

(f) Plans and procedures to ensure the continuity of operations for information resources that support the operations and assets of the institution of higher education in the event of a security incident.

(3) On or before July 1, 2011, and on or before July 1 each year thereafter, each institution of higher education shall submit to the department of higher education a report concerning the development and implementation of the institution's information security program and compliance with the requirements specified in subsection (2) of this section. Upon receipt of the reports, the department of higher education shall review the reports and subsequently submit the reports to the chief information security officer.

(4) Nothing in this section shall be construed to require any institution of higher education or the department of higher education to adopt policies or standards that conflict with federal law, rules, or regulations or with contractual arrangements governed by federal laws, rules, or regulations.

(5) and (6) (Deleted by amendment, L. 2011, (SB 11-062), ch. 128, p. 431, § 8, effective April 22, 2011.)

(7) (Deleted by amendment, L. 2011, (HB 11-1301), ch. 297, p. 1422, § 13, effective August 10, 2011.)

24-37.5-404.7. General assembly - information security plans. (1) The general assembly shall develop an information security plan. The information security plan shall provide information security for the communication and information resources that support the operations and assets of the general assembly.

(2) The information security plan shall include:

(a) Periodic assessments of the risk and magnitude of the harm that could result from a security incident;

(b) A process for providing adequate information security for the communication and information resources of the general assembly;

(c) Information security awareness training for regular employees of the general assembly;

(d) Periodic testing and evaluation of the effectiveness of information security for the general assembly, which shall be performed not less than annually;

(e) A process for detecting, reporting, and responding to security incidents consistent with the information security policy of the general assembly. The general assembly and the chief information security officer shall establish the terms and conditions by which the general assembly shall report information security incidents to the chief information security officer.

(f) Plans and procedures to ensure the continuity of operations for information resources that support the operations and assets of the general assembly in the event of a security incident.

(3) The legislative service agency directors shall maintain the information security plan pursuant to this section and keep the joint technology committee advised of the plan.

(4) Nothing in this section shall be construed to require the general assembly to adopt policies or standards that conflict with federal law, rules, or regulations or with contractual arrangements governed by federal laws, rules, or regulations.

(5) The general assembly shall provide regularized security awareness training to inform the regular legislative employees, administrators, and users about the information security risks and the responsibility of employees, administrators, and users to comply with the general assembly's information security plan and the policies, standards, and procedures designed to reduce those risks.

24-37.5-405. Security incidents - authority of chief information security officer. (1) A security incident in a public agency shall be reported to the chief information security officer in accordance with state incident reporting policies, standards, and guidelines.

(2) The chief information security officer shall be authorized to temporarily discontinue or suspend the operation of a public agency's communication and information resources in order to isolate the source of a security incident. The officer shall give notice to the governor, or the lieutenant governor in the event the governor is not available, the chief information officer, and the head of the public agency concurrent with such discontinuation or suspension of operations. The officer shall ensure, to the extent possible, the continuity of operations for the communication and information resources that support the operations and assets of the public agency.

(3) The chief information security officer may enter into contracts with a private person or entity to assist with resolving a security incident in a public agency. The officer shall establish an approved list of certified private persons and entities that may provide contract services in the event of a security incident. The officer shall establish criteria for the placement of private persons and entities on the list and shall select such persons and entities for placement on the list utilizing a request for proposals containing such criteria.

(4) Public agencies shall comply and cooperate with a directive of the chief

information security officer pursuant to subsection (2) of this section to temporarily discontinue or suspend the operation of a public agency's communication and information resources.

24-37.5-406. Reporting. (Repealed)

PART 5

TELECOMMUNICATIONS COORDINATION WITHIN STATE GOVERNMENT

24-37.5-501. Powers, duties, and functions concerning telecommunications. The chief information officer shall appoint assistants, clerical staff, and other personnel as may be necessary to discharge the duties and responsibilities set forth by this part 5.

24-37.5-502. Duties and responsibilities. (1) The chief information officer shall perform the following functions:

(a) In consultation with local, state, and federal departments, institutions, and agencies, formulate recommendations for a current and long-range telecommunications plan, involving telephone, radio, microwave, facsimile closed circuit and cable television, teleconferencing, public broadcast, data communications transmission circuits, fiber optics, satellites, cellular radio, and public safety radio communications systems required by the FCC public safety national plan and their integration into applicable telecommunications networks for approval of the governor;

(b) Administer the approved current and long-range plan for telecommunications and exercise general supervision over all telecommunications networks, systems, and microwave facilities, subject to the exception stated in subsection (2) of this section;

(c) Review all existing and future telecommunications applications, planning, networks, systems, programs, equipment, and facilities and establish priorities for those that are necessary and desirable to accomplish the purposes of this part 5;

(d) Approve or disapprove the acquisition of telecommunications equipment and necessary licenses by any state department, institution, or agency;

(e) Establish telecommunications procedures, standards, and records for management of telecommunications networks and facilities for all state departments, institutions, and agencies;

(f) Continually review, assess, and insure compliance with federal and state telecommunications regulations pertaining to the needs and functions of state

departments, institutions, and agencies;

(g) Advise the governor and general assembly on telecommunications matters;

(h) Cooperate with and assist nonprofit regional broadcasting corporations, as appropriate and if resources are available, in the development of regional noncommercial television and radio networks and local facilities, including acting as the agency by which the state participates in any such regional broadcasting corporation;

(i) Administer the public safety communications trust fund created in section 24-37.5-506; and

(j) Adopt rules in accordance with the "State Administrative Procedure Act", article 4 of this title, regarding distributions of public safety communications trust fund moneys to and repayment of such moneys by state and local governments.

(2) Notwithstanding the functions enumerated in paragraph (b) of subsection (1) of this section and paragraph (a) of subsection (4) of this section, the ultimate responsibility for the operation and conduct of the law enforcement radio systems specifically provided for the division of the Colorado state patrol that are performed by radio dispatchers and telephone operators shall be vested in the chief of the Colorado state patrol.

(3) The chief information officer may enter into contracts with any county, city and county, state agency, private school, school district, board of cooperative educational services, or library and may act as a telecommunications network provider between or among two or more counties or state agencies for the purpose of providing teleconferencing facilities and services between or among such entities, including the judicial system of any county, the department of corrections, and the department of human services and any of their facilities. To assure the availability of such network throughout the various state agencies, private schools, school districts, boards of cooperative educational services, libraries, and counties, the chief information officer shall develop a uniform set of standards for facilities to be utilized by the contracting entities.

(4) The chief information officer shall:

(a) In consultation with recognized public safety radio communication standards groups, appropriate affected public agencies, and the chief of the Colorado state patrol, adopt recommended standards for the replacement of analog-based equipment with digital-based radio equipment for purposes of dispatching and related functions within the department of public safety; and

(b) For purposes of serving the radio communications needs of state departments, including, but not limited to, the departments of public safety, transportation, natural resources, and corrections, adopt recommended standards and set a timetable for the replacement of existing radio telecommunications equipment with a system that satisfies the requirements of the FCC public safety national plan.

(5) The chief information officer shall carry out all duties and responsibilities set

forth in this section in a manner that is consistent with the objective of maximizing access to digital networks of the state by all public offices of all levels, branches, and political subdivisions of the state within every community of the state. In particular, within available resources and as soon as is feasible, the chief information officer shall provide connections proposed and approved by the department of local affairs, created in section 24-1-125, through the community-based access grant program established under section 24-32-3001 and may act as a network provider between or among all public offices as defined in said section. To the extent possible and if technically feasible, the bidding and the method of awarding the contract for telecommunications services under section 24-32-3001 should be structured in a manner as to allow the greatest number of providers to participate in the bidding and the award of the contract.

24-37.5-503. Legislative department exemption. The provisions of this part 5 shall not apply to the legislative department of the state.

24-37.5-504. Higher education exemption. Local and internal telecommunications networks of institutions of higher education may be exempted from the provisions of this part 5 upon application to the chief information officer; except that all systems must be certified by the chief information officer as being technically compatible with plans and networks as described in section 24-37.5-502 (1).

24-37.5-505. Service charges - pricing policy. (1) (a) Users of the office's telephone and data communication services shall be charged the full cost of the particular service, which shall include the cost of all material, labor, and overhead. Said user charges shall be transmitted to the state treasurer, who shall credit the same to the information technology revolving fund created in section 24-37.5-112. The revolving fund shall include user charges on public safety radio systems of a state agency or other state entity; except that no municipality, county, city and county, or special district shall be charged user charges on public safety radio systems of a state agency or other state entity.

(b) Repealed.

(2) The chief information officer shall establish a policy of remaining competitive with private industry with regard to the cost, timeliness, and quality of the telephone service or data communication functions provided by the office. An agency may only purchase private services if it has first worked with the office and the office has authorized the purchase of private services.

24-37.5-506. Public safety communications trust fund - creation. (1) There is hereby created in the state treasury the public safety communications trust fund, referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the office for distribution as determined by rules adopted pursuant to section 24-37.5-502 (1) (j). The primary purpose of such distributions shall be the acquisition and maintenance of public safety communication systems for use by departments including but not limited to the departments of public safety, transportation, natural resources, and corrections as provided in section 24-37.5-502 (4) (b). Such systems shall satisfy the requirements of the public safety national plan established by the federal communications commission, also referred to in this article as the "FCC", in *FCC report and order in general docket no. 87-112*, and subsequent FCC proceedings and rules. This section shall not preclude the payment of maintenance expenses including the cost of leased or rented equipment, payments to local governmental entities for radio communication systems, or payments related to public safety radio systems.

(2) (a) (I) The general assembly declares its intention to commit state moneys to the fund for the purposes set forth in this section. Except as otherwise provided in paragraph (b) of this subsection (2), the total amount of the principal in the fund shall not exceed fifty million dollars.

(II) Any appropriation of state moneys to the public safety communications trust fund for any fiscal year from moneys in the capital construction fund created in section 24-75-302 shall be further appropriated from the public safety communications trust fund to the office for the purposes set forth in this section. Any moneys in the public safety communications trust fund so appropriated that were initially appropriated from moneys in the capital construction fund shall, if any project for which such moneys are appropriated is initiated within the fiscal year, remain available until completion of the project or for a period of three years, whichever comes first, at which time the unexpended and unencumbered balances of such appropriation shall revert to the public safety communications trust fund.

(b) In addition to any appropriations made as a result of paragraph (a) of this subsection (2), the office may solicit and accept donations, grants, bequests, and other contributions to the fund from local, state, and federal entities and from public safety related nonprofit organizations that directly support state departments, state institutions, state agencies, and law enforcement and public safety political subdivisions of the state. Such contributions shall be transmitted to the state treasurer, who shall credit the contributions to the fund.

(3) At the end of each fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. All interest derived from the deposit and investment of this fund shall remain in the fund and shall not revert to the general fund.

(3.5) Notwithstanding any provision of subsection (3) of this section to the contrary, on April 15, 2010, the state treasurer shall deduct two hundred thirty thousand five hundred twenty dollars from the fund and transfer such sum to the general fund.

(4) In authorizing distributions of principal and interest from the fund and purchasing, leasing, contracting for, and otherwise acquiring equipment for state entities, the chief information officer shall consider the following:

(a) The need for achieving functional interoperability among local, state, and federal public safety radio communications systems by acquiring equipment that meets emerging technical standards for systems interoperability and open network architecture;

(b) The needs of local government entities that have recently invested in new radio systems, particularly in regard to interoperability;

(c) The promotion of an orderly transition from analog-based to digital-based radio systems.

(5) In acquiring equipment pursuant to subsection (4) of this section, the executive director of the office shall develop bid specifications that identify all services, requirements, and costs consistent with existing state law.

(6) The chief information officer shall keep an accurate account of all activities related to the fund including its receipts and expenditures and shall annually report in writing such account to the joint technology committee created in section 2-3-1702, C.R.S. The state auditor may investigate the affairs of the fund, severally examine the properties and records relating to the fund, and prescribe accounting methods and procedures for rendering periodical reports in relation to disbursements and purchases made from the fund.

(7) In the expenditure of any funds from the public safety communications trust fund for the acquisition, maintenance, or lease of any public safety radio communications systems equipment or any other communication devices or equipment, the chief information officer shall ensure that such expenditures are made pursuant to the requirements set forth under the "Procurement Code", articles 101 to 112 of this title.

PART 6

GENERAL GOVERNMENT COMPUTER CENTER (GGCC)

24-37.5-601. General government computer center (GGCC). The general government computer center referred to in this part 6 as "GGCC" is within the office of information technology. The chief information officer shall appoint, pursuant to section 13 of article XII of the state constitution, such personnel as may be necessary for the efficient operation of the GGCC.

24-37.5-602. Functions of the GGCC. (1) The GGCC shall perform the following functions:

(a) To provide computer and systems development and programming services to those state departments, institutions, and agencies in the executive branch that have been so designated by the office of information technology, after consulting with the affected entity, and to provide these same services to the legislative and judicial branches when so requested; except that services shall not be provided to any such entity unless such entity has funds available therefor;

(b) To establish and maintain automated data processing facilities at GGCC, including but not limited to the operation of automated data processing equipment and facilities and the employment of necessary personnel;

(c) To prepare and submit such reports as are required by this part 6 or that the governor or general assembly may request;

(d) To determine the capacity and utilization of the computer system in GGCC in an annual report.

(2) (a) In accordance with any policies, standards, and guidelines set forth by the office, the GGCC shall adopt and implement standards, policies, and procedures for the use of electronic or digital signatures by governmental agencies where use of electronic or digital signatures is expressly authorized by law.

(b) Each agency or department of state government, including institutions of higher education, shall ensure compliance with the policies, standards, and guidelines set forth by the office.

(c) The local authorities of any county, city, town, or city and county authorizing the use of digital or electronic signatures shall adopt rules, standards, policies, and procedures for their own use of electronic or digital signatures or shall ensure compliance with any policies, standards, and guidelines set forth by the office.

24-37.5-603. Powers of the chief information officer - penalty for breach of confidentiality. (1) In order to perform the functions and duties of the GGCC as set forth in this part 6, the chief information officer shall exercise the following powers:

(a) To prescribe procedures governing the operation of the GGCC automated data processing equipment and software and the physical plant;

(b) In accordance with the policies, standards, specifications, and guidelines formulated and promulgated pursuant to section 24-37.5-106 (1) (c), adopt such rules as may be necessary to carry out the purposes and provisions of this part 6;

(c) To contract for such services and equipment as the GGCC may require;

(d) To negotiate service level agreements with customers;

(e) To produce such reports as may be necessary; and

(f) To control the information technology revolving fund pursuant to section 24-

37.5-112.

(2) (a) Except in accordance with judicial order or as otherwise provided by law, no employee of the office shall divulge or make known in any way information disclosed in any restricted or protected document, program, or dataset located at or in the custody of the office.

(b) Any person who violates the provisions of paragraph (a) of this subsection (2) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition, such person shall be subject to removal or dismissal from state employment on grounds of malfeasance in office.

24-37.5-604. Service charges - pricing. (1) Users of GGCC services shall be charged by the office the full cost of the particular service, which shall include the cost of all material, labor, equipment, software, services, and overhead. No later than the November 1 submission date as required by section 24-37-304, the chief information officer shall establish, publish, and distribute billing rates to user entities and other interested entities effective for the following fiscal year.

(2) (a) User charges collected under this part 6 shall be transmitted to the state treasurer, who shall credit the same to the information technology revolving fund created in section 24-37.5-112.

(b) Repealed.

(3) The chief information officer shall establish a policy of remaining competitive with the service provided by private industry with regard to the cost, timeliness, and quality of that service provided by the office. An agency may only purchase private services if it has first worked with the office and the office has authorized the purchase of private services.

PART 7

INTERDEPARTMENTAL DATA PROTOCOL

24-37.5-701. Legislative declaration. (1) The general assembly hereby finds that:

(a) Each agency of the state, through the process of providing governmental services, collects a significant amount of data with regard to persons who have interactions with governmental agencies;

(b) Creating cross-departmental data interoperability and protocols used by all state executive branch agencies will significantly increase the efficiency of state government and enhance the ability of multiple state agencies to effectively and

efficiently provide services to individuals within the state;

(c) The data collected through the provision of governmental services, if appropriately collected and synthesized, will provide valuable information to guide members of the general assembly and persons within the state executive branch agencies in formulating state policy and in determining the effectiveness of state policies;

(d) It is imperative in establishing procedures and protocols for cross-departmental data processing that the state take all possible measures to ensure personal privacy and protect personal information from intentional or accidental release to unauthorized persons and from intentional or accidental use for unauthorized purposes.

(2) The general assembly therefore concludes that it is in the best interests of the state to create an interdepartmental data protocol to assist in formulating and determining the effectiveness of state policies.

24-37.5-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Advisory board" means the government data advisory board created in section 24-37.5-703.

(2) "Chief information officer" means the head of the office of information technology appointed pursuant to section 24-37.5-103.

(3) "Data" means the representation of facts as texts, numbers, graphics, images, sounds, or video. Facts are captured, stored, and expressed as data.

(3.5) "Education data subcommittee" means the subcommittee of the advisory board created in section 24-37.5-703.5 to provide policies and protocols regarding sharing education data among local and state education providers.

(4) "Interdepartmental data protocol" means an interoperable, cross-departmental data management system and file sharing procedure that permits the merging of unit records for the purposes of policy analysis and determination of program effectiveness.

(5) "Personal identifying information" means a person's first name or first initial and last name in combination with his or her social security number or driver's license number or identification card number.

(6) "Political subdivision" means a municipality, county, city and county, town, or school district in this state.

(7) "State agency" means each principal department within the executive branch, including each board, division, unit, office, or other subdivision within each department, each office or agency within the governor's office, each state-supported institution of higher education, and each local district junior college; except that "state agency" shall not include any department, agency, board, division, unit, office, or other subdivision of a department that does not collect unit records.

24-37.5-703. Government data advisory board - created - duties - repeal. (1) (a) There is hereby created in the office of information technology the government data advisory board, which shall consist of the members specified in this subsection (1).

(b) On or before October 1, 2009, the governor shall appoint four members of the advisory board as follows:

(I) An employee of a city, county, or city and county that collects and maintains unit-level records, which employee has expertise in data sharing and information technology;

(II) A person who is serving on a school district board of education in this state;

(III) An employee of a school district in this state who has expertise in data sharing and information technology; and

(IV) A person from an institution of higher education or a nongovernmental organization that, in the course of conducting research, routinely requests data from government agencies, which person has expertise in data sharing and information technology.

(c) The chief information officer, or his or her designee, shall serve as an ex officio member and chair of the advisory board.

(d) (I) The remaining membership of the advisory board shall consist of a person from each of the following departments who is either an expert in information technology or responsible for data administration within the member's respective department and who is selected by the head of the member's respective department to participate on the advisory board at the invitation of the chief information officer:

(A) The department of education;

(B) The department of higher education;

(C) The department of human services;

(D) The department of health care policy and financing;

(E) The department of public health and environment;

(F) The department of labor and employment;

(G) The department of public safety;

(H) The department of corrections; and

(I) The department of revenue.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), at the invitation of the chief information officer, additional members who meet the qualifications specified in said subparagraph (I) may be selected to participate on the advisory board as follows:

(A) The governor, as he or she deems appropriate, may direct the executive director of one or more of the departments that are not specified in subparagraph (I) of this paragraph (d) to select a member from his or her department or may select a member from one or more political subdivisions of the state, including a city, county, city and

county, or special purpose authority;

(B) The secretary of state, attorney general, and state treasurer, as he or she deems appropriate, may select a member from his or her department;

(C) The chief justice of the supreme court, as he or she deems appropriate, may select a member from the judicial branch; and

(D) The speaker of the house of representatives and the president of the senate may jointly select a member from the legislative branch, including a representative, senator, or employee. On and after July 1, 2013, if a vacancy arises for the legislative branch position, the jointly selected member shall be a member of the joint technology committee created in section 2-3-1702, C.R.S.

(2) The members of the advisory board appointed pursuant to paragraph (b) of subsection (1) of this section shall:

(a) Serve four-year terms; except that two of the members appointed pursuant to paragraph (b) of subsection (1) of this section shall initially serve two-year terms;

(b) Serve at the will of the governor. If a vacancy arises during a member's term, the governor shall appoint a person meeting the same qualifications to serve the remainder of the term.

(c) Serve without compensation and without reimbursement for expenses.

(3) (a) The chief information officer, or his or her designee, shall schedule the first meeting of the advisory board and schedule succeeding meetings of the advisory board as necessary to complete the advisory board's duties specified in this section.

(b) The office shall provide technical assistance and support, to the extent practicable within existing resources, to assist the advisory board in completing the duties specified in subsection (4) of this section.

(4) The advisory board shall have the following duties:

(a) To advise the chief information officer regarding the ongoing development, maintenance, and implementation of the interdepartmental data protocol;

(b) To advise the chief information officer concerning best practices in sharing and protecting data in state government;

(c) To recommend to the chief information officer rules and procedures that a state agency shall follow in requesting, or responding to a request for, data from another state agency, including but not limited to strategies for enforcing said rules;

(d) To advise the chief information officer concerning rules and procedures for responding to data requests submitted by an entity outside of state government;

(e) To recommend to the chief information officer a schedule of fees that the office may charge to state agencies to supervise and administer interdepartmental and external data requests, that a state agency may charge another state agency in responding to an interdepartmental data request, and that a state agency may charge to respond to a data request submitted by an entity outside of state government. In recommending the fee schedule, the advisory board shall ensure that the fee amounts do not exceed the direct

and indirect costs incurred by the office or by the state agency that is responding to a data request.

(f) Upon request by the chief information officer, to advise the chief information officer on other issues pertaining to data sharing.

(5) The advisory board shall ensure that the recommendations made pursuant to subsection (4) of this section comply with the interdepartmental data protocol.

(6) On or before January 15, 2010, and on or before January 15 each year thereafter, the advisory board shall submit to the chief information officer its recommendations for developing and implementing protocols for sharing data among state agencies and entities and with local governments and nongovernmental entities. The chief information officer shall review the recommendations and take them into account in preparing a report concerning implementing protocols for sharing data among state agencies and entities and with local governments and nongovernmental entities. The chief information officer shall submit the report to the general assembly on or before March 1, 2010, and on or before March 1 each year thereafter.

(7) This section is repealed, effective July 1, 2019. Prior to such repeal, the advisory board shall be reviewed as provided in section 2-3-1203, C.R.S.

24-37.5-703.5. Education data subcommittee - created - duties - repeal. (1) The education data subcommittee is hereby created as a subcommittee of the advisory board. The education data subcommittee shall consist of the following members:

(a) The advisory board members appointed pursuant to section 24-37.5-703 (1) (b) (II) and (1) (b) (III) to represent school districts;

(b) A person serving on the education data advisory committee created pursuant to section 22-2-304, C.R.S., which person is appointed by the governor;

(c) The advisory board member selected from the department of education;

(d) The advisory board member selected from the department of higher education;

(e) The advisory board member selected from the department of human services; and

(f) At least ten members appointed by the governor with expertise in data sharing by education agencies, including at least one representative from each of the following groups:

(I) Information officers employed by the school districts in the state;

(II) Charter schools authorized by school districts pursuant to part 1 of article 30.5 of title 22, C.R.S.;

(III) The state charter school institute created in part 5 of article 30.5 of title 22, C.R.S.;

(IV) The boards of cooperative services created pursuant to article 5 of title 22, C.R.S.;

(V) Information officers employed within the state system of community and technical colleges established pursuant to section 23-60-201, C.R.S.;

(VI) The governing boards of the state institutions of higher education;

(VII) Early childhood councils established pursuant to section 26-6.5-103, C.R.S., and early childhood care and education councils established pursuant to section 26-6.5-106, C.R.S.;

(VIII) Institutions of higher education or nongovernmental organizations that, in the course of conducting research, routinely request data from state agencies;

(IX) Nonprofit advocacy groups that work in children's issues and routinely request data from state agencies; and

(X) Statewide membership organizations of education professionals and local boards of education.

(2) The governor shall make the initial appointments to the education data subcommittee no later than October 1, 2009.

(3) The members of the education data subcommittee appointed by the governor shall:

(a) Serve terms of four years; except that, of the members initially appointed, the governor shall select approximately one-third of the members to serve two-year terms and approximately one-third of the members to serve three-year terms;

(b) Serve at the will of the governor. If a vacancy arises during a member's term, the governor shall appoint a person meeting the same qualifications to serve the remainder of the term.

(c) Serve without compensation and without reimbursement for expenses.

(4) (a) The advisory board member selected from the department of education shall schedule the first meeting of the education data subcommittee. At the first meeting, the education data subcommittee shall elect a chair from among its members to serve for a term not exceeding two years, as determined by the subcommittee. A member shall not be eligible to serve as chair for more than two successive terms.

(b) The education data subcommittee shall meet as often as necessary, at the call of the chair, to complete its duties.

(c) The office, to the extent practicable within existing resources, shall provide technical assistance and support to the education data subcommittee to assist the subcommittee in completing its duties pursuant to this section.

(5) The education data subcommittee shall have the following duties:

(a) To recommend to the chief information officer and the advisory board protocols and procedures for sharing education data among charter schools, school districts, boards of cooperative services, the department of education, the department of higher education, and state institutions of higher education;

(b) To recommend to the chief information officer and the advisory board appropriate information technology and reporting formats for education data;

(c) To recommend data element standards for individual student records for use by charter schools, school districts, boards of cooperative services, the department of education, the department of higher education, and state institutions of higher education;

(d) To recommend electronic standards by which charter schools, school districts, boards of cooperative services, the department of education, the department of higher education, and state institutions of higher education may share data currently being shared through other means, including but not limited to interoperability standards, standards and protocols for transfer of records including student transcripts, and the use of data-exchange transcripts;

(e) To recommend the design and continuing development of a statewide comprehensive P-20 education data system that may include, but need not be limited to, implementation of an interoperability data framework and protocols and standards for data input and for making and responding to data requests to ensure that preschool through postsecondary education entities throughout the state can share education data;

(f) Upon request by the chief information officer, to advise the chief information officer on other issues pertaining to education data sharing; and

(g) To identify a method or methods, if feasible, for assigning a unique student identifier as part of the department of education record integration tracking system or an alternative tracking system employing interagency data-sharing, for each person enrolled in an adult basic education program or high school general equivalency diploma program.

(6) (a) The education data subcommittee shall ensure that its recommendations conform with the interdepartmental data protocol and are in compliance with all state and federal laws and regulations concerning the privacy of information, including but not limited to the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g.

(b) The education data subcommittee shall ensure that its recommendations for the statewide comprehensive P-20 education data system include the elements required in the federal "America COMPETES Act", 20 U.S.C. sec. 9801 et seq., in order to qualify for the maximum amount of federal funding available through the "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5.

(7) On or before December 1, 2009, and at least every six months thereafter, the education data subcommittee shall submit to the chief information officer and the advisory board its recommendations prepared pursuant to subsection (5) of this section. The chief information officer shall review the recommendations and take them into account in preparing a report concerning protocols and procedures for sharing student data among preschool through postsecondary education entities, including but not limited to the creation of a statewide comprehensive P-20 education data system. The chief information officer shall combine the report with the report prepared pursuant to section 24-37.5-703 (6) and submit the combined report to the general assembly on or before March 1, 2010, and on or before March 1 each year thereafter.

(8) This section is repealed, effective July 1, 2019. Prior to such repeal, the education data subcommittee shall be reviewed as provided in section 2-3-1203, C.R.S.

24-37.5-703.7. Early childhood universal application subcommittee - created - duties - funding - repeal. (Repealed)

24-37.5-704. Interdepartmental data protocol - contents. (1) The chief information officer, working with the advisory board, shall oversee the implementation of the interdepartmental data protocol, which at a minimum shall include protocols and procedures to be used by state agencies in data processing, including but not limited to collecting, storing, manipulating, sharing, retrieving, and releasing data. In implementing the interdepartmental data protocol, the chief information officer and the advisory board shall monitor compliance with the timelines by which the state agencies shall implement the interdepartmental data protocol.

(2) The interdepartmental data protocol shall be designed to enable each state agency to accurately and efficiently collect and share data with the other state agencies. At a minimum, the interdepartmental data protocol shall be designed to ensure that data collected by different state agencies can be matched and discrepancies in the data processing reconciled to accurately identify data pertaining to the same record without allowing any permanent sharing of personal identifying information among state agencies without express authorization from the executive directors of the originating and receiving state agencies.

(3) The protocols and procedures included in the interdepartmental data protocol by which state agencies may share data and by which a state agency may release data to a political subdivision or to a nongovernmental entity or an individual shall, at a minimum:

(a) Establish the circumstances under which and the reasons for which a state agency may share information with another state agency, with a political subdivision, or with a nongovernmental entity or an individual;

(b) Establish the format in which a state agency may release data to a political subdivision, a nongovernmental entity, or an individual;

(c) Ensure compliance with all state and federal laws and regulations concerning the privacy of information, including but not limited to the federal "Family Educational Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g, and the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d to 1320d-9; and

(d) Ensure that a state agency does not permanently share personal identifying information with another state agency without express authorization from the executive directors of the originating and receiving state agencies or with a political subdivision, a nongovernmental entity, or an individual, other than the individual who is the subject of the information.

(4) Notwithstanding any provision of this section to the contrary, the interdepartmental data protocol shall not nullify any memoranda of understanding existing as of January 1, 2008, nor prohibit the creation of memoranda of understanding after said date, between or among state agencies concerning data sharing or any other data sharing practices.

(5) Notwithstanding any provision of this section to the contrary, the interdepartmental data protocol shall not prohibit the release to or sharing of data with nongovernmental entities or individuals if the release or sharing is otherwise required, permitted, or allowed by the provisions of part 2 of article 72 of this title or other state or federal law, or if the release or sharing occurs pursuant to contract or other agreement with a state agency.

24-37.5-705. Data sharing - authorization. (1) With the implementation of the interdepartmental data protocol, except as specifically prohibited by statute, each state agency is authorized, in accordance with the provisions of the interdepartmental data protocol, to share with the following entities data collected in the course of performing its powers and duties:

(a) Other state agencies;

(b) Agencies within the legislative and judicial departments;

(c) Political subdivisions; and

(d) Nongovernmental entities and individuals.

24-37.5-706. Interdepartmental data protocol cash fund - created. (1) The chief information officer is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this part 7. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the interdepartmental data protocol cash fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund are continuously appropriated to the office of information technology for the direct and indirect costs associated with the implementation of this part 7. The chief information officer and the office of information technology shall not be required to implement the provisions of this part 7 until such time as at least one hundred thirteen thousand five hundred dollars are credited to the fund. It is the intent of the general assembly that the provisions of this part 7 be implemented without the use of state moneys.

(2) Any moneys in the fund not expended for the purpose of this part 7 may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year

shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-37.5-707. Interdepartmental data protocol - report. The chief information officer shall submit to the governor and the state, veterans, and military affairs committees of the house of representatives and the senate, or any successor committees, a report on or before March 1, 2009, concerning development and implementation of the interdepartmental data protocol.

ARTICLE 37.7

Statewide Internet Portal Authority

24-37.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the statewide internet portal authority created pursuant to section 24-37.7-102.

(2) "Board" means the governing body of the authority created pursuant to section 24-37.7-102.

(3) "Electronic information, products, and services" means any data, information, product, or service that is created, generated, collected, maintained, or distributed in electronic form by a state agency, local government, or private enterprise to the public, state agencies, or local governments through electronic access.

(4) "Executive director" means the executive director of the statewide internet portal authority.

(5) "Local government" means the government of any county, city and county, home rule or statutory city, town, special district, school district, or other political subdivision of the state.

(6) "State agency" shall have the same meaning as provided in section 24-37.5-102 (4).

(7) "Statewide internet portal" means the officially designated electronic information delivery system by which electronic information, products, and services are provided via the internet.

(8) "Statewide internet portal integrator" means the private vendor selected to provide goods and services needed to implement and operate the statewide internet portal.

24-37.7-102. Statewide internet portal authority - creation - board. (1) There is hereby created an independent public body politic and corporate to be known as the statewide internet portal authority. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of the state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.

(2) The governing body of the authority shall be a board of directors that shall consist of the following fifteen voting members:

(a) The secretary of state;

(b) The head of one of the offices in the office of the governor appointed by the governor;

(c) The executive directors of three principal departments of the state appointed by the governor. No executive director may appoint a designee to serve on the board.

(d) (I) Three members from the private sector who exhibit a background in information management and technology and who are users of electronic information, products, and services or information technology services that are offered through the private sector appointed by the governor with the consent of the senate.

(II) The members from the private sector shall serve for terms of four years each; except that, of those members first appointed to the board, the terms of office shall be as follows:

(A) One shall be appointed for two years; and

(B) One shall be appointed for three years.

(e) One member representing the judicial department of the state appointed by the chief justice of the supreme court;

(f) Two members of the senate, one of whom is appointed by the president of the senate and one of whom is appointed by the minority leader of the senate, and two members of the house of representatives, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the minority leader of the house of representatives. Each of these four members shall exhibit a background in information management and technology or have experience as members of an oversight committee for information management and technology. The appointment of the members to the board by the minority leaders of the senate and house of representatives shall be made as soon as practicable after May 28, 2013. On and after July 1, 2013, if a vacancy arises among the legislative branch members, the appointed member shall be a member of the joint technology committee created in section 2-3-1702, C.R.S.

(g) One member representing local government appointed by the governor with the consent of the senate; and

(h) The chief information officer of the office of information technology created in section 24-37.5-103.

(3) (Deleted by amendment, L. 2007, p. 915, § 12, effective May 17, 2007.)

(4) The board may appoint such additional nonvoting members to the board as it deems necessary. Additional members appointed pursuant to this subsection (4) shall not be included in determining whether a quorum is present.

(5) (a) Except as provided in paragraph (b) of this subsection (5), each member shall serve until his or her successor has been appointed and qualified. The person making the original appointment shall fill any vacancy by appointment for the remainder of an unexpired term.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on May 28, 2013, are extended to and expire or terminate on the convening date of the first regular session of the seventieth general assembly. The terms of the members initially appointed by the minority leaders of the senate and house of representatives expire or terminate on the convening date of the first regular session of the seventieth general assembly. As soon as practicable after such convening date, the speaker, the president, and the minority leaders shall each appoint or reappoint one member in the same manner as provided in paragraph (f) of subsection (2) of this section. Thereafter, the terms of members appointed or reappointed by the speaker, the president, and the minority leaders shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, and the minority leaders shall be made as soon as practicable after such convening date. Members appointed or reappointed by the speaker, the president, and the minority leaders shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(6) The board shall annually elect a chairperson of the authority from those members of the board who are elected officials serving on the board and shall annually elect another member as secretary.

(7) Any appointed member of the board may be removed by his or her appointing authority for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-fourths of the meetings of the board in any one calendar year.

(8) Neither the members of the authority nor any person authorized by the authority to act in an official capacity shall be held personally liable for any act undertaken pursuant to the provisions of this article.

24-37.7-103. Meetings of board - quorum - expenses. (1) All meetings of the board of directors shall be subject to the provisions of section 24-6-402. No business of the board of directors shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total voting membership of the board is

present. Any action of the board of directors shall require the affirmative vote of a majority of the voting members present at any meeting at which a quorum is present.

(2) Members of the board shall serve without compensation but shall be reimbursed for all necessary expenses incurred in the performance of their duties under this article. Any payments to board members pursuant to this subsection (2) shall be paid from moneys of the authority.

24-37.7-104. Powers of the statewide internet portal authority. (1) In addition to any other powers granted to the authority in this article, the authority shall have the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a seal and to alter the same at its pleasure;

(d) To sue and be sued;

(e) To enter into any contract or agreement not inconsistent with this article or the laws of this state and to authorize the executive director to enter into contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this article and to secure the payment of bonds;

(f) To borrow money and to issue bonds evidencing the same;

(g) To purchase, lease, trade, exchange, or otherwise acquire, maintain, hold, improve, mortgage, lease, sell, and dispose of personal property, whether tangible or intangible, or any interest therein; and to purchase, lease, trade, exchange, or otherwise acquire real property or any interest therein and to maintain, hold, improve, mortgage, lease, or otherwise transfer such real property, so long as such transactions do not interfere with the mission of the authority as specified in section 24-37.7-105;

(h) To acquire space, equipment, services, supplies, and insurance necessary to carry out the purposes of this article;

(i) To deposit any moneys of the authority in any banking institution within the state or in any depository authorized in section 24-75-603, and to appoint, for the purpose of making such deposits, one or more persons to act as custodians of the moneys of the authority, who shall give surety bonds in such amounts and form and for such purposes as the board of directors requires;

(j) To contract for and to accept any gifts, grants, or loans of funds, property, or any other aid in any form from the federal government, the state, any state agency, or any other source, or any combination thereof, and to comply, subject to the provisions of this article, with the terms and conditions thereof;

(k) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article, which specific powers shall not

be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article;

(l) To fix the time and place or places at which its regular and special meetings are to be held. Meetings shall be held on the call of the presiding officer, but no less than six meetings shall be held annually.

(m) To adopt and from time to time amend or repeal bylaws and rules and regulations consistent with the provisions of this article; except that article 4 of this title shall not apply to the promulgation of any policies, procedures, rules, or regulations of the authority;

(n) To appoint a treasurer of the board and such other officers as the board of directors may determine and provide for their duties and terms of office;

(o) To appoint an executive director and such agents, employees, and professional and business advisers as may from time to time be necessary in its judgment to accomplish the purposes of this article, to fix the compensation of such executive director, employees, agents, and advisers, and to establish the powers and duties of all such agents, employees, and other persons contracting with the authority;

(p) To waive, by such means as the authority deems appropriate, the exemption from federal income taxation of interest on the authority's bonds, notes, or other obligations provided by the federal "Internal Revenue Code of 1986", as amended, or any other federal statute providing a similar exemption;

(q) To make and execute agreements, contracts, or other instruments necessary or convenient to the exercise of the powers and functions of the authority under this article, including but not limited to contracts with any person, firm, corporation, state agency, local government, or other entity. All state agencies and local governments are hereby authorized to enter into and do all things necessary to perform any such arrangement or contract with the authority.

(r) To arrange for guaranties or insurance of its bonds, notes, or other obligations by the federal government or by any private insurer, and to pay any premiums therefor.

(2) The authority shall not enter into a contract with a statewide portal integrator unless the statewide portal integrator was chosen by the authority pursuant to a request for proposals issued by the authority.

(3) Any current or pending action by the office of information technology relating to a request for proposals for the statewide internet portal shall be void.

(4) State agencies shall coordinate and cooperate with the authority for purposes of the delivery of electronic information, products, and services by the authority.

24-37.7-105. Mission of the authority. (1) The mission of the authority is to:

(a) Develop the officially recognized statewide internet portal that provides one-stop access to electronic information, products, and services in order to give members of

the public, state agencies, and local governments an alternative way to transact business with the state;

(b) Provide electronic access for members of the public, state agencies, and local governments to electronic information, products, and services through the statewide internet portal;

(c) Develop and annually update a strategic business plan for the implementation, maintenance, and enhancement of the statewide internet portal;

(d) Issue requests for bids or proposals to or contracts with any public or private parties for the design, implementation, operation, and improvement of the distribution of electronic information, products, and services or for the services described in paragraph (e) of this subsection (1), or both;

(e) Enter into a contract with a statewide internet portal integrator for the development, support, maintenance, and enhancement of the equipment and systems utilized for the statewide internet portal;

(f) Provide appropriate administration and oversight of the statewide internet portal integrator;

(g) Enter into contracts for the provision of new services related to the distribution of electronic information, products, and services through the statewide internet portal;

(h) Explore ways and means of expanding the amount and kind of electronic information, products, and services provided, increasing the utility of the electronic information, products, and services provided and the form in which it is provided, and, where appropriate, implementing such expansion or increase;

(i) Explore technological means of improving access for members of the public, state agencies, and local governments to electronic information, products, and services, and, where appropriate, implement such technological improvements; and

(j) Explore options for expanding the statewide internet portal and its services to members of the public, state agencies, and local governments by providing add-on services such as access to other information, products, services, and databases or by providing electronic mail and calendaring to subscribers.

24-37.7-106. Fees and charges - no modification - new services - reporting. (1) The authority shall not increase or decrease the amount of any charge or fee that a state agency or local government is authorized by law to impose for electronic information, products, and services.

(2) Access to electronic information, products, and services through the statewide internet portal shall be consistent with any law governing such access.

(3) Nothing in this article shall be construed as providing the authority with exclusive access to electronic information, products, and services.

(4) (a) Repealed.

(b) On or before November 1, 2010, and on or before November 1 of each year thereafter, the board shall report to the business, labor, and technology committee of the senate and the business affairs and labor committee of the house of representatives, or any successor committees, and to the joint budget committee on:

(I) The total amount of charges or fees imposed by each state agency for accessing electronic information, products, and services through the statewide internet portal made in the preceding fiscal year; and

(II) The total amount of receipts and revenue derived by the authority from the transactions described in subparagraph (I) of this paragraph (b) for the preceding fiscal year.

24-37.7-107. Financing. (1) The authority shall fund its operations from:

(a) Federal moneys granted or allocated to the authority;

(b) Web site advertising;

(c) Moneys, goods, or in-kind services donated from public or private sources;

(d) Moneys loaned to the authority by any person or entity;

(e) Moneys derived from the issuance and sale of bonds; or

(f) Moneys derived from the sale of services, products, or information.

24-37.7-108. Bonds and notes. (1) The authority may, from time to time, issue bonds and notes for any of its corporate purposes. The bonds and notes shall be issued pursuant to resolution of the board and shall be payable solely out of all or a specified portion of the revenues of the authority as designated by the board.

(2) Bonds of the authority, as provided in the resolution of the authority under which the bonds are authorized or as provided in a trust indenture between the authority and any commercial or trust company having full trust powers, may:

(a) Be executed and delivered by the authority in the form, in denominations, upon the terms and maturities, and at the times established by the board;

(b) Be subject to optional or mandatory redemption prior to maturity with or without a premium;

(c) Be in fully registered form or bearer form registerable as to principal or interest or both;

(d) Bear such conversion privileges and be payable in such installments and at such times not exceeding twenty years from the date of issuance as established by the board;

(e) Be payable at such place or places whether within or without the state as established by the board;

(f) Bear interest at such rate or rates per annum, which may be fixed or vary

according to index, procedure, or formula or as determined by the authority or its agents without regard to any interest rate limitation appearing in any other law of the state;

(g) Be subject to purchase at the option of the holder or the board;

(h) Be evidenced in the manner established by the board, and executed by the officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either of an officer of the authority or of an agent authenticating the same;

(i) Be in the form of coupon bonds that have attached interest coupons bearing a manual or a facsimile signature of an officer of the authority; and

(j) Contain any other provisions not inconsistent with this article.

(3) The bonds may be sold at public or private sale at the price or prices, in the manner, and at the times as determined by the board, and the board may pay all fees, expenses, and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the authority. Any outstanding bonds may be refunded by the authority pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.

(4) The resolution or trust indenture authorizing the issuance of the bonds or notes may pledge all or a portion of the property or revenues of the authority, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds or notes as the authority deems appropriate, may set forth the rights and remedies of the holders of any of the bonds or notes, and may contain provisions that the authority deems appropriate for the security of the holders of the bonds or notes, including but not limited to provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds or notes, including the redemption price or the purchase price.

(5) Any pledge of revenues or property made by the authority or by any person or governmental unit with which the authority contracts shall be valid and binding from the time the pledge is made. The revenues or property so pledged shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party, regardless of whether the party has notice of such lien. The instrument by which the pledge is created need not be recorded or filed.

(6) Neither the members of the board, employees of the authority, nor any person executing the bonds shall be liable personally on the bonds or notes or subject to any personal liability or accountability by reason of the issuance thereof.

(7) Bonds and notes issued by the authority shall not constitute or become an

indebtedness, a debt, or a liability of the state. The bonds shall contain on the face thereof a statement to such effect.

(8) The authority may purchase its bonds or notes out of any available moneys and may hold, pledge, cancel, or resell such bonds and notes subject to and in accordance with agreements with the holders thereof.

(9) Any bonds, notes, or other securities issued pursuant to this section and the income therefrom, including any profit from the sale thereof, shall be exempt from all taxation of the state or any agency, political subdivision, or instrumentality of the state.

24-37.7-109. Agreement of the state not to limit or alter rights of obligees. The state hereby pledges and agrees with the holders of any bonds or notes issued under this article and with those parties who enter into contract with the authority that the state will not limit, alter, restrict, or impair the rights vested in the authority or the rights or obligations of any person with which it contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of the holders of any bonds or notes of the authority until such bonds or notes have been paid or until adequate provision for payment has been made. The authority may include this provision and undertaking for the state in such bonds or notes.

24-37.7-110. Investments. The authority may invest or deposit any moneys in the manner provided by part 6 of article 75 of this title. In addition, the authority may direct a corporate trustee that holds moneys of the authority to invest or deposit such moneys in investments or deposits other than those specified by said part 6 if the board determines, by resolution, that the investment or deposit meets the standard established in section 15-1-304, C.R.S., and the income is at least comparable to income available on investments or deposits specified by said part 6.

24-37.7-111. Bonds eligible for investment. All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardian trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), may invest public funds in such bonds only if the bonds satisfy the investment requirements established in part 6 of article 75 of this title.

24-37.7-112. Proceeds as trust funds. All moneys received pursuant to this article, whether as proceeds from the sale of bonds, notes, or other obligations or as

revenues or receipts, shall be deemed to be trust funds to be held and applied solely as provided in this article. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this article, subject to such regulations as the authority and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing such obligations provides.

24-37.7-113. Annual report. (Repealed)

24-37.7-113.5. Annual report. On or before November 1, 2013, and on November 1 of each year thereafter, the authority shall submit a report that sets forth a complete and detailed operating and financial statement of the authority during such fiscal year. The report must also include any recommendations regarding additional legislation or other action that may be necessary to carry out the purposes of the authority.

24-37.7-114. Financial and performance audits. (1) (a) If a financial audit of the authority is conducted by an independent certified public accountant pursuant to a contract with the authority, any statements, records, schedules, working papers, and memoranda prepared by the certified public accountant shall be made available to the state auditor's office and shall be kept confidential unless a majority of the members of the legislative audit committee vote to open such documents.

(b) (Deleted by amendment, L. 2011, (HB 11-1297), ch. 269, p. 1224, § 5, effective June 2, 2011.)

(2) Upon the completion of a financial or performance audit described in subsection (1) of this section or in section 2-3-103 (1) (b), C.R.S., the state auditor shall submit a written report to the legislative audit committee, together with any findings and recommendations.

(3) The cost of each such financial audit shall be paid by the authority. The cost of any such performance audit shall be paid from annual appropriations made by the general assembly to the office of the state auditor.

ARTICLE 38

Government Efficiency

24-38-101. Legislative declaration. The general assembly hereby finds and declares that state agencies should be authorized and encouraged to improve their services and save money wherever possible.

24-38-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agency" means every agency in the executive branch of state government that is required by the constitution or statutes of the state to exercise discretion or to perform judicial or quasi-judicial functions. The term includes, but is not limited to, any board, bureau, commission, department, institution, division, section, or office of the state.

(2) "Cost savings" means any money that an agency does not expend from its general fund appropriations for a given fiscal year that is a direct result of cost-cutting measures, including an action that would result in a base reduction due to permanent reductions in spending. In no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process; except that "cost savings" does include savings realized from personal services contracts entered into pursuant to a public-private initiative agreement between the agency and a nonprofit entity in accordance with part 2 of this article.

24-38-103. Agency authority and incentives for budget savings. (1) Beginning with the 1998-99 fiscal year, any agency may implement measures that reduce the costs of delivering the agency's services and products below the amount of the agency's appropriations for a given fiscal year. Any agency that achieves cost savings under this subsection (1) may transfer twenty percent of the amount of the cost savings from one item of appropriation made to the agency in the general appropriation act or any supplemental appropriation act to another item of appropriation made to the same agency in said act. The following limitations shall apply only to transfers made pursuant to this subsection (1):

(a) In no case shall an agency use any of the amount transferred as a result of cost savings to add employment positions or for personal services.

(b) All transfers made pursuant to this subsection (1) shall be between items of appropriations made for the fiscal year in which the cost savings were achieved.

(c) Prior to expending any moneys so transferred, the agency that achieved the cost savings shall enter into a memorandum of understanding with the joint budget committee that details how the agency will spend the transferred moneys.

(d) Any moneys transferred to an agency as the result of cost savings may be spent only for reinvestment in technology or other capital projects related to the item of appropriation to which the moneys were transferred.

(1.5) Beginning with the 2004-05 fiscal year, an agency that achieves cost savings, as an alternative to the transfer authorized pursuant to subsection (1) of this section, may transfer fifty percent of the amount of the cost savings from one item of appropriation made to the agency in the general appropriation act or any supplemental appropriation act to the item for personal services in the appropriation made to the same agency for the purpose of paying performance-based awards to employees of the agency. The award shall be awarded in the fiscal year in which the cost savings are achieved and shall be made consistent with the performance review done in accordance with the merit pay system identified in section 24-50-104 (1) (c.7). Prior to the end of the state fiscal year in which a transfer is made pursuant to this subsection (1.5), an agency shall submit written notice to the joint budget committee, the office of state planning and budgeting, and the state controller of the amount of the cost savings achieved by the agency during the state fiscal year.

(2) The general assembly may reduce an agency's appropriations for the fiscal year following the fiscal year in which the agency achieved the cost savings by the amount of such cost savings if the general assembly determines that the agency is no longer maintaining the measures the agency used to achieve the cost savings or that such cost savings is sustainable for more than one fiscal year. Except as otherwise provided in this subsection (2), the general assembly shall not use a one-time cost savings an agency achieves in a given fiscal year to justify reducing any item of appropriation or the total amount of appropriations the agency may receive in the fiscal year following the fiscal year in which the agency achieved the cost savings. However, nothing in this subsection (2) shall affect the general assembly's authority to reduce an agency's appropriations for any reason other than cost savings.

(3) Nothing in this section shall be construed to allow an agency to avoid any power or duty required by law that otherwise applies to the agency's actions.

PART 2

PUBLIC-PRIVATE INITIATIVES

24-38-201. Legislative declaration. The general assembly hereby finds and declares that state government should deliver public services in the most cost-effective and efficient manner, that nonprofit entities that contract for public services leverage the use of public funds with private donations, and that increasing opportunities for nonprofit entities to contract with state agencies will further the cost-effective and efficient delivery of public services. It is the intent of the general assembly in enacting this part 2 only to provide flexibility to state government so that it can deliver public services more cost-effectively and efficiently and not to establish or authorize the establishment of new

programs.

24-38-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Nonprofit contribution" means the supply by a nonprofit entity of resources to accomplish all or any part of the work on a project or the implementation or administration of a program.

(2) "Nonprofit entity" means a corporation or organization authorized to do business in the state that is exempt from taxation pursuant to section 501 (a) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a), as amended, and is listed as an exempt organization in section 501 (c) (3) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (c) (3), as amended.

(3) "Public benefit" means an agency grant of a right or interest in or concerning an agency project or program.

(4) "Public-private initiative" means a nontraditional arrangement between an agency and one or more nonprofit entities that provides for:

(a) Acceptance of a nonprofit contribution to an agency project or service in exchange for a public benefit concerning the project or service other than only a money payment;

(b) Sharing of resources and the means of providing projects or services; or

(c) Cooperation in researching, developing, and implementing projects or services.

(5) "Unsolicited proposal" means a written proposal for a public-private initiative that is submitted by a nonprofit entity for the purpose of entering into an agreement with an agency but that is not in response to a formal solicitation or request issued by the agency.

24-38-203. Unsolicited proposals. (1) An agency may consider, evaluate, and accept an unsolicited proposal only if the proposal complies with all of the requirements of this section.

(2) An agency may consider an unsolicited proposal only if the proposal:

(a) Will assist the agency in carrying out its duties in a cost-effective and efficient manner without replacing existing state employees;

(b) Is independently originated and developed by the proposer;

(c) Is prepared without agency supervision;

(d) Includes sufficient detail and information to allow the agency to evaluate the proposal in an objective and timely manner and to determine if the proposal benefits the agency; and

(e) Is not an advance proposal for a known agency requirement that can be acquired by competitive methods unless:

(I) The agency has not established a timetable for satisfying the known requirement; or

(II) The proposal is likely to significantly shorten a timetable for satisfying the known requirement.

(3) Paragraphs (b) and (c) of subsection (2) of this section shall not be deemed to prohibit an agency from encouraging the submission of unsolicited proposals that are well-developed and consistent with the agency's general policy priorities by providing written or oral information to any person regarding the policy priorities or the requirements and procedures for submitting an unsolicited proposal.

(4) If an unsolicited proposal does not meet the requirements of subsection (2) of this section, the agency shall return the proposal without further action. If an unsolicited proposal meets all of the requirements of subsection (2), the agency may further evaluate the proposal pursuant to this section.

(5) An agency shall base its evaluation of an unsolicited proposal on the following factors:

(a) Unique and innovative methods, approaches, or concepts demonstrated by the proposal;

(b) Scientific, technical, or socioeconomic merits of the proposal;

(c) Potential contribution of the proposal to the agency's mission;

(d) Capabilities, related experience, facilities, or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;

(e) Cost savings, efficient delivery of services, or enhanced quality of service delivered to the recipient; and

(f) Any other factors appropriate to a particular proposal.

(6) An agency may accept an unsolicited proposal only if:

(a) The unsolicited proposal receives a favorable evaluation; and

(b) The agency makes a written determination based on facts and circumstances that the unsolicited proposal is an acceptable basis for an agreement to obtain services either without competition or, if applicable, after the agency takes the actions required by subsection (7) of this section.

(7) Except as otherwise provided in subsection (8) of this section, if an unsolicited proposal requires an agency to spend public moneys in an amount that is reasonably expected to exceed fifty thousand dollars in the aggregate for any fiscal year, the agency shall take the following actions before accepting the unsolicited proposal:

(a) Provide public notice that the agency will consider comparable proposals. The notice shall:

(I) Be given at least fourteen days prior to the date set forth therein for the

opening of proposals through any reasonable method, which may include publication on the agency's internet web site, posting on the state's bid information and distribution system, or publication in a newspaper of general circulation;

(II) Be provided to any nonprofit entity that expresses, in writing to the agency, an interest in a public-private initiative that is similar in nature and scope to the unsolicited proposal;

(III) Outline in summary form the general nature and scope of the unsolicited proposal, including the work to be performed on the project and the terms of any nonprofit contributions offered and public benefits requested concerning the project;

(IV) Request information to determine if the proposer of a comparable proposal has the necessary experience and qualifications to perform the public-private initiative; and

(V) Specify the address to and the date by which comparable proposals must be submitted, allowing a reasonable time to prepare and submit the proposals;

(b) Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and warrants further evaluation;

(c) Evaluate each comparable proposal, taking relevant factors into consideration; and

(d) Conduct good faith discussions and, if necessary, negotiations concerning each comparable proposal.

(8) The actions required by subsection (7) of this section do not apply to an unsolicited research proposal if an agency reasonably determines that the actions would improperly disclose either the originality of the research or proprietary information associated with the research proposal.

(9) An agency may accept a comparable proposal submitted pursuant to subsection (7) of this section if the agency determines that the comparable proposal is the most advantageous to the state in comparison to an unsolicited proposal or other submitted proposals. In making the determination, the agency shall use only the proposal evaluation criteria specified in this section and shall not use the methods of source selection set forth in part 2 of article 103 of this title.

(10) If an unsolicited proposal is accepted or if a comparable proposal is accepted pursuant to subsection (9) of this section, the accepting agency shall use the proposal as the basis for negotiation of an agreement.

(11) Subject to the requirements of this section, each agency shall determine its own process for considering, evaluating, and accepting or rejecting unsolicited proposals. If the agency determines that an unsolicited proposal is an acceptable basis for negotiation of an agreement pursuant to this section, the agency's procurement officer shall be responsible for taking the action required by subsection (10) of this section. Before an agency considers an unsolicited proposal or a comparable proposal under this part 2, the agency shall adopt either rules promulgated in accordance with article 4 of this

title or other written policy guidelines that it determines are necessary or appropriate to implement this part 2, including rules or guidelines on the evaluation of unsolicited proposals and the receipt, content, and proper handling of unsolicited or comparable proposals. The rules or guidelines shall also require both the nonprofit entity and the agency to disclose any individual or organizational conflicts of interest related to the public-private initiative and to document and properly manage any disclosures.

(12) At the time a principal department of state government submits its annual budget request to the joint budget committee of the general assembly, the department shall report to the committee regarding any public-private initiative agreement then in effect that the department or an agency within the department has entered into pursuant to this part 2. The information reported shall include, at a minimum, a brief description of the purpose and terms of the agreement, the amount of public moneys required to be expended by the state under the terms of the agreement, and the identity of the private partner that is a party to the agreement.

24-38-204. Public-private initiative agreements - cost savings. (1) An agency shall enter into an agreement for each public-private initiative that it accepts.

(2) An agency shall include terms and conditions in the agreement that it determines are appropriate in the public interest.

(3) If an agency achieves cost savings in a fiscal year by entering into a public-private initiative agreement, the agency shall be eligible to retain a portion of any cost savings resulting from the agreement as provided in section 24-38-103.

(4) An agency that enters into a public-private initiative agreement with a nonprofit entity is not a partner or a joint venturer with the nonprofit entity for any purpose.

24-38-205. Organizations banned from contract awards. Notwithstanding any provision of this part 2 to the contrary, any organization banned from receiving federal funds, and any successor organizations, shall not be awarded a public-private initiative contract pursuant to this part 2.

ARTICLE 38.5

Colorado Energy Office

PART 1

GENERAL PROVISIONS

24-38.5-101. Colorado energy office - creation. (1) There is hereby created within the office of the governor the Colorado energy office, the head of which shall be the director of the Colorado energy office. The director of the office shall be assisted by a deputy director and a staff to fulfill the office's mission to:

(a) Sustain the Colorado energy economy and promote all Colorado energy;

(b) Promote economic development in Colorado through energy-market advances that create jobs;

(c) Encourage Colorado-based clean and innovative energy solutions that include traditional, clean, and renewable energy sources in order to encourage a cleaner and balanced energy portfolio;

(d) Promote energy efficiency;

(e) Increase energy security;

(f) Lower long-term consumer costs; and

(g) Protect the environment.

(2) (Deleted by amendment, L. 2012)

24-38.5-102. Colorado energy office - duties and powers. (1) The Colorado energy office shall:

(a) Work with communities, utilities, private and public organizations, and individuals to promote:

(I) The renewable energy standard established in section 40-2-124, C.R.S.;

(II) Clean and renewable energy, such as wind, hydroelectricity, solar, and geothermal;

(III) Cleaner energy sources such as biogas and biomass;

(IV) Traditional energy sources such as oil and other petroleum products, coal, and natural gas;

(V) Energy efficiency technologies and practices;

(VI) Cleaner technologies by utilizing traditional, Colorado-sourced energy; and

(VII) New energy technologies as described in section 40-2-123, C.R.S.

(b) Develop programs to promote high performance buildings for commercial and residential markets;

(c) Make state government more energy efficient;

(d) Promote technology transfer and economic development;

(e) Advance innovative energy efficiency, renewable energy, and efficiency throughout the state as specified in sections 24-38.5-102.4 and 24-38.5-102.5;

(f) Implement and administer a wind for schools project pursuant to article 89 of

title 22, C.R.S.;

(g) Work with the Colorado energy research institute to provide grants to advance energy-efficient design and construction as specified in section 23-41-114 (4) (b) (VI), C.R.S.;

(h) Distribute money to the renewable energy authority as specified in section 24-47.5-103 (1);

(i) Send an office representative to the pollution prevention advisory board assistance committee pursuant to section 25-16.5-105.5 (2) (c) (III), C.R.S.;

(j) Ensure that information explaining the requirements of energy codes is available and provide technical assistance concerning the implementation and enforcement of energy codes to both counties and municipalities as specified in sections 30-28-211 (7) and 31-15-602 (7), C.R.S.;

(k) Collaborate with the state board of land commissioners regarding renewable energy resource development as specified in section 36-1-147.5 (4), C.R.S.;

(l) Provide home energy efficiency improvements for low-income households as specified in section 40-8.7-112 (3) (b), C.R.S., and prepare and submit to the general assembly an annual report as specified in section 40-8.7-112 (3) (f), C.R.S.;

(m) Establish and manage a program to improve energy efficiency in public schools as provided in section 39-29-109.5, C.R.S.;

(n) Provide public utilities with reasonable assistance, if requested, in seeking and obtaining support and sponsorship for an IGCC project as defined in section 40-2-123 (2) (b) (I), C.R.S., and manage and distribute to the utility some or all of any funds provided by the state or by the United States government to the state for purposes of study or development of an IGCC project as specified in section 40-2-123 (2) (j), C.R.S.;

(o) Collaborate with the department of higher education to develop energy curricula that will serve the work force needs of all energy industries. Such collaboration may include research institutions, state colleges, community colleges, and trade organizations in an effort to develop a means by which the state may address all facets of work force demands in developing a balanced energy portfolio. Institutions may also partner in the development of curricula with organizations that have existing energy curricula and training programs.

(p) Annually report to the senate agriculture, natural resources, and energy committee and the house agriculture, livestock, and natural resources committee, or their successor committees;

(q) Administer the electric vehicle grant fund;

(r) Implement and administer the renewable energy and energy efficiency for schools loan program pursuant to article 92 of title 22, C.R.S.;

(s) Repealed.

(t) Assist the executive director of the department of local affairs in allocating revenues from the geothermal resource leasing fund to eligible entities pursuant to section

34-63-105, C.R.S.

(2) Repealed.

(3) The Colorado energy office shall notify the house of representatives and senate committees of reference to which the office is assigned pursuant to section 2-7-203 (1), C.R.S., as part of its "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearing required by section 2-7-203 (2), C.R.S., if it has made any changes to:

(a) Any performance plans and performance evaluations required pursuant to section 2-7-204, C.R.S.;

(b) Office policies related to energy transmission; and

(c) Office policies that positively or negatively impact the energy sector.

24-38.5-102.4. Clean and renewable energy fund - creation - use of fund - definitions - repeal. (1) (a) (I) The clean and renewable energy fund is hereby created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund from the general fund, moneys transferred to the fund at the end of the 2006-07 state fiscal year and at the end of each succeeding state fiscal year from moneys received by the Colorado energy office, moneys received pursuant to the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, or any amendments thereto, or from revenue contracts, court settlement funds, supplemental environmental program funds, repayment or return of funds from eligible public depositories, and gifts, grants, and donations, and any other moneys received by the Colorado energy office. Interest and income earned on the deposit and investment of moneys in the clean and renewable energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund. Moneys in the fund shall not be transferred to the innovative energy fund created in section 24-38.5-102.5.

(II) Repealed.

(III) (A) On July 1, 2013, and each July 1 thereafter through July 1, 2016, one million six hundred thousand dollars shall be transferred by the state treasurer from the general fund to the clean and renewable energy fund.

(B) This subparagraph (III) is repealed, effective January 1, 2017.

(b) For purposes of this section, "Colorado energy office" means the Colorado energy office created in section 24-38.5-101.

(2) (a) All moneys in the clean and renewable energy fund are continuously appropriated to the Colorado energy office for the purposes of advancing energy efficiency and renewable energy throughout the state.

(b) The Colorado energy office may expend moneys from the clean and renewable energy fund:

(I) To attract renewable energy industry investment in the state;

(II) To assist in technology transfer into the marketplace for newly developed energy efficiency and renewable energy technologies;

(III) To provide market incentives for the purchase and distribution of energy efficient and renewable energy products;

(IV) To assist in the implementation of energy efficiency projects throughout the state;

(V) To aid governmental agencies in energy efficiency government initiatives;

(VI) To facilitate widespread implementation of renewable energy technologies; and

(VII) In any other manner that serves the purposes of advancing energy efficiency and renewable energy throughout the state.

(c) (I) Subject to the provisions of subparagraph (II) of this paragraph (c), the moneys in the clean and renewable energy fund may also be used by the Colorado energy office to make grants or loans to persons, as defined in section 2-4-401 (8), C.R.S., for use in carrying out the purposes of this section. The Colorado energy office shall consider the following information in determining whether to make a grant or loan:

(A) The amount of the grant or loan;

(B) The quantified impact on energy demand or amount of clean energy production generated as a result of the grant or loan;

(C) The potential economic impact of the grant or loan; and

(D) The public benefits expected to result from the grant or loan.

(II) The Colorado energy office may establish terms and conditions for making grants or loans pursuant to this section and in accordance with the objectives of the office as set forth in section 24-38.5-102.

24-38.5-102.5. Innovative energy fund - creation - use of fund - definitions. (1) (a) The innovative energy fund is hereby created in the state treasury. The principal of the fund shall consist of moneys transferred to the fund by the general assembly, moneys transferred at the end of each state fiscal year from moneys received by the Colorado energy office, moneys received pursuant to section 39-29-108 (2), C.R.S., or from revenue contracts, court settlement funds, supplemental program funds, repayment or return of funds from eligible public depositories, and gifts, grants, and donations, and any other moneys received by the Colorado energy office. Interest and income earned on the deposit and investment of moneys in the innovative energy fund shall be credited to the fund. Moneys in the fund at the end of any state fiscal year shall remain in the fund and shall not be credited to the state general fund or any other fund. Moneys in the fund shall not be transferred to the clean and renewable energy fund created in section 24-38.5-102.4.

(b) For purposes of this section:

(I) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101.

(II) "Innovative energy" means an existing, new, or emerging technology that:

(A) Enables the use of a local fuel source;

(B) Establishes a more efficient or environmentally beneficial use of energy; and

(C) Helps to create energy independence or energy security for the state.

(2) (a) All moneys in the innovative energy fund are continuously appropriated to the Colorado energy office for the purposes of advancing innovative energy efficiency throughout the state; except that the moneys are limited to efficiency projects and any other projects related to the severance of minerals subject to taxation under article 29 of title 39, C.R.S.

(b) The Colorado energy office may expend moneys from the innovative energy fund:

(I) To overcome market barriers facing emerging and cost-effective energy technologies;

(II) To promote robust research, development, commercialization, and financing of innovative energy technologies;

(III) To educate the general public on energy issues and opportunities;

(IV) To attract innovative energy industry investment in the state;

(V) To assist in technology transfer into the marketplace for newly developed innovative energy efficiency technologies;

(VI) To provide market incentives for the purchase and distribution of efficient innovative energy products;

(VII) To assist in the implementation of innovative energy efficiency projects throughout the state;

(VIII) To aid governmental agencies in innovative energy efficiency government initiatives;

(IX) To facilitate widespread implementation of innovative energy technologies; and

(X) In any other manner that serves the purposes of advancing innovative energy efficiency throughout the state.

(c) (I) Subject to the provisions of subparagraph (II) of this paragraph (c), the moneys in the innovative energy fund may also be used by the Colorado energy office to make grants or loans to persons, as defined in section 2-4-401 (8), C.R.S., for use in carrying out the purposes of this section. The Colorado energy office shall consider the following information in determining whether to make a grant or loan:

(A) The amount of the grant or loan;

(B) The quantified impact on energy demand or amount of innovative energy production generated as a result of the grant or loan;

(C) The potential economic impact of the grant or loan; and

(D) The public benefits expected to result from the grant or loan.

(II) The Colorado energy office may establish terms and conditions for making grants or loans pursuant to this section and in accordance with the objectives of the office as set forth in section 24-38.5-102; except that the grants or loans shall be limited to innovative energy efficiency projects and policy development.

24-38.5-102.7. Colorado energy saving mortgage program - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Accredited home energy rating provider" means a person who RESNET has accredited through the mortgage industry national home energy rating system accreditation standard as a rating provider and who appears on RESNET's national registry of accredited rating providers or a person who meets other rating provider requirements adopted in guidelines by the Colorado energy office pursuant to paragraph (c) of subsection (4) of this section.

(b) "Certified home energy rater" means an individual who an accredited home energy rating provider has certified as a RESNET home energy rater to inspect and evaluate a home's energy features, assign a HERS index score to the home, and recommend energy efficiency improvements or an individual who meets other rater certification requirements adopted in guidelines by the Colorado energy office pursuant to paragraph (c) of subsection (4) of this section.

(c) "Colorado energy saving mortgage program" or "program" means the Colorado energy star/energy saving mortgage program administered by the Colorado energy office as of January 1, 2013, as modified by this section or by any program changes implemented by the Colorado energy office within the limitations specified in this section, or any successor program.

(d) "Energy efficient home" means a home that a certified home energy rater has certified as having a HERS index score of not more than fifty or that meets other requirements for being an energy efficient home that the Colorado energy office adopts in guidelines pursuant to subsection (4) of this section.

(e) "Energy saving mortgage" means a mortgage issued to a borrower by a participating lender through the Colorado energy saving mortgage program for the purpose of financing:

(I) The purchase of a newly built energy efficient home; or

(II) Improvements to an existing home that:

(A) Are made in accordance with recommendations made by or approved by the Colorado energy office following a residential energy audit of the home; and

(B) Are confirmed by post-installation verification conducted by the Colorado energy office or a vendor, including but not limited to a participating utility, under

contract with the office to have improved the energy efficiency of the home to the extent required by the Colorado energy office.

(f) "HERS index" means the home energy rating system index established by RESNET to measure the energy efficiency of a home.

(g) "Participating lender" means a bank, credit union, other financial institution, or independent mortgage broker that participates in the Colorado energy saving mortgage program by issuing energy saving mortgages and contributing funding that reduces the total cost of the mortgages to the borrowers.

(h) "Participating public utility" means a public utility, as defined in section 40-1-103, C.R.S., including any municipality that operates an electric utility and any cooperative electric or gas association or nonprofit electric corporation or association, that:

(I) Provides electricity or natural gas to residential customers, without regard to whether the utility, association, or corporation is subject to or exempt, in whole or in part, from the "Public Utilities Law", articles 1 to 7 of title 40, C.R.S.;

(II) Chooses to participate in the Colorado energy saving mortgage program by meeting all requirements for participation set forth in guidelines adopted by the Colorado energy office; and

(III) If it is required to comply with the provisions of article 3.2 of title 40, C.R.S., has, prior to its initial participation in the Colorado energy savings mortgage program, had the public utilities commission approve a participation plan.

(i) "RESNET" means the residential energy services network that is a recognized national standards-making body for building energy efficiency rating and certification systems in the United States.

(2) The Colorado energy office may spend any available moneys to fund energy saving mortgages subject to the following limitations:

(a) To the extent feasible, the Colorado energy office shall spend money evenly on energy saving mortgages that finance purchases of newly built energy efficient homes and energy saving mortgages that finance improvements to existing residences;

(b) Each energy saving mortgage may include funding that reduces the total cost of the mortgage to the borrower from both a participating public utility and a participating lender. The Colorado energy office may adopt guidelines to specify minimum percentages of total funding for an energy saving mortgage that each nonstate source of funding must provide.

(c) If a utility chooses to participate in the Colorado energy savings mortgage program by providing demand-side management program moneys, such moneys may only be used towards energy savings attributable to energy efficiency improvements and not towards energy savings attributable to renewable energy or on-site energy generation improvements.

(d) If a utility has existing demand-side management programs for residential new

construction or whole-house existing retrofits, the utility must identify, in a demand-side management plan approved by the public utilities commission prior to the utility's initial participation in the Colorado energy mortgage savings program, how it will track participation in all programs, including the Colorado energy savings mortgage program, to ensure that customers do not receive multiple incentives.

(e) The Colorado energy office may only approve an energy saving mortgage that finances improvements to an existing home if the improvements are made by or approved by the office following a residential energy audit of the home and are confirmed by post-installation verification to have increased the energy efficiency of the home to the extent required by the office. The office may adopt guidelines that specify requirements for energy efficiency increases and the conduct of residential energy audits and post-installation testing.

(f) Subject to the following maximum value limitations, the Colorado energy office may adopt energy savings-based guidelines that set forth the maximum total value to the borrower in terms of reduction in the total costs of an energy saving mortgage:

(I) For an energy saving mortgage that finances the purchase of a new energy efficient home, the maximum total value to the borrower in terms of reduction in the total costs of an energy saving mortgage is:

(A) For a home that has a HERS index score of zero, eight thousand dollars or any lower amount that the Colorado energy office establishes in guidelines; or

(B) For a home that has a HERS index score that is greater than zero but no more than fifty, any lower amounts that the Colorado energy office establishes in guidelines subject to the limitation that if the office establishes multiple lower amounts, those amounts must increase as the HERS index score of a home decreases;

(II) For an energy saving mortgage that finances improvements to an existing home, the maximum total value to the borrower in terms of reduction in the total costs of an energy saving mortgage is the lesser of any energy savings-based amount adopted in guidelines by the Colorado energy office or eight thousand dollars.

(g) The Colorado energy office may spend moneys contributed by a participating public utility only for energy saving mortgages for homes within the service area of the participating public utility.

(h) If demand-side management moneys contributed by a participating utility, when combined with moneys from all other sources, yield an incentive amount that exceeds the incremental cost of the energy saving improvements, the utility must set forth the treatment of the demand-side management moneys in its demand-side management plan and have that treatment approved by the public utilities commission.

(i) If the participation of a participating utility causes additional energy savings improvements to be made, due to the matching Colorado energy office and lender moneys, the public utilities commission may include the additional energy savings benefits and exclude the additional leveraged moneys from the benefit-cost ratio

calculation described in section 40-1-102 (5) (b), C.R.S.

(3) A participating public utility receives credit for its participation in the program towards any demand side management program targets, contingent upon public utilities commission approval, pursuant to article 3.2 of title 40, C.R.S., or may receive credit towards any greenhouse gas emissions requirements that may be established in the future.

(4) Notwithstanding any other provision of this section, if another index or measure supersedes the HERS index as the industry standard for measuring building energy efficiency, the Colorado energy office may adopt guidelines that:

(a) Adopt the other index or measure as the standard for determining the energy efficiency of a new home or existing residence;

(b) Specify values on the new index or measure that are comparable to the HERS index scores and point improvements specified in this section and are to be used to determine eligibility for and the maximum value of energy saving mortgages; and

(c) Specify the requirements and procedures, including any required accreditation of rating providers or certification of raters, that must be complied with in rating a new home or existing residence under the other index or measure.

24-38.5-103. Electric vehicle grant fund - creation - administration. (1) There is hereby created in the state treasury the electric vehicle grant fund, referred to in this section as the "fund". The fund shall be used to provide grants to local governments, landlords of multi-family apartment buildings, and the unit owners' associations of common interest communities as defined in article 33.3 of title 38, C.R.S., to install recharging stations for electric vehicles. The grants shall be prioritized based upon the prospective recipients' potential for, and commitment to, energy efficiency.

(2) The Colorado energy office is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly. Any moneys in the fund not expended for the purposes of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

24-38.5-104. Photovoltaic installer qualifications - cooperation with department of regulatory agencies. (1) Effective July 1, 2011, all photovoltaic installations funded wholly or partially through state or federal grants, including grants

under the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, shall be subject to the requirements set forth in section 40-2-128, C.R.S.

(2) If the governor, by executive order, appoints a committee to study the desirability of credentialing of solar installers, the committee, or the Colorado energy office on the committee's behalf, is specifically authorized to submit a proposal for such credentialing to the department of regulatory agencies pursuant to section 24-34-104.1 (2). In addition, the committee may study and make recommendations concerning the scope-of-work provisions of section 40-2-128, C.R.S., specifically including enforcement of the supervision and worker ratio requirements of section 40-2-128 (1) (c) and (1) (d), C.R.S.

24-38.5-105. Clean energy improvement debt reserve fund - authorization - use. (1) (a) The clean energy improvement debt reserve fund is hereby created in the state treasury. The principal of the fund shall consist of up to ten million dollars of legally available moneys from nonstate sources under the control of the Colorado energy office, which the state treasurer shall promptly credit to the fund if instructed in writing to do so by the director of the Colorado energy office, and any fees paid to the state treasurer in accordance with subparagraph (II) of paragraph (b) of this subsection (1). All interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund, and all unexpended and unencumbered moneys in the fund at the end of any fiscal year shall remain in the fund. The fund is hereby continuously appropriated to the state treasurer, who may expend moneys from the fund solely for the purposes of paying principal and interest on bonds issued by a local improvement district or other special district as specified in paragraph (c) of this subsection (1) and defraying any direct and indirect costs incurred by the state treasurer in executing duties required by this section.

(b) (I) If the Colorado energy office instructs the state treasurer to credit moneys from nonstate sources to the clean energy improvement debt reserve fund, with prior written authorization from the director of the Colorado energy office and the state treasurer and after agreeing to pay fees to be credited to the fund to the state treasurer as specified in subparagraph (II) of this paragraph (b), a local improvement district or other special district that imposes special assessments on real property and issues bonds payable from the revenues generated by the special assessments to generate the moneys needed to pay the up-front costs of making renewable energy improvements or clean energy improvements as authorized by part 6 of article 20 of title 30, C.R.S., or any other provision of law may rely on the clean energy improvement debt reserve fund as a backup source of moneys that may be used, after the depletion of any district debt service reserve fund, for the payment of principal and interest owed to holders of the district's bonds.

(II) A local improvement district or other district that issues bonds and that wishes to rely on the clean energy improvement debt reserve fund as a backup source of moneys

for the payment of principal and interest owed to holders of the bonds shall enter into a written agreement with the Colorado energy office to pay to the state treasurer for crediting to the fund such fees for the privilege of relying on the fund as the Colorado energy office may require. Fees to be paid by a district as required by the Colorado energy office shall be deemed to be a portion of the amount of the interest rate savings resulting from more favorable financing terms attributable to the reliance upon the fund. The Colorado energy office may, in its discretion, require that fees be paid on an annual basis, commencing and calculated on the date of issuance of the bonds and on each one-year anniversary of the issuance of the bonds thereafter while the bonds remain outstanding, in an amount equal to a number of basis points of the principal amount of the bonds outstanding as of each calculation date agreed upon by the office and the district.

(c) Whenever the paying agent responsible for making payments to the holders of any bonds issued by a district that has relied upon the clean energy improvement debt reserve fund as a backup source of repayment for the district's bonds has not received payment of principal or interest on the bonds on the tenth business day immediately prior to the date on which such payment is due and any debt service reserve fund for the local improvement district or other special district that issued the bonds has been depleted, the paying agent shall so notify the state treasurer and the district by telephone, facsimile, or other similar communication, followed by written verification, of such payment status. The state treasurer shall immediately contact the district and determine whether the district will make the payment by the date on which it is due and, if the state treasurer confirms that the district will not make the payment, the state treasurer shall expend moneys from the clean energy improvement debt reserve fund to make the payment in a timely manner. If the amount of moneys in the clean energy improvement debt reserve fund is not sufficient to cover the entire amount of the payment, the state treasurer shall pay only so much of the payment as can be paid from available moneys in the fund. If payments on more than one series of bonds issued in reliance upon the clean energy improvement debt reserve fund as a backup source of moneys for repayment are required to be made from the fund at the same time and the amount of moneys in the fund is not sufficient to cover the entire amount of the payments, the state treasurer shall pay from available moneys in the fund only an equal percentage of the amount of each payment due.

(2) This section shall not be construed to create any state debt, to require the state to make any bond payments on behalf of any local improvement district or other special district from any source of moneys other than the clean energy improvement debt reserve fund, or to require the state to fully pay off any outstanding bonds of a district that cannot make scheduled bond payments.

(3) In accordance with section 11 of article II of the state constitution, the state hereby covenants with the purchasers of any outstanding bonds issued in reliance upon the existence of the clean energy improvement debt reserve fund that the state will not

repeal, revoke, or rescind the provisions of this section concerning the fund or modify or rescind the same so as to limit or impair the rights and remedies granted by this section to the purchasers of such bonds and that any moneys in the fund shall not revert to the general fund.

24-38.5-106. Financing of capital projects to make state government more energy efficient - lease-purchase agreements - legislative declaration - definition. (1) As used in this section, unless the context otherwise requires, "utility cost-savings contract" shall have the same meaning as set forth in section 24-30-2001 (6).

(2) (a) In order to make state government more energy efficient in accordance with section 24-38.5-102, the Colorado energy office may propose a prioritized list of projects associated with current utility cost-savings contracts that will improve the energy efficiency of state buildings or facilities and that are proposed to be constructed or improved using financing provided in accordance with subsection (3) of this section. If the Colorado energy office creates a prioritized list, the prioritized list shall include an estimate of the total amount of annual utility cost savings expected if all of the projects on the prioritized list are completed; descriptions of the projects, the affected buildings, and the impact of the projects on tenants; a timeline for implementation; a detailed budget for each project; a list of properties recommended for use as collateral, which shall include only properties operated and maintained by agencies that are responsible for the operation and maintenance of at least one state building or facility for which a project is being financed in accordance with subsection (3) of this section; estimates of the amount of annual utility cost savings expected for each of the projects; and expected annual payments for each project, including the expected funding sources for such payments. The Colorado energy office shall submit the prioritized list and referenced supporting documents to the office of state planning and budgeting for review and approval or disapproval. Except as otherwise provided in paragraph (b) of this subsection (2), the office of state planning and budgeting shall submit any projects on the prioritized list that it approves to the capital development committee of the general assembly for review and approval or disapproval. Subject to the limitations specified in subsection (3) of this section, if the capital development committee determines after reviewing the projects submitted to it for its review and approval or disapproval that it is appropriate to authorize the state treasurer to pursue financing provided in accordance with subsection (3) of this section to fund some or all of the projects or if the office of state planning and budgeting has approved projects for buildings or facilities operated and maintained by the department of transportation and submitted such projects to the committee for informational purposes only pursuant to paragraph (b) of this subsection (2), the committee shall provide a letter to the Colorado energy office, the office of state planning and budgeting, the joint budget committee of the general assembly, and the state treasurer

that specifies the final approved priority of the projects.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), any projects on the prioritized list proposed by the Colorado energy office and approved by the office of state planning and budgeting for buildings or facilities operated and maintained by the department of transportation shall be deemed to be finally approved and shall be included on the prioritized list submitted to the capital development committee for informational purposes only.

(3) (a) Upon receipt of the letter from the capital development committee regarding its review pursuant to subsection (2) of this section, the state treasurer may enter into one or more lease-purchase agreements on behalf of the state in order to generate the proceeds needed to complete the projects. A lease-purchase agreement:

(I) May be entered into with any for-profit or nonprofit corporation, trust, or commercial bank as a trustee, as lessor;

(II) Shall be limited to a total par value, including costs of issuance, of all such instruments issued, distributed, and sold of no more than seventy-three million dollars;

(III) Shall include provisions that:

(A) Specify that all payment obligations of the state under the lease-purchase agreement are subject to annual appropriation by the general assembly and that obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the state constitution or the laws of the state concerning or limiting the creation of indebtedness by the state;

(B) Indicate that if the state does not renew the agreement, the sole security available to the lessor shall be the property that is the subject of the nonrenewed agreement; and

(C) Allow the state to receive title to the real and personal property that is the subject of the agreement on or prior to the expiration of the entire term of the agreement, including all optional renewal terms;

(IV) May include:

(A) Provisions for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made and to be made under the agreement. Such instruments shall not be notes, bonds, or any other evidence of indebtedness of the state within the meaning of any provision of the state constitution or the laws of the state concerning or limiting the creation of indebtedness by the state.

(B) Such other terms, provisions, and conditions as the state treasurer may deem appropriate.

(b) Only a building or facility subject to an energy performance contract, as defined in section 24-30-2001 (1), that is under consideration by the office of the state architect as of thirty days following June 10, 2010, may be the subject of a lease-purchase agreement entered into by the state treasurer pursuant to this subsection (3).

(c) The state, acting by and through the state treasurer, may enter into ancillary

agreements and instruments deemed necessary or appropriate in connection with a lease-purchase agreement authorized pursuant to this subsection (3), including but not limited to deeds, leases, subleases, easements, or other instruments relating to the real property on which the facilities are located.

(d) The provisions of section 24-30-202 (5) (b) shall not apply to a lease-purchase agreement or any ancillary agreement or instrument authorized pursuant to this subsection (3). Any provision of the fiscal rules promulgated pursuant to section 24-30-202 (1) and (13) that the state controller deems to be incompatible or inapplicable with respect to such a lease-purchase agreement or ancillary agreement or instrument may be waived by the controller or his or her designee within the office of the state controller.

(e) Interest paid under a lease-purchase agreement, including interest represented by such instruments, shall be exempt from state income tax.

(f) Notwithstanding the authority of the capital development committee of the general assembly to authorize, after approval by the office of state planning and budgeting, the state treasurer to enter into lease-purchase agreements on behalf of the state, in order to ensure that lease-purchase agreements are entered into under favorable financial market conditions, the state treasurer shall have sole discretion to determine the timing of the state treasurer's entry into any lease-purchase agreement on behalf of the state pursuant to this subsection (3).

(g) The state treasurer shall coordinate with the office of state planning and budgeting in regard to the schedule of lease payments required in connection with any lease-purchase agreement.

(h) Once a lease-purchase agreement has been executed, the state treasurer shall submit the schedule for annual payments to the office of state planning and budgeting and the joint budget committee of the general assembly. The office of state planning and budgeting shall submit a budget request to the joint budget committee to reduce any corresponding operating appropriations for state capital facilities realizing utility cost savings from projects financed by lease-purchase agreements and to appropriate annual payments in the capital construction section of the budget for those facilities for which operation and maintenance is funded in whole or in part with moneys that are subject to state appropriation. Upon receipt of the budget request from the office of state planning and budgeting, the joint budget committee shall recommend to the general assembly an appropriation for annual payments in the capital construction section of the budget and a reduction of the same amount in the applicable utilities line item of the operating budget. The office of state planning and budgeting and the joint budget committee recommendation shall also include an appropriation of the original funding sources of the utility line item equal to the identified savings for transfer to the energy efficiency project proceeds fund created in subsection (4) of this section unless such transfer is prohibited by the requirements of the original funding source. It is the intent of the general assembly that the utilities line item reduction be permanent, and that any future appropriated

increases be defended in relation to the balance for utilities that remain in the line.

(4) The energy efficiency project proceeds fund is hereby created in the state treasury. The principal of the fund shall consist of moneys received by the state in connection with any lease-purchase agreements entered into pursuant to subsection (3) of this section and any other legally available moneys that may be appropriated or transferred to the fund. All interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. Moneys in the fund that were received by the state in connection with any lease-purchase agreement and that are trustee funds may be expended by the state treasurer, and other moneys in the fund not identified for funding annual payments or to be used to defray any incremental costs incurred by the state controller in managing accounting and reporting requirements related to lease-purchase agreements entered into pursuant to subsection (3) of this section are hereby continuously appropriated to the state treasurer, for the purpose of making disbursements necessary to complete projects associated with current utility cost-savings contracts that are authorized to be financed through lease-purchase agreements entered into by the state treasurer on behalf of the state pursuant to subsection (3) of this section. Moneys in the fund shall also be subject to appropriation by the general assembly for the purpose of paying the principal of and interest on and defraying any incremental costs incurred by the state controller in managing accounting and reporting requirements related to such lease-purchase agreements.

24-38.5-107. Colorado energy office - subject to audit. No later than January 15, 2017, the state auditor shall complete a performance audit of the Colorado energy office. The state auditor shall present the performance audit report to the legislative audit committee. After the performance audit report is released by the legislative audit committee, the state auditor shall provide copies, in accordance with section 24-1-136 (9), to the house agriculture, livestock, and natural resources committee, the senate agriculture and natural resources committee, and the joint budget committee.

PART 2

GREEN BUILDING INCENTIVE PILOT PROGRAM

24-38.5-201. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) An incentive-based green building pilot program will strive to reduce electricity, gas, and water use in older homes while providing an incentive for homebuyers to purchase new residential construction that meets stringent energy efficiency standards;

(b) Providing incentives for new residential construction that meets stringent energy efficiency standards and improving energy efficiency in existing residences can stimulate local and state economies and provide opportunities for job growth in green jobs and industries that are focused on improving energy efficiency of both new and existing residences; and

(c) An incentive-based green building pilot program will benefit homebuyers who are attempting to purchase highly energy efficient new residential construction and retrofit existing homes in an attempt to reduce energy and water consumption.

24-38.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Energy code" means the 2006 international energy conservation code, or any successor edition, published by the international code council or any state or local energy code that has more recent or more stringent requirements.

(2) "Energy efficiency improvement" means:

(a) An upgrade to a structure, appliance, fixture, plumbing, heating or cooling system, or water heater in any existing residence that is intended to reduce the consumption of electricity, natural gas, water, or any other fuel or energy source; and

(b) The installation or upgrade of building insulation, air sealing measures, and duct sealing in any existing residence.

(3) "Existing residence" means a residence, either single-family detached or multi-family, that:

(a) Is located in Colorado;

(b) Is used as the qualified homebuyer's primary residence; and

(c) Has a current home energy rating, as determined by a recognized green building rating system, that is below minimum standards, as determined by the energy code.

(4) "Green building incentive pilot program" or "pilot program" means the green building incentive pilot program described in section 24-38.5-203.

(5) "Highly efficient new residential construction" means a new single-family detached residence or new multi-family residence located in Colorado that is designed and constructed to be at least twenty-five percent more efficient than the energy code's requirements, as documented by a recognized green building rating system.

(6) "Home energy audit" means an inspection, survey, and analysis of a home's structure and systems in order to quantify the building's projected energy consumption.

(7) "Home energy rating" means an objective and standard measurement of a home's energy efficiency relative to standards contained in an energy code, such as those developed by the residential energy services network or any successor organization.

(8) "Qualified homebuyer" means a person that has entered into a sales contract to purchase highly efficient new residential construction and will be selling the person's existing residence in order to purchase the highly efficient new residential construction as the person's primary residence.

(9) "Recognized green building rating system" means a system of rules for comparing the performance of a whole building or building system to the energy code, to a problem, or to a test case that serves as a basis for evaluation or comparison. "Recognized green building rating system" includes, but is not limited to:

(a) The federal energy star program, jointly operated by the United States environmental protection agency and the United States department of energy, or its successor program;

(b) The January 2008 version, or any successor standard, of the "LEED for Homes Rating System" administered by the United States green building council or its successor organization;

(c) The national green building standard, commonly cited as ANSI/ICC 700-2008, established by the national association of home builders and the international council code, or any successor standard; and

(d) Energy audits that are performed by the electric utility, or its designee, providing service to the residence.

24-38.5-203. Green building incentive pilot program. (1) Except as provided in paragraph (b) of subsection (9) of this section, the Colorado energy office shall establish and administer a green building incentive pilot program in accordance with the requirements established in this part 2.

(2) (a) A qualified homebuyer may submit an application, provided by the Colorado energy office, to the Colorado energy office for a grant to make energy efficiency improvements to the homebuyer's existing residence that the homebuyer is selling in preparation for purchasing a highly efficient new residential construction.

(b) The Colorado energy office shall award a larger grant to a qualified homebuyer with an existing residence that has a home energy rating or home energy audit showing greater inefficiency.

(3) The energy efficiency improvements shall be performed by contractors approved by the Colorado energy office as specified in subsection (6) of this section.

(4) The Colorado energy office shall require the qualified homebuyer to submit documentation:

(a) That the home energy rating of the qualified homebuyer's existing residence is

below the energy code's requirements;

(b) That the qualified homebuyer has entered into a sales contract to purchase a highly efficient new residential construction;

(c) Of the estimated completion date of the qualified homebuyer's highly efficient new residential construction;

(d) Of the name or names of the contractors that will perform the energy efficiency improvements on the existing residence; and

(e) That the highly efficient new residential construction meets the definition specified in section 24-38.5-202 (5). The qualified homebuyer may seek such documentation from the home builder, who may then submit the documentation on behalf of the qualified homebuyer.

(5) Energy efficiency improvements made to an existing residence shall be completed in a manner that is consistent with a home energy rating or a home energy audit, and shall result in improved energy efficiency. Retrofits and upgrades to improve the energy efficiency of a qualified homebuyer's existing residence shall be completed before the closing of the sale of the residence.

(6) The Colorado energy office shall create a list of contractors eligible to perform energy efficiency improvements to a qualified homebuyer's existing residence.

(7) In order to confirm that the qualified homebuyer met the requirements of the pilot program, the qualified homebuyer shall submit to the Colorado energy office copies of closing documentation for the highly efficient new residential construction no later than thirty days after the construction is complete. If construction is delayed and not completed by the estimated completion date, the Colorado energy office may grant a waiver or extension for submission of this documentation.

(8) If the purchase of the highly efficient new residential construction is not finalized for any reason, including but not limited to the cancellation of the sale by the qualified homebuyer or the failure of the qualified homebuyer to secure financing, the qualified homebuyer shall reimburse the total amount of the grant to the Colorado energy office within thirty days after such cancellation or failure.

(9) (a) Funding for the pilot program shall be provided from federal funds transferred to the Colorado energy office that the Colorado energy office has already received prior to August 10, 2011, or may receive after August 10, 2011. The Colorado energy office may require additional documentation or information from the qualified homebuyer as required to secure any additional federal funds.

(b) The Colorado energy office shall not establish the pilot program set forth in this part 2 if federal funds are not available.

ARTICLE 38.7

Colorado Clean Energy Finance Program

PART 1

GENERAL PROVISIONS

24-38.7-101. Short title. This article shall be known and may be cited as the "Colorado Clean Energy Finance Program Act".

24-38.7-101.5. Legislative declaration. The general assembly finds, determines, and declares that energy-efficiency improvements for existing buildings are one of the wisest investments that any individual or business can make. However, many Coloradans may be under the mistaken impression that the cost of such improvements is out of reach for them or that financing would be difficult to obtain. Therefore, the general assembly encourages all Coloradans to investigate the possibility of financing energy-efficiency improvements by contacting their current lenders, including banks, mortgage lenders, credit unions, and other financial institutions. Nothing in this article is intended to affect lending requirements or limitations nor to alter the scope of lending as currently defined between banks and credit unions or other lenders.

24-38.7-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Area median income" means the median income of the county in which the primary residence of a qualified borrower is located in relation to family size, as published annually by the United States department of housing and urban development.

(2) "Certified contractor" means:

(a) A contractor, including but not limited to a general, heating, air conditioning, or lighting contractor, certified by the program administrator to market the program to potential qualified borrowers and make clean energy improvements that may be financed by clean energy loans; and

(b) A manufacturer or dealer of manufactured homes, as defined in section 24-32-3302, who is certified by the program administrator to market the program to potential qualified borrowers and make clean energy improvements that may be financed by clean energy loans.

(3) "Clean energy improvement" means:

(a) Any repair of or addition or improvement to residential real property completed by or under the supervision of a certified contractor that improves the energy

efficiency of the property or replaces all or a portion of the energy from nonrenewable sources used in connection with the property with energy from renewable sources; and

(b) Any installation of, or connection with, equipment that produces or conducts recycled energy or renewable energy resources, as defined in section 40-2-124, C.R.S., or solar heating and cooling systems, for use on residential or commercial real property if such installation or connection is completed by or under the supervision of a certified contractor.

(4) "Clean energy loan" means a loan in a maximum amount of twelve thousand five hundred dollars originated by a participating public lender or a participating private lender, including but not limited to a bank or mortgage lender, to a qualified borrower for the purpose of financing one or more clean energy improvements to the borrower's primary residence, rental property, or place of business; except that, if the qualified borrower is a nonprofit corporation or local government housing authority that provides units in a multi-unit housing project as homes to individuals or families who meet the income qualifications of first tier or second tier qualified borrowers, the maximum amount of a loan shall be twelve thousand five hundred dollars multiplied by the number of units in the multi-unit housing project provided to the individuals or families.

(5) "First tier qualified borrower" means a qualified borrower whose income is less than eighty percent of area median income.

(6) "Office" means the Colorado energy office.

(7) "Program" means the Colorado clean energy finance program.

(8) "Program administrator" or "administrator" means one or more entities selected by the office to:

(a) Market the program;

(b) Recruit, train, and certify contractors;

(c) Measure and verify, in accordance with standards established by the office, energy, emissions, and gross and net cost savings resulting from clean energy improvements financed by clean energy loans originated and serviced by participating public lenders and private lenders;

(d) Encourage homeowners to participate in utility demand side management programs where applicable; and

(e) Perform such other duties as may be authorized in this article or required by the office.

(9) "Program fund" means the clean energy program fund created in section 24-38.7-103 (2) (a).

(10) "Public lender" means a county, municipality, district, authority, or other political subdivision of the state authorized to make economic development, affordable housing, or housing rehabilitation loans.

(11) "Qualified borrower" means an individual or family who owns his, her, or their primary residence and satisfies lending guidelines established by the program

administrator or a Colorado charitable nonprofit corporation exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, or county or municipal housing authority that provides homes for ownership or rental to homeowners or renters who meet the income qualifications of first tier or second tier qualified borrowers.

(12) "Second tier qualified borrower" means a qualified borrower whose income is eighty percent or more, but less than one hundred twenty percent, of area median income.

(13) "Third tier qualified borrower" means a qualified borrower whose income is one hundred twenty percent or more of area median income.

24-38.7-103. Colorado energy office - powers and duties - program - fund created. (1) The Colorado clean energy finance program is hereby created. The office shall oversee the program and the program administrator and shall, in addition to exercising any other powers and performing any other duties specified in this article:

(a) Select the program administrator in accordance with the provisions of the "Procurement Code", articles 101 to 112 of this title. In selecting the program administrator, the office shall consider the extent to which a potential program administrator has demonstrated experience in recruiting, training, and certifying contractors or can otherwise establish that it will be able to perform such functions.

(b) Directly market the program to the general public or contract with the program administrator for the marketing of the program to the general public;

(c) Develop and operate or contract with the program administrator for the development and operation of a quality assurance, measurement, and verification program to:

(I) Monitor the quality of clean energy improvement installations;

(II) Measure and report on energy, emissions, and gross and net cost savings resulting from clean energy improvements financed by clean energy loans; and

(III) Authorize participating lenders, certified contractors, and qualified borrowers on whose property clean energy improvements are made to use the "Colorado Clean & Green" logo or other logo and marketing materials prepared in accordance with section 24-38.7-105.

(d) Determine, in consultation with the state treasurer, when the administrative and procedural framework for the program and the available administrative and financial resources for the program are sufficiently developed to allow the office to effectively oversee the program. No clean energy loan shall be marketed to a potential qualified borrower, applied for by a potential qualified borrower, or made to a qualified borrower until the office has determined that it is ready to effectively oversee the program and instructed certified contractors to begin marketing clean energy loans.

(e) Exercise such other powers and perform such other duties necessary or incidental to or implied from the specific powers and duties specified in this article.

(2) (a) The clean energy program fund is hereby created in the state treasury, and the following accounts are hereby created in the fund:

(I) The loan buy-down account; and

(II) The loan loss reserve account.

(b) The program fund and the accounts of the program fund shall consist of such moneys as the general assembly may appropriate thereto from the innovative energy fund created in section 24-38.5-102.5, the clean and renewable energy fund created in section 24-38.5-102.4, and any gifts, grants, or donations that may be made to the program fund. In accordance with section 24-36-113 (1) (a), which requires the state treasurer, in making investments, to use prudence and care to preserve the principal and to secure the maximum rate of interest consistent with safety and liquidity, if the general assembly chooses not to appropriate moneys to the program fund or to the accounts of the program fund, nothing in this article shall be deemed to require the state treasurer to credit any moneys to the program fund or the accounts of the program fund. All interest and income earned on the deposit and investment of moneys in the program fund and the accounts of the program fund shall be used for the loan buy-down account and the loan loss reserve account. Moneys in the loan buy-down account and loan loss reserve account of the program fund shall remain in the accounts and shall not be transferred to the general fund or any other fund at the end of any fiscal year.

(3) (a) All moneys in the program fund are continuously appropriated to the office, and the office shall make payments from the loan buy-down account of the program fund to participating public lenders and private lenders to compensate the lenders for the reduction in the amount of future interest payments resulting from the provision of clean energy loans to first tier and second tier qualified borrowers at the below-market interest rates determined pursuant to section 24-38.7-104 (2). The office shall pay the compensation for each clean energy loan by paying to the lender a lump sum equal to the present value of the reduction in future interest payments on the date the loan closes.

(b) The office shall make payments from the loan loss reserve account of the program fund to compensate participating public lenders and private lenders for the uncollectible amount of clean energy loans any such lenders have written off. The office shall pay the compensation for each uncollectible clean energy loan by paying to the lender a lump sum equal to the present value of the uncollectible portion of the loan on the date the lender wrote it off.

(c) The state treasurer shall periodically transfer moneys from the loan buy-down account of the program fund to the loan loss reserve account of the program fund to ensure that the balance of the loan loss reserve account is at least five percent of the total principal amount of outstanding clean energy loans made by participating public lenders

and private lenders. The administrator shall update the state treasurer regarding outstanding clean energy loans originated by such lenders as required by the state treasurer so that the state treasurer can accurately determine the appropriate amount and timing of transfers.

(d) The state treasurer may invest up to a total amount of forty million dollars of state moneys in bonds or notes issued by participating public or private lenders for the purpose of funding clean energy loans under this part 1 and under part 2 of this article during the 2008-09, 2009-10, and 2010-11 fiscal years subject to the following conditions:

(I) The state treasurer may invest no more than fifteen million dollars during the 2008-09 fiscal year and no more than a total amount of twenty-five million dollars during the 2008-09 and 2009-10 fiscal years; and

(II) Such investments shall be subject to the state treasurer's discretion and shall comply with the qualifications for state investments listed in section 24-36-113.

24-38.7-104. Program administrator - training and certification of contractors - reporting. (1) In accordance with terms contractually agreed to by the program administrator and the office, acting on behalf of the state, the program administrator shall implement and administer the program by:

(a) Recruiting, selecting, screening, training, and certifying contractors, including but not limited to general, heating, air conditioning, and lighting contractors, to be certified contractors capable of marketing the program and completing clean energy improvements. The program administrator may charge contractors a reasonable fee for training and certification, and the recruiting, selection, screening, training, and certification process shall include, at a minimum:

(I) Direct marketing of the program to contractors;

(II) Financial and business practices background checks of contractors seeking to become certified contractors; and

(III) Initial training that includes:

(A) Education regarding the elements of the program, the financial and environmental benefits of clean energy improvements, including but not limited to specific education regarding products qualified to bear the federal energy star label, and recommended means of marketing the program to potential program customers; and

(B) The provision of information regarding additional required training and other requirements for contractors who may wish to become preferred contractors under the federal home performance with energy star program.

(b) Issuing annual reports regarding the administration of the program as specified in subsection (3) of this section.

(2) A potential qualified borrower shall apply for a clean energy loan by

completing an initial loan application. The office or, at the discretion of the office, the program administrator or participating public lenders and private lenders shall prescribe the form of the loan application and shall determine, based on the application and such other information as the administrator may reasonably require from the applicant, whether the applicant is a qualified borrower and, if so, whether the qualified borrower is a first tier, second tier, or third tier qualified borrower. However, a participating public lender may only originate clean energy loans for first tier and second tier qualified borrowers. A qualified borrower may choose a loan term of up to ten years. The state treasurer shall, using a formula tied to a regularly published interest rate index selected by the state treasurer, determine a base annual rate of interest to be charged on loans made to third tier qualified borrowers. The state treasurer shall set an annual rate of interest for loans to second tier qualified borrowers by subtracting a number of basis points selected by the state treasurer from the base annual rate and shall set an annual rate of interest for loans to first tier qualified borrowers by subtracting a number of basis points selected by the state treasurer from the annual rate of interest for loans to second tier qualified borrowers. The interest rate charged to a qualified borrower that is a nonprofit corporation or a housing authority shall be the interest rate charged to second tier qualified borrowers; except that the interest rate charged to a nonprofit corporation or housing authority shall be the interest rate charged to first tier qualified buyers if the nonprofit corporation or housing authority only provides the housing for which the loan will finance clean energy improvements to individuals or families who are first tier qualified borrowers.

(2.5) (a) The office shall not issue a clean energy loan under this article for the installation of solar photovoltaic equipment to a qualified borrower until the borrower certifies that:

(I) (A) The performance of all photovoltaic electrical work, the installation of photovoltaic modules, and the installation of photovoltaic module mounting equipment is subject to on-site supervision by a certified photovoltaic energy practitioner as designated by the North American board of certified energy practitioners (NABCEP) or a licensed master electrician, licensed journeyman electrician, or licensed residential wireman, as defined in section 12-23-101, C.R.S.

(B) In the case of building-integrated photovoltaic technology, if the type of building-integrated photovoltaic technology installed or the scope of the building-integrated photovoltaic installation involved does not require a licensed master electrician, licensed journeyman electrician, or licensed residential wireman to perform the installation work and the installation work concerns the installation of roofing materials, the on-site supervision may be performed by a certified solar energy installer, as designated by NABCEP or roof integrated solar energy (RISE).

(C) For a building-integrated photovoltaic installation, a licensed master electrician, licensed journeyman electrician, or licensed residential wireman must perform the installation work for any stage of the installation after the installation materials

penetrate the roof, a structural wall, or another part of the building, or any stage of the installation in which the building-integrated photovoltaic materials transition to a surface-mounted junction box and utilize types of conduit and building wire that are approved by the national electrical code, as defined in section 12-23-101 (3.2), C.R.S.

(D) By submitting an initial application for funding or an initial contract proposal, the applicant assumes responsibility for employing or contracting with one or more certified energy practitioners or licensed master electricians, licensed journeyman electricians, or licensed residential wiremen to supervise the installation and as necessary to maintain the three-to-one ratio required by subparagraphs (II) and (III) of this paragraph (a), including during any off-site, pre-installation assembly. To receive final payment for the work, the applicant must supply the name and certification number of each certified energy practitioner or the license number of each master electrician, journeyman electrician, or residential wireman who actually provided on-site supervision or was present to maintain the three-to-one ratio required by subparagraphs (III) and (IV) of this paragraph (a).

(II) All work performed on the alternating-current side of the inverter will be performed by an electrical contractor who employs a licensed journeyman electrician or a licensed residential wireman who will perform the work. All electrical work that pertains to article 23 of title 12, C.R.S., will be performed by an electrical apprentice registered with the appropriate state regulatory agency, a licensed journeyman electrician, or a licensed residential wireman. The appropriate ratio of no less than one journeyman or residential wireman for every three electrical apprentices will be maintained.

(III) On a system with a direct current design capacity of more than five hundred kilowatts:

(A) During any photovoltaic electrical work, the ratio of the number of persons who are assisting with the work and who are neither licensed electricians nor registered electrical apprentices to the number of persons who are certified as provided in subparagraph (I) of this paragraph (a) shall never exceed three to one, and a person who is both licensed and certified shall not count double for purposes of measuring this ratio; and

(B) There shall be at least one on-site supervisor who is certified as provided in subparagraph (I) of this paragraph (a) during the installation of photovoltaic modules, the installation of photovoltaic module mounting equipment, and any photovoltaic electrical work; except that, if at any time during any of these stages, there are more than twelve persons on the work site who are neither licensed electricians nor registered electrical apprentices and who are not certified as provided in subparagraph (I) of this paragraph (a), there shall be at least two persons who are certified as provided in subparagraph (I) of this paragraph (a) present on the work site and providing direct supervision.

(IV) On a system with a direct current design capacity of five hundred kilowatts or less:

(A) During the installation of photovoltaic modules, the installation of photovoltaic module mounting equipment, and any photovoltaic electrical work, the ratio of the number of persons who are assisting with the work and who are neither licensed electricians nor registered electrical apprentices to the number of persons who are certified as provided in paragraph (a) of this subsection (2.5) shall never exceed three to one, and a person who is both licensed and certified shall not count double for purposes of measuring this ratio; and

(B) There shall be, at all times, at least one on-site supervisor who is certified as provided in subparagraph (I) of this paragraph (a).

(b) As used in this subsection (2.5), the terms "photovoltaic electrical work" and "photovoltaic module mounting equipment" shall have the meanings set forth in section 40-2-128, C.R.S.

(3) (a) No later than one year from the date of issuance of the first clean energy loan by a participating public lender or private lender pursuant to this article, and no later than the same date each subsequent year, the program administrator shall provide to the office a report detailing its administration of the program since its inception and for the prior fiscal year. The report shall include, at a minimum:

(I) A detailed accounting of the financial status of the program, including statements regarding:

(A) The total number and principal amount of clean energy loans originated and the number and principal amount of clean energy loans originated to first tier, second tier, and third tier qualified borrowers;

(B) The total amount of outstanding principal and interest on clean energy loans owed by qualified borrowers and the amount of such principal and interest owed by first tier, second tier, and third tier qualified borrowers;

(C) The total number and principal and interest amounts of any uncollectible clean energy loans written off by participating public lenders and private lenders and the number and principal amounts of such loans issued to first tier, second tier, and third tier qualified borrowers;

(D) The total amount of bonds or other notes in which the state treasurer has invested as authorized by section 24-38.7-103 (3) (d), the payments made on such bonds or other notes, and the payments to be made in the future on such bonds or other notes; and

(E) The amounts paid to participating public lenders and private lenders by the office pursuant to section 24-38.7-103 (3) (a) and (3) (b) and any contracts entered into by the state and the administrator as authorized by this article;

(II) Estimates of the total energy, emissions, and gross and net cost savings resulting from clean energy improvements financed by clean energy loans; and

(III) Any recommended program improvements.

(b) Subject to the limitation set forth in section 24-1-136 (11), no later than

January 30, 2010, and no later than each January 30 thereafter, the office shall report to the transportation and energy committee of the house of representatives and the agriculture, natural resources, and energy committee of the senate, or any successor committees, regarding the program. The report shall include the information provided to the office in the program administrator's annual report and whatever additional information the office deems relevant to fully apprise the committees regarding the status of the program.

24-38.7-105. Administration - "Colorado Clean & Green" designation - cash funding. (1) The office, or the administrator under the direction of the office, may produce or cause to be produced a suitable design or drawing, referred to in this section as the "logo", to be used in the marketing of clean energy loans and clean energy improvements. The logo may, but is not required to, contain the slogan "Colorado Clean & Green" or other words or symbols as the office in its discretion may deem appropriate.

(2) The title to the logo and copyrights for all marketing materials using the logo shall at all times remain in and be reserved to the office.

(3) The logo, or any reproduction, copy, or facsimile thereof, may not be used in any advertising, display, labeling, or identification without prior written permission from the office.

(4) A lender, certified contractor, or qualified borrower that complies with this article and the office's qualifications for use of the logo shall be permitted to use the logo in advertising, labeling, or marketing of products and services.

(5) The cost of the design and production of the logo shall be recovered through license fees. The office or administrator may condition the design and production of the logo on the receipt of gifts, grants, donations, or advance deposits in an amount sufficient to defray the costs of design and production.

PART 2

THIRD-PARTY COMMERCIAL SOLAR ENERGY INSTALLATIONS

24-38.7-201. Legislative declaration. This part 2 is intended to complement part 1 of this article by facilitating clean energy loans for larger-scale commercial, industrial, and institutional installations of solar heating or cooling and solar electric generation facilities, which hold great potential for clean energy development but in which the size limitations, economic incentives, and industry practices applicable to small residential installations either cannot be duplicated or are not economically feasible.

24-38.7-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Clean energy improvement" means an installation of solar heating, solar cooling, or solar electric generation equipment and any related controls, meters, wiring, and other facilities on commercial, industrial, or government-owned real property.

(2) "Clean energy loan" means a loan originated by a participating public lender or a participating private lender, including but not limited to a bank or mortgage lender, for the purpose of financing one or more clean energy improvements to commercial, industrial, or government-owned real property, subject to the following conditions:

(a) The loan may, but need not, be to an independent third party rather than to the owner of the property or to a public utility.

(b) The loan may be for a fixed term of twenty years.

(c) The loan may be a fully assumable, nonrecourse loan and may not be subject to any prepayment penalty.

(d) The amount of the loan may exceed the amount stated in section 24-38.7-102 (4).

(3) "Office" means the Colorado energy office.

(4) "Public lender" means a county, municipality, district, authority, or other political subdivision of the state authorized to make economic development, affordable housing, or housing rehabilitation loans. "Public lender" includes, without limitation, the Colorado housing and finance authority.

24-38.7-203. Colorado energy office - administrator - state treasurer - powers and duties - statement of intent. (1) The office and the administrator shall administer this part 2 substantially in accordance with part 1 of this article, except with regard to:

(a) The definitions of terms common to both part 1 of this article and this part 2, as such definitions are modified in this part 2; and

(b) Provisions that, in the judgment and discretion of the office, the administrator, and the state treasurer, are appropriate only in the context of small residential installations under part 1 of this article.

(2) The provisions of part 1 of this article and of article 36 of this title concerning the type and quality of investments made by the state treasurer shall continue to apply. The general assembly intends that the extension of the program under this part 2 be accomplished as seamlessly as possible, within existing appropriations, and with minimal disruption to the current practices of the office, the administrator, and the state treasurer.

ARTICLE 38.9

Green Jobs Colorado Training Program

24-38.9-101 to 24-38.9-108. (Repealed)

OTHER AGENCIES

ARTICLE 40

Population Policy and the Population Advisory Council

24-40-101 to 24-40-105. (Repealed)

ARTICLE 40.5

Colorado Cost Containment Commission

24-40.5-101 to 24-40.5-104. (Repealed)

ARTICLE 41

Coordinator of Environmental Problems

24-41-101. (Repealed)

ARTICLE 42

Office of Transportation Safety

24-42-101. Office created - director. (1) There is hereby created within the office of the executive director of the department of transportation an office of

transportation safety, the head of which shall be the director of the office of transportation safety. The director shall be appointed by the executive director of the department of transportation in accordance with the provisions of section 13 of article XII of the state constitution. The director of the office of transportation safety shall appoint the necessary staff of his office in accordance with the provisions of section 13 of article XII of the state constitution.

(2) The office of transportation safety and the director thereof shall exercise their powers and perform their duties and functions, specified by this article, under the department of transportation and the executive director thereof, 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 this title.

24-42-102. Advisory committee - sunset review. (Repealed)

24-42-103. Powers, duties, and functions. (1) There is hereby created within the office of transportation safety a coordinator of transportation safety, who shall be the director of the office.

(2) The office of transportation safety shall have the following powers, duties, and functions:

(a) To consult with state departments, institutions, and agencies, with political subdivisions of the state, and with appropriate citizen groups and to formulate current and long-range plans and programs involving all aspects and components of transportation safety;

(b) To succeed to and perform the powers and duties of the office of the coordinator of highway safety in dealing with the federal government with respect to federal highway traffic safety legislation, programs, and activities and, to that end, to coordinate the activities of state departments, institutions, and agencies and of political subdivisions of the state relating thereto; and

(c) To advise and report to the governor and the general assembly on transportation safety plans and operations.

24-42-104. Transfer. Effective July 1, 1991, such officers and employees who were engaged prior to said date in the performance of the powers, duties, and functions of the division of highway safety in the state department of highways and who, in the opinion of the executive director of the department of transportation, are necessary to perform the powers, duties, and functions of the office of transportation safety shall become officers and employees of the office of transportation safety and shall retain all

their rights to state personnel system and retirement benefits under the laws of the state, and their service shall be deemed to have been continuous. The office of transportation safety shall succeed to all property and records which were used for or pertain to the performance of the powers, duties, and functions of the coordinator of highway safety. All appropriations made to the division of highway safety in the state department of highways for the fiscal year beginning July 1, 1991, or remaining to the credit thereof and not revertible by law to the general fund on July 1, 1991, shall be transferred to the office of transportation safety. The transportation commission shall budget and allocate all moneys to be expended by or allocated to the office of transportation safety in accordance with section 43-1-113, C.R.S.

24-42-105. Colorado training institute. (Repealed)

ARTICLE 43

Railroad Authority Act

24-43-101 to 24-43-112. (Repealed)

ARTICLE 44

Commission of Indian Affairs

24-44-101. Legislative declaration. The general assembly finds and declares that the affairs of the two Indian tribes whose reservations are largely within the state of Colorado, the Southern Ute tribe and the Ute Mountain Ute tribe, include matters of state interest and that the state of Colorado recognizes the special governmental relationships and the unique political status of these tribes with respect to the federal government and, further, that it is in the best interest of all the people of Colorado that there be an agency providing an official liaison among all persons in both the private and public sectors who share a concern for the establishment and maintenance of cooperative relationships with and among the aforesaid tribes and Indian peoples.

24-44-102. Establishment of commission. There is hereby established in the

office of the lieutenant governor the Colorado commission of Indian affairs, referred to in this article as the "commission".

24-44-103. Duties and powers of commission. (1) It is the duty of the commission:

(a) To coordinate intergovernmental dealings between tribal governments and this state;

(b) To investigate the needs of Indians of this state and to facilitate the provision of technical assistance in the preparation of plans for the alleviation of such needs;

(c) To cooperate with and secure the assistance of the local, state, and federal governments or any agencies thereof in formulating and coordinating programs regarding Indian affairs adopted or planned by the federal government so that the full benefit of such programs will accrue to the Indians of this state;

(d) To review all proposed or pending legislation affecting Indians in this state;

(e) To study the existing status of recognition of all Indian groups, tribes, and communities presently existing in this state; and

(f) To employ and fix the compensation of an executive director of the commission, who shall carry out the responsibilities of the commission.

(g) to (k) Repealed.

(2) The commission has the following powers:

(a) To petition the general assembly for funds to effectively administer the commission's affairs and to expend funds in compliance with state regulations;

(b) To accept and expend gifts, funds, grants, donations, bequests, and devises for use in furthering the purposes of the commission;

(c) To contract with public or private bodies to provide services and facilities for promoting the welfare of Indian peoples;

(d) To make legislative recommendations;

(e) To form committees as needed to respond to and address the needs of tribal governments and Indian peoples of this state; and

(f) To make and publish reports of findings and recommendations.

24-44-104. Membership - term of office - chairperson - compensation. (1) (a) The commission consists of the following eleven voting members:

(I) The lieutenant governor;

(II) The executive directors of:

(A) The department of human services;

(B) The department of public health and environment;

(C) The department of natural resources; and

(D) The department of local affairs;

(III) Two official representatives each from Southern Ute and Ute Mountain Ute tribes; and

(IV) Two at-large members who shall be selected by the commission at its first meeting and triennially thereafter.

(b) The governor may, from time to time as he or she deems appropriate to respond to the needs of tribal governments and Indian peoples of the state, appoint representatives of federal, state, or local governmental agencies to serve as ex officio nonvoting members and representatives of nongovernmental entities that handle issues facing the tribes and Indian peoples of Colorado as nonvoting advisory members of the commission.

(c) The commission shall consult with other persons as it deems appropriate, including representatives of other principal departments of state government, political subdivisions, organizations with experience in American Indian legal matters, or other such entities.

(2) (a) Members serving by virtue of their office within state government may appoint a designee and shall serve so long as they hold that office. Members representing Ute Indian tribes shall be designated by their respective tribal governing bodies. Members appointed pursuant to paragraph (b) of subsection (1) of this section serve as long as they hold the position in the governmental agency or nongovernmental entity they held when originally appointed.

(b) The lieutenant governor shall serve as chairperson of the commission and shall, subject to section 24-44-105 and the ratification of a majority of the voting members of the commission, appoint an executive director.

(3) Commission members shall not be compensated for their services rendered for the commission.

24-44-105. Executive director. The commission may employ an executive director to carry out the day-to-day responsibilities and business of the commission. The executive director is an ex officio member of the commission and must be an enrolled member of a federally recognized Indian tribe.

24-44-106. Meetings - quorum - proxy vote prohibited. (1) The commission shall meet quarterly and at any other such time as it deems necessary. Meetings may be called by the chairperson or by a petition signed by a majority of the voting members of the commission. Ten days' notice shall be given in writing prior to the meeting date.

(2) Two voting Indian members of the commission and two voting members serving by virtue of their office within state government constitute a quorum.

(3) Proxy voting is not permitted.

24-44-107. Reports. (Repealed)

24-44-108. Fiscal records. The executive director or his or her designee shall keep fiscal records, which records are subject to annual audit by the state auditor. The audit reports shall become a part of the annual report and shall be submitted in accordance with the regulations governing preparation and submission of the annual report.

ARTICLE 44.5

Early Childhood Council Advisory Team

24-44.5-101 and 24-44.5-102. (Repealed)

ARTICLE 44.7

Early Childhood Leadership Commission

24-44.7-101 to 24-44.7-105 (Repealed)

ARTICLE 45

Colorado Promotion Association

24-45-101 to 24-45-108. (Repealed)

ARTICLE 45.5

Colorado Advisory Council for Persons with Disabilities

24-45.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Nearly a half million Coloradans have one or more physical, mental, or developmental disabilities;

(b) Persons with disabilities are often subject to discrimination in the areas of telecommunications, public services, public accommodations operated by private entities, and employment;

(c) The federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, established principles and guidelines regarding persons with disabilities;

(d) It is in the best interest of the state of Colorado to strive to ensure equality of opportunity, independent living, and economic self-sufficiency for all of the state's citizens, including persons with disabilities.

24-45.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Council" means the Colorado advisory council for persons with disabilities created in section 24-45.5-103.

(2) "Person with a disability" means a person who:

(a) Has a physical or mental impairment or chronic medical condition that substantially limits one or more of his or her major life activities;

(b) Has a record of such an impairment; or

(c) Is regarded as having such an impairment.

24-45.5-103. Colorado advisory council for persons with disabilities - creation - appointments - meetings. (1) There is hereby created in the office of the governor the Colorado advisory council for persons with disabilities.

(2) The council shall consist of no more than twenty members and shall reflect statewide participation and a commitment to the inclusion of persons with disabilities. Membership shall include at least seven persons appointed from state agencies serving persons with disabilities, and the remaining members shall represent persons with disabilities from business and industry, disability advocacy organizations, and other nonprofit organizations.

(3) The governor shall appoint the initial council members on or before August 1, 2008. The governor shall appoint the council chair at the time of appointment. The terms of the council members shall expire at the pleasure of the governor. Upon the expiration of a council member's term, the council member shall continue to serve until a successor

is appointed as provided in subsection (4) of this section.

(4) The governor shall appoint a qualified person to fill a vacancy on the council for the remainder of any unexpired term. If the governor does not appoint a person to fill the vacancy within sixty days after the date the vacancy arises, the speaker of the house of representatives and the president of the senate, within ninety days after the date the vacancy arises, shall jointly appoint a qualified person to fill the vacancy. If the speaker of the house of representatives and the president of the senate do not appoint a person to fill the vacancy within the ninety-day period, the council, by a majority vote, shall appoint a qualified person to fill the vacancy.

(5) The council shall convene its first meeting no later than September 1, 2008, and meet at least quarterly thereafter. The meetings of the council shall also be held on call of the chair or at the request of at least three members of the council.

(6) Council members shall not receive compensation for their time but may be reimbursed for actual and necessary expenses pursuant to section 24-45.5-105 (2).

24-45.5-104. Powers and duties of the council. (1) The council shall have the following powers, functions, and duties:

(a) Coordinating with state boards, advisory councils, and commissions established for or related to persons with disabilities;

(b) Advising the governor and general assembly on legislation and state policy affecting persons with disabilities;

(c) Issuing an annual report to the governor and general assembly on the state's programs, services, and policies affecting and addressing persons with disabilities;

(d) Monitoring the state's implementation of Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., as amended, including oversight pursuant to *Olmstead v. L.C.,* 527 U.S. 581 (1999);

(e) Acting as an additional entry point for public grievances regarding disability issues and referring those grievances to the appropriate state agency or personnel; and

(f) Developing procedures relating to the council's internal operations.

24-45.5-105. Gifts, grants, and donations - reimbursement. (1) The council is authorized to receive and expend gifts, grants, and donations from individuals, private organizations, foundations, or any governmental unit; except that the council may not accept a gift, grant, or donation if it is subject to conditions that are inconsistent with this article or any other law of this state.

(2) Council members shall be reimbursed for actual and necessary expenses incurred in the discharge of their official duties, including an allowance for mileage as provided in section 24-9-104 (2) and any reasonable and necessary expenses associated

with providing accommodations for a council member's disability.

24-45.5-106. Repeal of article. This article is repealed, effective July 1, 2018. Prior to said repeal, the council shall be reviewed, as provided in section 2-3-1203, C.R.S.

ARTICLE 46

Economic Development

PART 1

COLORADO ECONOMIC DEVELOPMENT COMMISSION

24-46-101. Legislative declaration. The general assembly hereby finds and declares that, in light of current economic conditions in Colorado, it is in the best interests of the people of this state that measures be taken to encourage, promote, and stimulate economic development and employment in Colorado. To that end, it is the purpose of this article to bring together people representing a broad spectrum of interests, including higher education, agriculture, advanced technologies, finance and banking, venture capital, energy, and industry, to review the economic condition of Colorado, to develop and implement programs for the promotion of economic development in Colorado, and to ensure that such economic development programs create employment opportunities for Colorado residents and benefit Colorado companies.

24-46-102. Colorado economic development commission - creation - membership - definition. (1) Effective July 1, 1996, the Colorado economic development commission is abolished and the terms of the members of the commission serving as such immediately prior to June 30, 1996, are terminated.

(2) There is hereby created the Colorado economic development commission in the Colorado office of economic development, referred to in this article as the "commission".

(3) (a) The commission shall consist of the governor or the governor's designee and eight members who shall be appointed no later than August 1, 1996, as follows: Four members shall be appointed by the governor; two members shall be appointed by the speaker of the house of representatives; and two members shall be appointed by the president of the senate.

(b) On and after September 1, 2013, the commission includes two additional

members to represent advanced industries. The speaker of the house of representatives and the president of the senate shall each appoint one member, and these members must have advanced industry business and research experience. In making these appointments, the speaker and the president shall give preference to a person whose experience is in more than one advanced industry.

(c) No member of the general assembly shall be appointed as a member of the commission. The governor shall appoint at least one person from west of the continental divide and one person from the eastern slope predominately from the rural area. Members shall serve at the pleasure of their appointing authority.

(d) As used in this subsection (3), "advanced industry" means the following industries:

(I) Advanced manufacturing;

(II) Aerospace;

(III) Bioscience;

(IV) Electronics;

(V) Energy and natural resources;

(VI) Infrastructure engineering; and

(VII) Information technology.

24-46-103. Commission - organization - meetings. (1) The commission shall adopt its own rules of procedure, shall elect a chairman and a vice-chairman from its membership, and shall keep a record of its proceedings.

(2) The commission shall meet at least once each quarter. Members shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

24-46-104. Powers and duties of commission. (1) The commission has the following powers and duties:

(a) To adopt an annual budget;

(b) To develop operating guidelines relating to the manner and forms of financial assistance such as loans, grants, and local match requirements to be provided for various types of projects;

(c) To review the economic needs of the various geographical regions of Colorado;

(d) To identify the types of businesses which need the most support in terms of economic development;

(e) and (f) (Deleted by amendment, L. 91, p. 823, § 1, effective March 29, 1991.)

(g) To make information and assistance available for businesses interested in

relocating or expanding their operations in the state of Colorado;

(h) To receive and expend donations or grants from the private sector;

(i) To contract for those services, including personnel services, and materials required by the activities of the commission;

(j) To review and recommend to the governor expenditures of moneys of the fund for economic incentives and marketing, as provided in section 24-46-105, for reimbursement for actual and necessary expenses of the commission, as authorized in section 24-46-103 (2), and for operational expenses of the commission;

(k) To exercise any other powers or perform any other duties which are consistent with the purposes for which the commission was created and which are reasonably necessary for the fulfillment of the commission's assigned responsibilities;

(l) and (m) Repealed.

(n) To contract with the Colorado housing and finance authority, created in part 7 of article 4 of title 29, C.R.S., for the operation of a Colorado credit reserve program for the purpose of increasing the availability of credit to small businesses in Colorado;

(o) To oversee the Colorado office of film, television, and media loan guarantee program pursuant to section 24-48.5-115 and the performance-based incentive for film production in Colorado pursuant to section 24-48.5-116; and

(p) To consult with the Colorado office of economic development pursuant to section 24-48.5-117.

(2) The commission shall report to the general assembly no later than November 1 of each year regarding the work of the commission. The report shall include the information required to be collected by the commission pursuant to section 24-46-105.1.

24-46-104.5. Statewide enterprise zone - existing enterprise zones - recommendations to the general assembly - repeal. (Repealed)

24-46-105. Colorado economic development fund - creation. (1) There is hereby created a fund to be known as the Colorado economic development fund, referred to in this part 1 as the "fund", which shall be administered by the commission and which shall consist of all moneys that may be available to it.

(2) The moneys in the fund shall be subject to annual appropriation by the general assembly, except as provided in subsection (2.5) of this section, for the purposes of this part 1. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation. Any interest earned on the investment or deposit of moneys in the fund shall not be credited to the general fund of the state but shall instead be credited to the revolving account created in subsection (2.5) of this section. Contributions of money,

property, or services may be received from any state agency, county, municipality, federal agency, person, or corporation for use in carrying out the purposes of this part 1.

(2.5) (a) The moneys in the fund may be used by the commission to make grants or loans to both public and private persons and entities for use in carrying out the purposes of this part 1, subject to the provisions of paragraph (b) of this subsection (2.5) and subsections (3) and (4) of this section. In determining whether to make a grant or loan, the commission shall consider each of the following guidelines:

(I) The amount of the grant or loan;

(II) The number of jobs that are likely to be generated in the state as a direct or indirect result of the facility or operation the grant or loan would fund and ancillary facilities thereto;

(III) The quality and wage level of jobs created;

(IV) The extent to which a person or entity establishing or expanding a business operation or facility intends to employ Colorado residents at the new or expanded operation or facility the grant or loan would fund and ancillary facilities thereto;

(V) The extent to which a person or entity establishing or expanding a business facility or operation intends to contract with Colorado residents and Colorado-based companies for services and goods at the new or expanded operation or facility the grant or loan would fund and ancillary facilities thereto; and

(VI) The extent of the public benefits expected to result from the grant or loan.

(b) The commission may establish whatever terms and conditions it deems appropriate in making grants or loans pursuant to this section; except that the terms and conditions established by the commission shall meet or exceed the requirements established in subsection (4) of this section for a grant or loan awarded in part or in whole based on a private person's or entity's creation of full-time permanent new jobs in the state. The loan amount and any interest earned thereon shall be paid back to the commission, and such moneys shall be credited to a special account in the fund to be known as the revolving account. In accordance with subsection (2) of this section, interest earned on the investment or deposit of moneys in the economic development fund shall also be credited to the revolving account. All moneys in the revolving account may be used by the commission to make loans and grants as provided in this subsection (2.5) without further appropriation by the general assembly. The commission shall not approve grants or loans to state departments or agencies for specific projects which are typically considered by the general assembly in the general appropriation bill or in supplemental appropriation bills unless the joint budget committee approves the application for such grants or loans.

(3) The governor is not authorized to expend moneys from the fund unless such expenditure has been reviewed and recommended by the commission. The governor may reject any recommendations by the commission.

(4) (a) The commission shall award a grant or loan from moneys in the fund based

in part or in whole on a private person's or entity's creation of full-time permanent new jobs in the state, only if the person or entity:

(I) Pays all of its new employees hired on or after August 3, 2007, a minimum wage as determined by the commission;

(II) Creates one or more new jobs and maintains the jobs for at least one year; and

(III) (A) Has not been adjudicated to be in violation of any federal, state, or local laws affecting the health, safety, or working conditions of employees for at least the prior five years, as certified by the person or entity; or

(B) Has been adjudicated to be in violation of a federal, state, or local law affecting the health, safety, or working conditions of employees within five years of applying for a grant or loan pursuant to this section, but can provide evidence to the commission that it has corrected the violation or has taken steps to correct the violation and can provide an estimated date by which the violation will be corrected.

(b) The provisions of this subsection (4) do not apply to the following:

(I) A nonprofit entity; or

(II) An intern or trainee who is under the age of twenty-one and who is employed for a period of not longer than three months.

(c) No person or entity shall pay an employee through a third party or treat an employee as a subcontractor or independent contractor to avoid the requirements of this subsection (4). The provisions of this paragraph (c) shall not apply to a person or entity that hires subcontractors or independent contractors in the normal course of the person's or entity's business.

24-46-105.1. Reporting requirement - new jobs created. (1) Every private person or entity that receives a grant or loan from the commission pursuant to this article, awarded in part or in whole on the basis of the person's or entity's creation of full-time permanent new jobs with wage requirements shall file a progress report with the commission. The progress report shall include, but shall not be limited to, the following:

(a) The name of the person or entity that received the grant or loan and, if the recipient is an entity, the name of the chief officer of the entity;

(b) The business address and business phone number of the person or entity that received the grant or loan;

(c) The amount of the grant or loan awarded to the person or entity by the commission;

(d) A statement of the number of new full-time permanent jobs that the person or entity that received the grant or loan has created to date;

(e) Payroll or other data to verify the number of new jobs created by the person or entity;

(f) The average annual compensation level of new full-time permanent employees

of the new jobs created;

(g) A statement as to whether the person or entity that received the grant or loan reduced employment at any other site controlled by the person or entity in the state as a result of automation, merger, acquisition, corporate restructuring, or other business activity; and

(h) Any other information reasonably required by the commission to evaluate the progress of the person or entity that received the grant or loan and the effectiveness of awarding the grant or loan.

(2) The progress report submitted to the commission shall include a signed certification by the private person who received the grant or loan or, if the recipient is a private entity, the chief officer of the entity that received the grant or loan as to the accuracy of the progress report.

(3) Any private person or entity that receives a grant or loan pursuant to this article based in part or in whole on the person's or entity's creation of full-time permanent new jobs in the state shall file the progress report required pursuant to subsection (1) of this section.

(4) The commission shall include the information collected each year pursuant to subsection (1) of this section in the commission's report to the general assembly pursuant to section 24-46-104 (2). The commission's report shall also include a statement as to whether the private person or entity that received the grant or loan has achieved the person's or entity's job creation and wage requirement.

(5) The commission shall inform a private person or entity that receives a grant or loan based in part or in whole on the person's or entity's creation of full-time permanent new jobs in the state that the person or entity is required to comply with the requirements of this section at the time the commission awards the grant or loan.

24-46-105.3. Economic development incentives - employers in compliance with federal law - legislative declaration. (1) The general assembly hereby finds and declares that the commission encourages, promotes, and stimulates economic development and employment in Colorado by awarding economic development incentives to employers in the form of grants, loans, and performance-based incentives. The general assembly further finds that it is in the best interest of the people of the state to ensure that United States citizens and others lawfully present in the state are the beneficiaries of employment opportunities that are made possible through moneys awarded to employers the commission. The general assembly recognizes that many local governments also participate in programs to develop new businesses, expand existing businesses, promote economic development within their jurisdictions, and create employment opportunities for Colorado. The general assembly further recognizes that it would be in the best interest of the people of the state if local governments would take steps to ensure that United States

citizens and others lawfully present in the state are the beneficiaries of employment opportunities created through economic development incentives offered at the local level. Therefore, the general assembly hereby encourages all local governments that participate in economic development incentive programs to develop standards to ensure that all employers who are awarded economic development incentives employ only United States citizens or people who are lawfully present in the state and have the authority to work.

(2) In addition to the requirements specified for any employer to receive a grant, loan, performance-based incentive, or other economic development incentive pursuant to the provisions of this article, an employer shall be in compliance with the provisions of 8 U.S.C. sec. 1324a in order to be eligible to receive such economic development incentive. The commission shall develop a procedure by which an employer that receives an economic development incentive pursuant to this article shall provide proof to the commission that each employee employed by the employer within the United States is a United States citizen or, if not a United States citizen, is lawfully present in the state and authorized to work.

(3) During the process of awarding a grant, loan, performance-based incentive, or other economic development incentive to an employer, the commission shall have the discretion to determine when to verify that the employer is in compliance with the provisions of 8 U.S.C. sec. 1324a.

(4) If the commission determines that an employer who receives an economic development incentive pursuant to this article is not in compliance with the provisions of 8 U.S.C. sec. 1324a, or is unable to prove that it is in compliance with the requirements of 8 U.S.C. sec.1324a, the commission shall notify the employer by certified mail of the commission's determination of noncompliance. The employer shall repay the total amount of money received as an economic development incentive to the commission within thirty days of receipt of the notice.

(5) Notwithstanding the provisions of this article, any employer that has been issued a notice of noncompliance pursuant to subsection (4) of this section shall be ineligible to qualify for a grant, loan, performance-based incentive, or other economic development incentive awarded pursuant to this article for five years after the date that the employer has repaid the commission in full pursuant to the requirements of subsection (4) of this section.

(6) Upon determination that an employer is ineligible to receive an economic development incentive pursuant to this section, the commission shall allow the employer to appear at a hearing before the commission and to establish proof that the employer is in compliance with the provisions of 8 U.S.C. sec. 1324a. The commission shall satisfy the requirements of this subsection (6) within existing resources.

(7) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

24-46-105.5. Local economic development - participation in federal programs. Any local government may participate in federal programs to develop new business, expand existing business, or promote economic development within its jurisdiction. Any local government participating in such programs may enter into contracts for the administration of such programs and expend moneys as required for participation in such programs.

24-46-105.7. Performance-based incentive for new job creation - new jobs incentives cash fund.

(1) (Deleted by amendment, L. 2008, p. 943, § 1, effective August 5, 2008.)

(2) On or after January 1, 2006, but prior to January 1, 2011, any employer that satisfies the criteria that the commission has established for an employer to qualify for a grant or a loan from the commission pursuant to section 24-46-105 (2.5) may be eligible to receive a performance-based incentive from the commission from the moneys in the new jobs incentives cash fund created in this section.

(3) An employer that qualifies to receive a performance-based incentive for new jobs created pursuant to this section and that qualifies for an income tax credit pursuant to section 39-30-105, C.R.S., shall be allowed to receive the incentive allowed pursuant to this section and claim the credit allowed pursuant to section 39-30-105, C.R.S.

(4) (a) and (b) (Deleted by amendment, L. 2008, p. 943, § 1, effective August 5, 2008.)

(c) The commission shall develop procedures for the administration of this section, including establishing a procedure for employers to apply for performance-based incentives and for the commission to issue payment of the incentives.

(5) On or before March 1, 2007, and on or before March 1 of each year thereafter, the commission shall report to the business affairs and labor committee of the house of representatives and the business affairs, labor, and technology committee of the senate, or any successor committees, regarding the performance-based incentives awarded pursuant to this section. The report shall include but need not be limited to the number of employers that received the performance-based incentive pursuant to this section and the total amount of all incentives received during the most recent fiscal year for which such information is available.

(6) The total amount of performance-based incentives that the commission issues pursuant to this section in any fiscal year shall not exceed the amount appropriated to the commission to be used for the purposes of this section in the applicable fiscal year. The commission shall issue incentives to applicants at the commission's discretion until the amount appropriated has been expended.

(7) (a) The commission shall not allow any employer that has been approved to receive a performance-based incentive for the creation of new jobs prior to June 5, 2006,

to claim an incentive pursuant to this section for the same jobs for which the previous incentive was approved.

(b) (Deleted by amendment, L. 2008, p. 943, § 1, effective August 5, 2008.)

(8) Of the total amount appropriated by the general assembly to the commission to be used for the purposes of this section, an amount equal to fifteen percent of the amount appropriated shall be used by the commission to award performance-based incentives pursuant to this section to employers who open a new business or expand or relocate an existing business and create new jobs in an enterprise zone that is not within the boundaries of the counties of Denver, Boulder, Douglas, Arapahoe, Jefferson, or Broomfield.

(9) (a) There is hereby created in the state treasury the new jobs incentives cash fund, referred to in this section as the "fund". The fund shall consist of:

(I) Moneys transferred to the fund in accordance with section 12-47.1-701 (2), C.R.S.; and

(II) Any moneys appropriated to the fund by the general assembly.

(b) The moneys in the fund shall be annually appropriated by the general assembly for the purposes of this section. All moneys not expended or encumbered, and all interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund at the end of any fiscal year. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

24-46-105.8. Performance-based incentive for film production in Colorado - film incentives cash fund - definitions.

(1) to (3) (Deleted by amendment, L. 2009, (HB 09-1010), ch. 419, p. 2332, § 3, effective July 1, 2009.)

(4) Repealed.

(5) and (6) (Deleted by amendment, L. 2009, (HB 09-1010), ch. 419, p. 2332, § 3, effective July 1, 2009.)

24-46-106. Repeal of part. This part 1 is repealed, effective July 1, 2017.

PART 2

VENTURE CAPITAL PROGRAM

24-46-201. Definitions. As used in this part 2, unless the context otherwise

requires:

(1) "Authority" means the venture capital authority created in section 24-46-202.

(2) "Certified capital" means an amount of cash that is contributed by a qualified taxpayer to the authority that is deposited in a venture capital fund.

(3) (a) "Distressed urban community" means an area within a city or city and county:

(I) Where a qualified business would not be a qualified rural business; and

(II) That has been designated as an enterprise zone pursuant to article 30 of title 39, C.R.S.

(b) If a distressed urban community's enterprise zone status is terminated pursuant to article 30 of title 39, C.R.S., a certified investment shall nevertheless continue to be considered an investment in a qualified business that has its principal business operation located in a distressed urban community if the location was in an enterprise zone at the time of the first qualified investment by the fund manager in the business.

(4) "Enterprise fund" means the enterprise fund created in section 24-46-202.

(5) "Fund manager" means a partnership, corporation, trust, or limited liability company that invests cash in qualified businesses or qualified rural businesses and is selected through the authority's competitive selection process to establish and manage one or more venture capital funds as described in this part 2. A fund manager shall have at least two years of money management experience in the venture capital industry or the equivalent as determined by the authority.

(6) "Premium tax liability" means the liability imposed by section 10-3-209 or 10-6-128, C.R.S., or, in the case of a repeal or reduction by the state of the liability imposed by section 10-3-209 or 10-6-128, C.R.S., any other tax liability imposed upon an insurance company by the state.

(7) "Proceeds" means any revenues arising from the use of certified capital, including, but not limited to, income generated from qualified investments and income generated from all certified capital not currently invested in qualified investments.

(8) (a) "Qualified business" means a business that, subject to paragraphs (b) and (c) of this subsection (8), meets all of the following criteria as of the time of a fund manager's first qualified investment in the business and as otherwise determined by the authority:

(I) The business:

(A) Is headquartered in this state and its principal business operations are located in this state; or

(B) Has entered into a contract with a fund manager to comply, within nine months after finalization of the contract, with sub-subparagraph (A) of this subparagraph (I) and the contract contains enforceable provisions requiring a return of any investment of certified capital and any other revenues required to be paid in the event of noncompliance with this subsection (8) or a contract provision;

(II) Is a small business;

(III) Is not a business predominantly engaged in:

(A) Professional services provided by accountants, doctors, or lawyers;

(B) Banking; lending; real estate development; insurance; oil and gas exploration; direct gambling activities, which do not include ancillary gambling businesses such as manufacturers of gaming equipment and others as defined by the authority; or

(C) Making loans to or investing in a fund manager or affiliates of a fund manager;

(IV) Does not receive an investment from a venture capital fund that exceeds fifteen percent of the venture capital fund's aggregate total of certified capital; and

(V) Maintains its business in this state for at least five years after first receiving an investment of certified capital and has entered into a contract with a fund manager to comply with this requirement. The contract shall contain enforceable provisions requiring a return of any investment of certified capital and any other revenues required to be paid in the event of noncompliance with this subparagraph (V) or a contract provision.

(b) If a business meets some, but not all, of the criteria set forth in paragraph (a) of this subsection (8), the business may nevertheless be deemed to be a qualified business if the authority determines that the investment of certified capital in the business proposed by a fund manager pursuant to this part 2 will further the economic development of the state.

(c) Any business that is classified as a qualified business at the time of the first qualified investment in the business by a fund manager shall remain classified as a qualified business, and may receive continuing qualified investments from a venture capital fund. The continuing investments shall be qualified investments even though the business may not meet the definition of a qualified business at the time of the continuing investments; except that a qualified business shall comply with subparagraph (V) of paragraph (a) of this subsection (8) for at least five years after an initial qualified investment to remain a qualified business and to receive continuing qualified investments.

(9) "Qualified distribution" means any distribution out of certified capital from a venture capital fund for expenses related to managing and operating the fund. Qualified distributions shall not exceed two and one-half percent annually of the total amount of certified capital allocated to each venture capital fund unless authorized by the authority after a review of extraordinary items. "Qualified distribution" does not include the use of certified capital for litigation challenging the validity, implementation, or effect of this part 2 or article 3.5 of title 10, C.R.S., lobbying, or governmental relations.

(10) (a) "Qualified investment" means, subject to paragraph (b) of this subsection (10), the investment of certified capital by a fund manager in a qualified business or qualified rural business, as applicable, for the purchase of any debt, debt participation, equity, or hybrid security, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation

instruments, including, but not limited to, options or warrants; except that a fund manager shall use certified capital only to make seed and early-stage investments in qualified businesses or qualified rural businesses, as applicable; except that the authority may allow a qualified investment in a qualified rural business that is not a seed or early-stage investment if the investment is appropriate and later-stage capital investments are not otherwise available to the qualified rural business. An investment shall be deemed to be a qualified investment only if the qualified business or qualified rural business in which the investment is made expends the qualified investment within Colorado; except that this limitation shall not be deemed to preclude the purchase of services or goods from outside of Colorado if such services are performed and such goods are used in Colorado.

(b) A fund manager shall not make a loan to a qualified business or qualified rural business unless the business has received two written loan rejection letters from two different commercial banks headquartered or chartered in Colorado that make small business loans, one of which shall be a preferred lender designated by the federal small business administration. Any such loan by a fund manager shall not be made through or in connection with any guaranteed loan program.

(11) (a) "Qualified rural business" means a qualified business that has its principal business operations in any county, but not any city and county, in this state that, as of June 9, 2001, has a population of not more than one hundred fifty thousand people and, if the county's population exceeds twenty thousand people, that has a growth rate that does not exceed the statewide average for the period of 1990-2000 by more than twenty-five percent as defined in the two most recent decennial censuses. Additionally, a qualified rural business shall be located in an area designated as an enterprise zone pursuant to article 30 of title 39, C.R.S., unless the authority waives this requirement.

(b) Any business that is classified as a qualified rural business at the time of the first qualified investment in the business by a fund manager shall remain classified as a qualified rural business and may receive continuing qualified investments from a venture capital fund. The continuing investments shall be qualified investments even though the business may not meet the definition of a qualified rural business at the time of the continuing investments; except that, to remain a qualified rural business and to receive qualified investments, a qualified rural business shall comply with subparagraph (V) of paragraph (a) of subsection (8) of this section for at least five years after an initial qualified investment.

(12) "Qualified taxpayer" means an insurance company that has contributed certified capital to the authority and received a tax credit certificate from the authority pursuant to section 24-46-204; except that, upon payment of certified capital by a qualified taxpayer, the qualified taxpayer may transfer or sell all or a portion of its venture capital tax credits to another insurance company, in which case "qualified taxpayer" shall be deemed to refer to such insurance company. A transfer or sale of venture capital tax credits by a qualified taxpayer shall not affect the schedule for taking the venture capital

tax credits as provided in this part 2.

(13) "Seed and early-stage investment" means the first investment from a professional venture capital firm to a qualified business. A seed investment is made to a qualified business that has not yet fully established commercial operations or that involves continued research and product development. An early-stage investment is made to a qualified business for product development or initial marketing, manufacturing, or sales activities.

(14) "Venture capital fund" means one or more rural venture capital funds, one or more distressed urban community venture capital funds, or one or more statewide venture capital funds as described in section 24-46-203 (1), located outside of the state treasury, containing certified capital that is managed by a fund manager to make qualified investments.

(15) "Venture capital tax credit" or "tax credit" means the tax credit created by section 24-46-204 that a qualified taxpayer may claim pursuant to this part 2.

24-46-202. Venture capital authority - board - staffing fund - bonds - enterprise fund - distribution of proceeds. (1) (a) There is hereby created as a special purpose authority, as defined in section 24-77-102 (15), the venture capital authority. The authority shall be a body corporate, a political subdivision of the state, and a public instrumentality, and its exercise of the powers conferred by this part 2 shall be deemed and held to be the performance of an essential public function; except that the authority shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state. The authority shall constitute an enterprise for the purposes of section 20 of article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total annual revenues in grants, as defined in section 24-77-102 (7), from all Colorado state and local governments combined. The authority shall not be a district for purposes of section 20 of article X of the state constitution.

(b) (I) The governing body of the authority shall be a board of directors consisting of nine members, of whom five shall be appointed by the governor, two shall be appointed by the president of the senate, and two shall be appointed by the speaker of the house of representatives. Board members shall be residents of this state. Board members shall have experience in venture capital, investment banking, institutional investment, fund management, or banking. A board member shall not have a business relationship with a current or proposed fund manager in the previous three years or for at least three years after an allocation of certified capital. Each member shall serve until a successor has been appointed and qualified. Any member shall be eligible for reappointment. The person making the original appointment shall fill any vacancy by appointment for the remainder of an unexpired term.

(II) (A) Subject to sub-subparagraph (B) of this subparagraph (II), the members of

the board shall serve four-year terms, expiring on May 5 of each year.

(B) The speaker and the president shall each appoint one member with an initial term of two years and one member with an initial term of three years. Of the members appointed by the governor, two shall have initial terms of one year, two shall have initial terms of two years, and one shall have an initial term of three years.

(c) Any member of the board may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless the notice and hearing have been expressly waived in writing.

(d) (I) The board of directors of the authority shall adopt its own rules of procedure, shall elect a chair and a vice-chair from its membership, and shall keep a record of its proceedings. The authority may hire staff as it deems necessary or convenient to administer this part 2. The Colorado office of economic development and the Colorado economic development commission shall cooperate with the authority in such administration. The authority shall pay the office in advance as agreed upon by the authority and the office for all costs incurred by the office in providing staffing for the authority, including but not limited to the costs of compensation for employees staffing the authority and administration related to such staffing. The office shall credit any payment received from the authority to the venture capital authority staffing fund, which fund is hereby created in the state treasury. The fund is continuously appropriated to the office to pay costs incurred by the office in providing staffing for the authority. Interest and income derived from the deposit and investment of moneys in the fund shall remain in the fund and shall not be transferred to the general fund or any other fund at the end of any fiscal year.

(II) The authority shall meet at least once each quarter. Members shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

(2) (a) The authority may, by resolution that meets the requirements of subsection (3) of this section, authorize and issue revenue bonds in an amount not to exceed five million dollars in the aggregate for expenses of the authority. Bonds may be issued only after approval by both houses of the general assembly acting either by bill or joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution. Bonds shall be payable only from the enterprise fund.

(b) All bonds issued by the authority shall provide that:

(I) No holder of bonds may compel the state or any subdivision thereof to exercise its appropriation or taxing power; and

(II) The bonds do not constitute a debt or financial obligation of the state and are payable only from the net revenues allocated to the authority for expenses as designated in the bonds.

(3) (a) Any resolution authorizing the issuance of bonds under this section shall state:

(I) The date of issuance of the bonds;

(II) A maturity date or dates during a period not to exceed twenty years after the date of issuance of the bonds;

(III) The interest rate or rates on, and the denomination or denominations of, the bonds; and

(IV) The medium of payment of the bonds and the place where the bonds will be paid.

(b) Any resolution authorizing the issuance of bonds under this section may:

(I) State that the bonds are to be issued in one or more series;

(II) State a rank or priority of the bonds; and

(III) Provide for redemption of the bonds prior to maturity, with or without premium.

(4) Any bonds issued pursuant to the terms of this section may be sold at public or private sale. If bonds are to be sold at a public sale, the authority shall advertise the sale in any manner the authority deems appropriate. All bonds issued pursuant to the terms of this section shall be sold at a price not less than the par value thereof, together with all accrued interest up to the date of delivery.

(5) Notwithstanding any provision of law to the contrary, all bonds issued pursuant to this section are negotiable.

(6) (a) A resolution pertaining to issuance of bonds under this section may contain covenants as to:

(I) The purpose to which the proceeds of sale of the bonds may be applied, and the permissible use and disposition thereof;

(II) Such matters as are customary in the issuance of revenue bonds, including, without limitation, the issuance and lien position of other or additional bonds; and

(III) Books of account and the inspection and audit thereof.

(b) Any resolution made pursuant to the terms of this section shall be deemed a contract with the holders of the bonds, and the duties of the authority under the resolution shall be enforceable by any appropriate action in a court having jurisdiction.

(7) Bonds issued under this section and bearing the signatures of the board members of the authority in office on the date of the signing shall be deemed valid and binding obligations regardless of whether, prior to delivery and payment, any or all of the persons whose signatures appear thereon have ceased to be members of the board.

(8) (a) Except as otherwise provided in the resolution authorizing the bonds, all bonds of the same issue under this section shall have a prior and paramount lien on the net revenues pledged therefor. The authority may provide for preferential security for any bonds, both principal and interest, to be issued under this section to the extent deemed feasible and desirable by the authority over any bonds that may be issued thereafter.

(b) Bonds of the same issue or series issued under this section shall be equally and ratably secured, without priority by reason of number, date, sale, execution, or delivery,

by a lien on the net revenue pledged in accordance with the terms of the resolution authorizing the bonds.

(9) The authority may accept grants from any source and shall deposit the grants in the enterprise fund, which fund is hereby created in the authority. The enterprise fund shall be a revolving fund administered by the authority as a government-owned business that provides oversight concerning the investment of revenues in the enterprise fund pursuant to this part 2. Revenues earned on the investment or deposit of moneys in the enterprise fund shall be credited to the enterprise fund.

(10) (a) The authority shall utilize the enterprise fund:

(I) As a revolving, evergreen fund to provide continued seed and early-stage investment capital to qualified businesses and qualified rural businesses, and for this purpose the authority shall transfer revenues in the fund to one or more venture capital funds for the purpose of enabling a fund manager to make qualified investments; and

(II) For its direct and indirect expenses in administering this part 2, including repayment of revenue bonds and payment for costs of staffing the authority paid to the Colorado office of economic development pursuant to subparagraph (I) of paragraph (d) of subsection (1) of this section.

(b) The authority shall deposit revenues from the following sources in the enterprise fund:

(I) Distributions of an amount equal to one hundred percent of certified capital prior to the distribution of any remaining proceeds;

(II) Distributions of all remaining proceeds according to the authority's contract with each fund manager;

(III) Fees; and

(IV) Assessed penalties.

24-46-203. Venture capital funds - managers - qualified investments - contract - distributions. (1) The authority shall establish procedures and additional selection criteria for, and shall conduct, a competitive process for the selection of one or more fund managers to establish and manage one or more rural venture capital funds and to establish and manage one or more statewide venture capital funds. The authority shall establish and publicize the deadlines for the competitive selection process. The authority may establish reasonable application fees. In conducting the competitive process, the authority shall not be subject to the requirements of the "Procurement Code", articles 101 to 112 of this title. The authority shall select fund managers by December 31, 2004, and thereafter as necessary. When selecting a fund manager, the authority shall place a significant emphasis on:

(a) The total amount of venture capital managed by the applicant in Colorado and elsewhere;

(b) The applicant's historical return on investment, with an emphasis on returns

from seed and early stage investments;

(c) The percentage of proceeds to be retained by the applicant in comparison with the percentage of proceeds to be distributed to the enterprise fund.

(2) The authority shall allocate:

(a) Twenty-five percent of certified capital to one or more fund managers for the establishment and management of one or more rural venture capital funds for the purpose of making qualified investments in qualified rural businesses;

(b) Fifty percent of certified capital to one or more fund managers for the establishment and management of one or more statewide venture capital funds for the purpose of making qualified investments in other qualified businesses; and

(c) Twenty-five percent of certified capital to one or more fund managers for the establishment and management of one or more distressed urban community venture capital funds for the purpose of making qualified investments in qualified businesses whose principal business operations are located in a distressed urban community.

(3) As soon as practicable after the selection date, the authority and each fund manager shall enter into a contract whereby the fund manager shall establish and manage the venture capital funds pursuant to this part 2 and shall comply with other requirements established by the authority. The contract shall specify that the fund manager shall make qualified investments according to the following schedule:

(a) By January 1, 2006, the fund manager shall have made at least one qualified investment.

(b) Within the period ending three years after an allocation date, a fund manager shall have made qualified investments cumulatively equal to at least thirty percent of the certified capital allocated to it on such allocation date.

(c) Within the period ending five years after an allocation date, a fund manager shall have made qualified investments cumulatively equal to at least fifty percent of the certified capital allocated to it on such allocation date.

(d) Within the period ending ten years after an allocation date, a fund manager shall have made qualified investments cumulatively equal to at least one hundred percent of the certified capital allocated to it on such allocation date.

(4) A fund manager may, before making a proposed qualified investment in a specific business, request from the authority a written opinion that the business in which it proposes to invest is located in a distressed urban community or should be considered a qualified business or qualified rural business, as applicable. Upon receiving a request, the authority shall have thirty working days to determine whether the business is located in a distressed urban community or the business meets the definition of a qualified business or qualified rural business, as applicable, and notify the fund manager of its determination with an explanation of the determination. If the authority fails to notify the fund manager of its determination within thirty working days, the business in which the fund manager proposes to invest shall be deemed to be located in a distressed urban community or to be

a qualified business or qualified rural business, as applicable.

(5) A fund manager shall invest all certified capital not currently invested in qualified investments in:

(a) Cash that is deposited in a federally insured financial institution;

(b) Certificates of deposit in a federally insured financial institution;

(c) Investment securities that are obligations of the United States, its agencies, or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(d) Debt instruments rated at least "AA" or its equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a nationally recognized credit rating organization, and that are not subordinated to other unsecured indebtedness of the issuer or the guarantor, as the case may be;

(e) Obligations of this state, any municipality in this state, or any political subdivision thereof;

(f) Interests in money market funds, the portfolios of which are limited to cash and obligations described in this subsection (5); or

(g) Any other investments approved in advance and in writing by the authority.

(6) (a) The authority's contract with a fund manager shall state the terms governing the distribution, other than a qualified distribution, of certified capital and proceeds. Unless authorized by its contract with the authority and until it has made the distribution specified in paragraph (b) of this subsection (6), a fund manager shall not make any distributions from:

(I) Certified capital other than qualified distributions; or

(II) Proceeds.

(b) (I) The fund manager shall distribute to the authority an amount equal to one hundred percent of certified capital allocated to venture capital funds managed by the fund manager prior to making distributions pursuant to subparagraph (II) of this paragraph (b). The authority shall deposit the distribution in the enterprise fund.

(II) After the distribution made pursuant to subparagraph (I) of this paragraph (b) has occurred, the fund manager shall distribute all remaining certified capital and proceeds on a pro-rated basis between the authority and the fund manager as negotiated in the contract by the authority and as certified capital and proceeds become available. The authority shall deposit the distributions to the enterprise fund.

(7) (a) In addition to other items as specified by the authority, on or before January 31 of each year, each fund manager shall report the following to the authority:

(I) The balance of certified capital at the end of the immediately preceding calendar year for each venture capital fund managed by the fund manager;

(II) The number of jobs created in Colorado from qualified investments made by the fund manager and the amount of proceeds, if any, received by the fund manager from

the investments;

(III) The amount of qualified distributions made by the fund manager from certified capital during the immediately preceding calendar year; and

(IV) All qualified investments made by the fund manager from certified capital during the immediately preceding calendar year.

(b) Annually, and within ninety days after the close of its fiscal year, each fund manager shall provide to the authority an audited financial statement that includes the opinion of an independent certified public accountant. The audit shall address the methods of operation and conduct of the business of the fund manager to determine whether the fund manager is complying with this part 2 and the authority's contract and whether the certified capital received by the fund manager has been invested as required under this part 2 and the authority's contract.

(8) Venture capital fund offering materials shall include the following statement:

> **The state of Colorado does not endorse the quality of management or the potential for earnings of such fund and is not liable for damages or losses to any investor in the fund or any other entity. Selection by the Colorado Venture Capital Authority to participate in this program does not constitute a recommendation or endorsement of the venture capital fund or its investments by the Colorado Venture Capital Authority.**

(9) If a fund manager violates any applicable provision of this part 2 or any material provision of the authority's contract with the fund manager, the authority may require the fund manager to make a payment in an amount up to the amount of certified capital received by the fund manager in addition to penalties as determined by the authority. The payments shall be deposited in the enterprise fund. The authority may use additional remedies, as specified in its contract with a fund manager, to ensure appropriate oversight of the venture capital program. The authority shall conduct an annual review of each fund manager to determine its compliance with the requirements of this part 2 and its contract with the authority.

24-46-204. Venture capital tax credits - contributions to authority - report. (1) For tax years commencing on or after January 1, 2005, but no later than January 1, 2014, and subject to the requirements and limitations of this section, there shall be allowed to any qualified taxpayer a venture capital tax credit to be used against the taxpayer's premium tax liability. The authority shall issue tax credit certificates to qualified taxpayers with a total value of fifty million dollars to be taken by one or more qualified taxpayers at the rate of up to five million dollars per year for each of the

calendar years from 2005 through 2014; except that if H.B. 04-1206 is enacted at the second regular session of the sixty-fourth general assembly, becomes law, and is subsequently declared to be unconstitutional by a final judgment that invalidates the tax credits enacted by such bill, the authority shall issue tax credit certificates to qualified taxpayers with a total value of one hundred million dollars to be taken by one or more qualified taxpayers at the rate of up to ten million dollars per year for each of the remaining calendar years through 2014. A qualified taxpayer shall submit the tax credit certificate with the taxpayer's tax return.

(2) Upon completion of the authority's competitive selection process for fund managers pursuant to section 24-46-203, but no earlier than January 31, 2004, and no later than December 1 of each year from 2005 until 2014, the authority shall issue a tax credit certificate to a qualified taxpayer pursuant to subsection (5) of this section and shall allocate certified capital contributed to the authority by the qualified taxpayer to one or more fund managers selected by the authority in accordance with section 24-46-203 (2).

(3) If the amount of the tax credit claimed by a qualified taxpayer exceeds the amount due on its premium tax liability in the tax year for which the tax credit is being claimed, the amount of the tax credit not used to offset taxes may be carried forward for up to ten years as tax credits against the qualified taxpayer's subsequent years' premium tax liability.

(4) A qualified taxpayer claiming a tax credit against premium tax liability earned through a contribution of certified capital to the authority shall not be required to pay any additional or retaliatory tax as a result of claiming the credit.

(5) (a) An insurance company shall become a qualified taxpayer if all of the conditions of the tax credit certificate and the following conditions are met:

(I) Pursuant to a form established by the authority, the insurance company shall make a timely and irrevocable offer, contingent only upon the authority's issuance to the insurance company of a tax credit certificate, to make a specified contribution of certified capital to the authority on dates specified by the authority. The offer shall include the requested amount of tax credits, the year for which the tax credits are requested, the insurance company's specified contribution for each tax credit dollar requested, which contribution shall be no less than eighty percent of the requested amount of tax credits, and any other information required by the authority.

(II) The authority shall issue a tax credit certificate to the insurance company. The tax credit certificate shall state the date by which cash contributions shall be made by the qualified taxpayer, the date by which tax credits shall be available for use by the qualified taxpayer, penalties and any other remedies for noncompliance, and any other requirements deemed necessary by the authority as a condition of issuing the tax credit certificate.

(III) Pursuant to subsection (7) of this section, the insurance company timely makes the contribution of certified capital to the authority specified in subparagraph (I) of

this paragraph (a).

(b) The authority shall establish and publicize to insurance companies:

(I) Deadlines for submitting irrevocable offers for contributions and for issuing tax credit certificates;

(II) Forms and requirements for offers and the content requirements of such offers; and

(III) Any other requirement determined to be necessary by the authority.

(c) (I) A tax credit certificate shall specify:

(A) An amount of money that a qualified taxpayer may claim as a tax credit pursuant to this section;

(B) The amount of certified capital that the qualified taxpayer has contributed or will contribute by the dates specified in the tax credit certificate;

(C) The calendar year in which the tax credits may be used against the qualified taxpayer's premium tax liability;

(D) Penalties and remedies in the event of noncompliance by the qualified taxpayer; and

(E) Other conditions deemed necessary by the authority.

(II) The authority shall continue to issue tax credit certificates in the order of the insurance companies that have offered to contribute the next highest value per tax credit dollar requested until the authority has issued five million dollars of tax credit certificates per year, or if H.B. 04-1206 is enacted at the second regular session of the sixty-fourth general assembly, becomes law, and is subsequently declared to be unconstitutional, until the authority has issued ten million dollars of tax credit certificates per year; except that the authority may issue tax credit certificates on an annual basis, a multi-year basis, or periodically as it deems necessary.

(6) On or before January 31, 2006, and on or before each succeeding January 31 until January 31, 2015, the authority shall provide a report to the division of insurance in the department of regulatory agencies. The report shall identify each qualified taxpayer for the tax year that ended during the prior calendar year by name and identifying number issued by the national association of insurance commissioners, or any analogous successor organization, and shall list the amount of the tax credits allowed to the qualified taxpayer.

(7) (a) To become a qualified taxpayer, an insurance company shall pay the specified amount of certified capital to the authority when due.

(b) (I) If an insurance company fails to make a payment of certified capital to the authority when due, the authority shall provide the insurance company with a notice by certified mail that the insurance company has fifteen working days to cure the defect. The fifteen-day period shall begin on the date the notice is postmarked.

(II) Failure by an insurance company to make the payment of certified capital by the end of the fifteenth working day shall result in an immediate forfeiture of any right to

claim the tax credits. The authority shall be authorized to reallocate such tax credits to other qualified taxpayers as deemed necessary by the authority. Reallocation shall not diminish the authority's ability to use penalties and remedies as stated in the tax certificate.

(III) The authority shall assess penalties against a qualified taxpayer that fails to make the payment of certified capital by the end of the fifteenth working day as stated in the tax credit certificate and may pursue other remedies and actions as stated in the tax certificate.

24-46-205. Administrative expenses. All direct and indirect expenditures incurred by the authority in carrying out the responsibilities assigned in this part 2 shall be paid from the enterprise fund without the necessity of an appropriation by the general assembly.

24-46-206. Office - report. The office of economic development shall assist the authority in administering this part 2. The authority shall submit a report to the state auditor on February 1 of each year regarding the results of the implementation of this part 2. The state auditor shall audit the implementation of this part 2 within three years after March 4, 2004, and submit a report of the audit to the legislative audit committee.

24-46-207. Conflict of interest. No member or employee of the executive branch shall become an officer, director, employee, or consultant of or receive any compensation from the authority or a fund manager either during the term of the member or employee's employment with the executive branch or for six years after such term ends. However, this section shall not prohibit any employee of the Colorado office of economic development from staffing the authority or prohibit the authority from paying the office for costs of staffing the authority incurred by the office in providing staffing for the authority as required by section 24-46-202 (1) (d) (I).

PART 3

COLORADO REGIONAL TOURISM ACT

24-46-301. Short title. This part 3 shall be known and may be cited as the "Colorado Regional Tourism Act".

24-46-302. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The health, safety, and welfare of the people of the state of Colorado are enhanced by a diverse revenue stream, and the people of the state would benefit from an expansion of opportunities for investment in large-scale regional tourism projects that will attract significant investment and revenue from outside the state;

(b) Diversification of the state's economic base can contribute to much-needed economic stability;

(c) Colorado is in competition with other states to attract large-scale regional tourism projects;

(d) It is in the best interests of the people of the state to provide a financing mechanism for attracting, constructing, and operating large-scale regional tourism projects that will attract significant investment and revenue from outside the state; and

(e) In keeping with Colorado's tradition of local governments playing a significant role in land use and development projects, regional tourism projects should be proposed by a local government or by one or more local governments working together.

24-46-303. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Base year revenue" means the state sales tax revenue collected during the twelve-month period immediately prior to the month in which a regional tourism project is authorized, as determined by the department of revenue.

(2) "Commission" means the Colorado economic development commission created in section 24-46-102.

(3) "Director" means the director of the Colorado office of economic development created in section 24-48.5-101.

(4) "Eligible costs" means the costs of designing, constructing, financing, and maintaining eligible improvements designated by the commission as part of an approved regional tourism project, including but not limited to costs of engineering, construction engineering, surveying, construction surveying, construction labor and materials, design, planning, legal services, accounting, overhead or administrative staffing, financing, bond issuance or reissuance, underwriting, interest payments, loan origination fees, and similar necessary and convenient costs incurred by the financing entity in exercising its powers pursuant to this part 3. Moneys advanced by private developers within the regional tourism project to the financing entity for eligible improvements, whether pursuant to loans or contractual funding and reimbursement agreements, together with reasonable interest thereon, shall be eligible costs. In addition, the financing entity's costs for purchasing eligible improvements constructed and owned by third parties either prior to or subsequent to designation of the regional tourism project shall be eligible costs. Costs

and expenses incurred by the financing entity pursuant to section 24-35-118 and in complying with its annual report and audit obligations under this part 3 shall be eligible costs.

(5) "Eligible improvements" means the specific improvements authorized by the commission as part of an approved regional tourism project, whether publicly or privately owned, including but not limited to storm sewer and sanitary sewer collection, conveyance, distribution, treatment, and related facilities and real property interests necessary or convenient thereto; potable and nonpotable water supplies and collection, conveyance, distribution, treatment, and related facilities and real property interests related thereto; roads; streets; state highways; rights-of-way; lighting; traffic signals and signs; direction and location signage and similar signage; land acquisition; surveying, engineering, soils testing, site planning, grading, and similar activities necessary or convenient for site preparation and development; park and recreational facilities; trails and paths; public safety facilities; landscaping; tourism and entertainment facilities; transportation facilities; surface and structured parking facilities; and any other facilities or improvements necessary to or convenient for the completion of an approved project.

(6) "Financing entity" means the entity designated by the commission in connection with its approval of a regional tourism project to receive and utilize state sales tax increment revenue. A financing entity may be a metropolitan district created pursuant to title 32, C.R.S., an urban renewal authority created pursuant to part 1 of article 25 of title 31, C.R.S., or any regional tourism authority to be formed pursuant to this part 3.

(7) "Financing term" means the aggregate period authorized by the commission pursuant to this part 3 within which the financing entity is authorized to receive and utilize state sales tax increment revenue to finance eligible costs.

(7.5) "Gambling-related activities" means any betting, wagering, or payments made on or in connection with one or more games that qualify as gambling as defined in section 18-10-102 (2), C.R.S., or limited gaming as defined in section 9 of article XVIII of the state constitution and section 12-47.1-103 (19), C.R.S.

(8) "Local government" means a city, county, city and county, or town or a group of contiguous cities, counties, city and counties, or towns.

(9) "Regional tourism authority" or "authority" means a corporate body organized pursuant to this part 3 for the purposes, with the powers, and subject to the restrictions set forth in this part 3 and the formation of which has been approved by the commission pursuant to this part 3.

(10) "Regional tourism project" or "project" means a development project that is planned to include a tourism or entertainment facility together with ancillary uses, structures, and improvements, and that has been approved by the commission pursuant to this part 3.

(11) "Regional tourism zone" means the geographic area defined by the commission as part of an approved regional tourism project. A regional tourism zone

shall not extend into the territorial boundaries of any local government except for the local government that is requesting the designation of the regional tourism zone. A regional tourism zone may be limited to portions of a local government and may include noncontiguous tracts or parcels of property.

(12) "State sales tax increment revenue" means the portion of the revenue derived from state sales taxes collected within a designated regional tourism zone in excess of the amount of base year revenue.

Editor's note: This version of subsection (12) is effective until July 1, 2014.

(12) "State sales tax increment revenue" means the portion of the revenue derived from state sales taxes, not including any sales taxes for remote sales as specified in section 39-26-104 (2), C.R.S., collected within a designated regional tourism zone in excess of the amount of base year revenue.

Editor's note: This version of subsection (12) is effective July 1, 2014.

(13) "Tourism or entertainment facility" means a facility or group of interrelated facilities constructed primarily for use as a tourism or entertainment venue that is reasonably anticipated to draw a significant number of regional, national, or international patrons. A tourism or entertainment facility may include but need not be limited to museums, stadiums, arenas, major sports facilities, performing arts theaters, theme or amusement parks, conference center or resort hotels, or other similar venues. "Tourism or entertainment facility" shall not include any facility or group of interrelated facilities that directly or indirectly offer, make available, or facilitate in any manner one or more gambling-related activities.

24-46-304. Regional tourism project - application - requirements. (1) Any local government may apply for approval of a regional tourism project, including designation of a regional tourism zone, the creation of a regional tourism authority, and designation of a financing entity to receive, utilize, and disburse state sales tax increment revenue for eligible costs.

(2) A local government shall submit an application for a regional tourism project to the Colorado office of economic development in a form and manner to be determined by the commission. The office shall provide the commission with each application received after the director's review pursuant to section 24-46-305. The application shall include, but need not be limited to, the following:

(a) Maps of the proposed project area showing both current conditions and a conceptual rendering of the proposed project in its anticipated built condition;

(b) A map showing the proposed boundaries of the proposed regional tourism zone;

(c) A narrative description of the proposed project, including the location and estimated overall cost, estimated eligible costs, anticipated scope and phasing of eligible improvements, and the infrastructure existing or needed in connection with the project;

(d) A discussion of each of the application criteria and how the project will meet each of the criteria, including an economic analysis detailing projected economic development, impact on future state sales tax revenue during and after the financing term, the number of new jobs to be created by the project by job category as defined by the Colorado department of labor and employment occupational employment statistics survey and the wages and, to the extent that it is reasonably possible, information on health benefits for jobs in each category, market impact, anticipated regional and in-state competition, the ability to attract out-of-state tourists, the fiscal impact to local governments within and adjacent to the regional tourism zone, an analysis of the impact to local school districts and an estimate of the percentage of total program that the state will become responsible to fund through the state's share of total program pursuant to section 22-54-106, C.R.S., in the event that an urban renewal authority is the financing entity for the regional tourism project and uses property tax revenue to finance the project, and any other information reasonably requested by the commission;

(e) A description of the proposed financing entity, a general description of the financing entity's plan for financing the eligible costs and providing the eligible improvements, and whether authorization of a regional tourism authority is requested. A request for authorization of a regional tourism authority shall include a description of the proposed authority's geographic boundaries, requested powers, and anticipated sources of revenue, if any, in addition to state sales tax increment revenue.

(f) If it is anticipated that the financing entity will enter into contractual arrangements with one or more urban renewal authorities, metropolitan districts, local governments, or private parties with respect to the method of financing the eligible costs and providing eligible improvements, a general description of such contemplated contractual arrangements;

(g) If it is anticipated that the eligible improvements will be constructed in phases or that financing of the eligible costs will be accomplished in phases, a description of the contemplated phases and anticipated timing of the phases;

(h) The proposed financing term, the percentage of state sales tax increment revenue to be allocated to the financing entity, and the portion of the financing term during which such percentage is to be allocated to the financing entity. No single debt issuance of the financing entity shall have a maturity date in excess of thirty years; except that the financing term may exceed thirty years to the extent that the financing entity anticipates issuing a series of bonds or other forms of debt and provided that the financing entity shall have the ability to consolidate or refinance previously issued debt or bonds

with a maturity date for such consolidated or refinanced debt or bonds not to exceed thirty years.

(i) Along with the economic analysis submitted with the application, a report by a third-party analyst who is an expert in the field of economic or public financial analysis calculating the percentage of the state sales tax increment revenue that will be dedicated to the regional tourism project to be set by the commission pursuant to section 24-46-305 (3) (d). The applicant shall share its data and reasoning with the third-party analyst, and the analyst shall rely on such data and reasoning as it deems appropriate in the exercise of its independent judgment. An applicant dissatisfied with such report may revise its application and request report revisions. The reviewing third-party analyst shall be chosen through a request for proposals issued by the office of state planning and budgeting to ensure an independent and thorough analysis, and the third-party analyst shall report to that office. The costs of such report shall be paid by the applicant directly to the third-party analyst.

(3) An application by a local government for designation as a regional tourism project shall be approved by the commission upon a finding by the majority of the commissioners participating in the review of the application that the application demonstrates that each of the following criteria are materially met:

(a) The project is of an extraordinary and unique nature and is reasonably anticipated to contribute significantly to economic development and tourism in the state and the communities where the project is located;

(b) The project is reasonably anticipated to result in a substantial increase in out-of-state tourism;

(c) A significant portion of the sales tax revenue generated by the project is reasonably anticipated to be attributable to transactions with nonresidents of the regional tourism zone; and

(d) The local government has provided reliable economic data demonstrating that, in the absence of state sales tax increment revenue, the project is not reasonably anticipated to be developed within the foreseeable future.

24-46-305. Regional tourism project approval - director - commission - review. (1) Upon receipt of a local government's application for a regional tourism project, the director or the director's designee shall review the application and shall make an initial determination regarding whether the application has met the criteria for a regional tourism project specified in section 24-46-304.

(2) (a) Upon review of each application for completeness, the director shall forward the application to any county or counties where the regional tourism project will be implemented and to municipalities adjacent to where the regional tourism project will be implemented for an opportunity to review the application and submit comments to the

commission. The director shall provide such counties and municipalities with the application at least thirty days prior to the public hearing held pursuant to subsection (3) of this section. The director shall also forward the application to the commission with a recommendation that the commission approve or deny the application or approve the application with conditions; except that the commission shall not approve any project that, if approved, would likely create a state sales tax revenue dedication of more than fifty million dollars to all regional tourism projects in any given year.

(b) (I) The commission shall not approve more than two initial projects pursuant to this subsection (2).

(II) In the calendar year succeeding the commission's approval of two initial projects pursuant to subparagraph (I) of this paragraph (b), the commission may approve two additional projects pursuant to this subsection (2).

(III) In the calendar year succeeding the commission's approval of two additional projects pursuant to subparagraph (II) of this paragraph (b), the commission may approve two additional projects pursuant to this subsection (2).

(3) The commission shall hold a public hearing, subject to the provisions of the "Colorado Sunshine Act of 1972", article 6 of this title, to review and consider the application. After the hearing has been held, the commission shall review each application and give consideration to the director's recommendations. The commission shall take action on the application within a reasonable time after submission. If the commission approves the application, it shall adopt a resolution specifying the following:

(a) The local government that has been approved to undertake a regional tourism project;

(b) The area of the regional tourism zone;

(c) Whether the commission has authorized the creation of a regional tourism authority; and

(d) The percentage of the state sales tax increment revenue that will be dedicated to the regional tourism project. Such percentage shall be set at a value that in the best estimation of the commission will result in only the net new revenue likely created by the project and related development being dedicated to the financing entity and shall exclude any sales tax revenue the state would likely have received without the project and development.

(4) As part of the approval of a regional tourism project, the commission shall authorize the department of revenue to collect the percentage of the state sales tax increment revenue set by the commission pursuant to paragraph (d) of subsection (3) of this section on behalf of the approved financing entity and shall authorize the financing entity to receive and utilize the state sales tax increment revenue for the duration of the financing term. In implementing such authorization, the department of revenue shall remit such revenue to the financing entity on a monthly basis promptly after collection. The commission shall authorize the utilization of the state sales tax increment revenue by the

financing entity pursuant to this part 3 and any conditions of approval imposed by the commission and incorporated in writing into the commission's resolution of approval.

(5) Following the commission's approval of an application, the commission shall promptly transmit written notice and a copy of the approval to the executive director of the department of revenue. Such transmittal shall include any information deemed necessary by the department of revenue to fulfill its obligations pursuant to this part 3.

24-46-306. Regional tourism authority - board - creation - powers and duties. (1) The commission shall not deny a request to authorize the creation of a regional tourism authority if the commission otherwise approves an application for a regional tourism project that includes a request for the formation of a regional tourism authority.

(2) A regional tourism authority, if authorized, shall be governed by a board consisting of the following members:

(a) If the applicant is a single local governmental entity, two members appointed by the commission who are owners of commercial property within the regional tourism zone and three members appointed by the local governmental entity. Of the members appointed by the local governmental entity, at least one member shall be a locally elected official and at least one member shall represent the community at large.

(b) If the applicant is two local governmental entities, three members appointed by the commission who are owners of commercial property within the regional tourism zone and two members appointed by each of the local governmental applicants. Of the members appointed by the local governmental applicants, at least one member shall be an elected official of the local government and at least one member shall represent the community at large.

(c) Except as otherwise provided in paragraph (d) of this subsection (2), if the applicant is more than two local governmental entities, a single member who is an elected official and a single member who represents the community at large appointed by each local governmental entity and one less than an equal number of commercial property owners within the tourism zone appointed by the commission.

(d) If the applicant is more than two local governmental entities that consist of more than two counties, a single member who is an elected official and a single member who represents the county at large appointed by each county governmental entity and one less than an equal number of commercial property owners within the regional tourism zone who are appointed by the commission.

(3) Unless limited by the commission's conditions of approval, each authority shall have all of the powers necessary or convenient to carry out and effect the purposes and provisions of this part 3, including but not limited to the following powers:

(a) Perpetual existence and succession;

(b) To adopt, have, and use a corporate seal;

(c) To sue and be sued and to be a party to suits, actions, and proceedings;

(d) To undertake regional tourism projects;

(e) To enter into contracts and agreements affecting the affairs of the regional tourism authority as necessary to complete a regional tourism project;

(f) To receive, invest, pledge, spend, and otherwise utilize and expend state sales tax increment revenue in accordance with an approved regional tourism project;

(g) To assign and pledge to any metropolitan district or urban renewal authority having all or any portion of the regional tourism zone within its boundaries or service area the authority's right to receive and utilize state sales tax increment revenue to support bonds or other financing instruments issued or entered into by the metropolitan district or urban renewal authority for eligible costs or to acquire eligible improvements, including but not limited to loans or funding and reimbursement agreements with developers involved in the regional tourism project or other third parties;

(h) To borrow money and incur indebtedness and evidence the same by certificates and note and debentures, to issue bonds, and to invest any moneys of the authority not required for immediate disbursement in property or in securities in which public bodies may legally invest funds subject to their control pursuant to part 6 of article 75 of this title;

(i) To deposit any moneys not required for immediate disbursement in any depository authorized in section 24-75-603 and, for the purpose of making such deposits, to appoint by written resolution one or more persons to act as custodians of the moneys of the authority, which person or persons shall give surety bonds in the amounts and form and for the purposes as the authority requires;

(j) To make such appropriations and expenditures of its funds and to set up, establish, and maintain such general, separate, or special funds and bank accounts or other accounts as it deems necessary or convenient to carry out and effect the purposes and provisions of this part 3;

(k) To accept on behalf of the regional tourism authority real or personal property for the use of the authority and to accept gifts and conveyances made to the authority upon such terms or conditions as the board of the authority may approve;

(l) To adopt, amend, and enforce bylaws and rules that are not in conflict with the constitution and laws of the state for carrying out the business, objects, and affairs of the authority;

(m) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the regional tourism authority by this part 3. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 3; and

(n) To authorize the use of electronic records or signatures and to adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to

article 71.3 of this title.

(4) A regional tourism authority shall not have the power of eminent domain and shall not have the power to impose or levy any sales tax, use tax, property tax, or any other tax.

(5) The board of directors of a regional tourism authority shall be subject to the provisions of the "Colorado Open Records Act", article 72 of this title, and the "Colorado Sunshine Act of 1972", article 6 of this title.

24-46-307. State sales tax increment revenue. (1) In order to implement the collection of state sales tax increment revenue, the resolution adopted by the commission approving a regional tourism project shall state that state sales taxes, if any, levied and collected after the effective date of the commission's approval of the project shall be divided and distributed by the department of revenue as follows:

(a) The portion of state sales taxes collected within the boundaries of the regional tourism zone equal to the base year revenue shall be paid into the state treasury as such state sales taxes are normally collected and paid; and

(b) The portion of sales tax revenue in excess of the base year revenue shall be allocated to and, when collected, paid into a special fund established by the financing entity. The financing entity shall segregate such revenue from other moneys of the financing entity, if any, and shall utilize such sales tax revenue solely to finance eligible costs incurred for the purpose of constructing the eligible improvements and implementing the regional tourism project. The special fund may be used, without limitation, to pay the principal of, the interest on, and any premiums due in connection with the bonds of, loans or advances to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such financing entity for financing or refinancing, in whole or in part, a regional tourism project. Any excess state sales tax collections not allocated pursuant to this paragraph (b) shall be paid into the funds of the state treasury.

(2) State sales tax increment revenue, together with any investment income earned thereon, shall be construed and treated for all purposes as being assigned to, the property of, and the revenue of the applicable financing entity and shall not be construed or treated for any purpose as revenue or property of the state.

24-46-308. Annual report - audit. (1) Within ninety days of the end of the first full state fiscal year after the commission approves a regional tourism project and on the same date each year thereafter, the financing entity shall prepare and submit to the commission an annual report detailing the total amount of state sales tax increment revenue that the regional tourism project has collected over the past year, how such revenue has been spent, projected revenue for the remainder of the period for which the

regional tourism project may collect state sales tax increment revenue, and a summary of the status of construction of the eligible improvements. If any information provided in the annual report is a trade secret, proprietary, or otherwise entitled to protection pursuant to article 72 of this title, it shall be so designated and shall be kept confidential by the state. The governing body of the financing entity shall attest to the accuracy of the information provided in the annual report.

(2) With the annual report, a financing entity shall submit an independent audit of its financial status that is prepared by a certified public accountant attesting to the accuracy of the annual report. In the report, the financing entity shall state whether any state sales tax increment revenue is being used for purposes other than for eligible costs, and any other financial information that is reasonably required by the commission.

(3) If the audit finds that state sales tax increment revenue has been used for unauthorized purposes, the financing entity shall be liable for the repayment of such state sales tax increment revenue to the project or to the general fund of the state. The repayment may be made from moneys of the financing entity derived from sources other than state sales tax increment revenue, if any, by offset against future state sales tax increment revenue that otherwise would be disbursed to it by the department of revenue, or from other moneys that are legally available to the financing entity for such purpose.

(4) If the financing entity is a metropolitan district or an urban renewal authority, it may comply with the requirements of this section by submitting to the commission a copy of the report that the metropolitan district or urban renewal authority is otherwise required to submit to a local government pursuant to law. Such copy shall be delivered to the commission concurrently with the delivery of the annual report and audit when otherwise required by law.

(5) The Colorado office of economic development and the department of revenue shall prepare a report to be submitted by the office no later than November 1 of the applicable fiscal year to the finance committees of the house of representatives and senate, the business and economic development committee of the house of representatives, and the business, labor, and technology committee of the senate, or any successor committees. The report shall present information on all tax expenditures for regional tourism economic development during the prior fiscal year and shall include information from the reports required pursuant to subsection (6) of this section.

(6) (a) Each year, no later than September 1, the department of revenue shall report the aggregate amount of state sales tax increment revenue diverted to financing entities for approved projects.

(b) Every two years, no later than September 1, the Colorado office of economic development and the department of revenue shall report detailed information on each project approved to receive state sales tax increment revenue, including but not necessarily limited to:

(I) The name, address, and contact for each recipient;

(II) The amount of sales tax revenue diverted for the project;

(III) The boundaries of the approved regional tourism zone and narrative for the project;

(IV) The proposed term of financing and the percent of the new net revenue that is approved for the project;

(V) The actual state sales tax revenue collected within the zone compared to the projected revenues contained in the approved application;

(VI) The number of net new jobs directly created by the project in each category as defined by the Colorado department of labor and employment occupation employment statistics survey and the wages and health benefits for jobs in each category; and

(VII) An assessment of the overall effectiveness of the project.

24-46-309. Commencement of development. (1) Substantial work on a regional tourism project, including but not limited to the financing entity's issuance of bonds or other debt instruments, the repayment of which is secured by a pledge of the state sales tax increment revenue or the commencement of actual development or predevelopment, such as erecting permanent structures, excavating the ground to lay foundations, mass grading of the site, or work of a similar description that manifests an intention and purpose to complete the project shall commence within five years from the date of approval of the project by the commission.

(2) If substantial work on the regional tourism project toward the goals specified in the application pursuant to section 24-46-304 does not commence within five years of approval by the commission, the commission may revoke or modify its approval of the financing entity or the regional tourism project. Revocation of approval may be appealed to the commission, which may reinstate its approval upon a showing of good cause for the delay. Any state sales tax increment revenue that the regional tourism project has generated from the time of the original approval for the project may remain dedicated to the project to the extent that it has been previously expended or pledged by the financing entity for the financing of eligible costs. If substantial work on the regional tourism project does not commence within one year of reinstatement of approval from the commission, the commission shall revoke approval of the project.

(3) If the commission revokes its approval of the financing entity or the regional tourism project, the commission may require that any state sales tax increment revenue collected during that period, together with investment income earned thereon, that was not previously expended or pledged by the financing entity for the financing of eligible costs shall be refunded to the state treasurer, and no further moneys shall be remitted by the state.

(4) In evaluating whether substantial work has been commenced for purposes of administering this section, the commission shall rely on the information and data supplied

in the annual reports submitted pursuant to section 24-46-308. The commission shall have authority to revoke its approval of a financing entity or a regional tourism project only pursuant to this section.

24-46-310. Issuance of bonds by a financing entity. (1) A financing entity may issue bonds from time to time in its discretion to finance any eligible improvements with respect to a regional tourism project and may also issue refunding or other bonds of the financing entity from time to time in its discretion for the payment, retirement, renewal, or extension of any bonds previously issued by the financing entity under this section and to provide for the replacement of lost, destroyed, or mutilated bonds previously issued under this section.

(2) (a) Bonds issued under this section may be general obligation bonds of the financing entity, the payment of which, as to principal and interest and premiums, if any, the full faith, credit, and assets, acquired and to be acquired, of the financing entity are irrevocably pledged.

(b) Bonds issued under this section may be special obligations of the financing entity that, as to principal and interest and premiums, if any, are payable solely from and secured only by a pledge of any income, proceeds, revenues, or funds of the financing entity, including, without limitation, state sales tax increment revenue.

(3) Notwithstanding any other provision of this section, any bonds issued under this section may be additionally secured as to the payment of the principal and interest and premiums, if any, by a mortgage of any regional tourism project, or any part thereof, title to which is then or thereafter in the financing entity or of any other real or personal property or interests therein then owned or thereafter acquired by the financing entity.

(4) Notwithstanding any other provision of this section, general obligation bonds issued under this section may be additionally secured as to the payment of the principal and interest and premiums, if any, as provided in subsection (2) of this section, with or without being also additionally secured as to payment of the principal and interest and premiums, if any, by a mortgage as provided in subsection (3) of this section or a trust agreement as provided in subsection (5) of this section.

(5) Notwithstanding any other provision of this section, any bonds issued under this section may be additionally secured as to the payment of the principal and interest and premiums, if any, by a trust agreement by and between the financing entity and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state.

(6) Bonds issued under this section shall not constitute an indebtedness of the state or of any county, municipality, or public body of the state other than the financing entity issuing such bonds and shall not be subject to the provisions of any other law or of the charter of any municipality relating to the authorization, issuance, or sale of bonds.

(7) Bonds issued under this section shall be authorized by a resolution of the financing entity and may be issued in one or more series and shall bear such date, be payable upon demand or mature at such time, bear interest at such rate, be in such denomination, be in such form, either coupon or registered or otherwise, carry such conversion or registration privileges, have such rank or priority, be executed in the name of the financing entity in such manner, be payable in such medium of payment, be payable at such place, be subject to such callability provisions or terms of redemption, with or without premiums, be secured in such manner, be of such description, contain or be subject to such covenants, provisions, terms, conditions, and agreements, including provisions concerning events of default, and have such other characteristics as may be provided by such resolution or by the trust agreement, indenture, or mortgage, if any, issued pursuant to such resolution. The seal, or a facsimile thereof, of the financing entity shall be affixed, imprinted, engraved, or otherwise reproduced upon each of its bonds issued under this section. Bonds issued under this section shall be executed in the name of the financing entity by the manual or facsimile signatures of such officials as may be designated in said resolution or trust agreement, indenture, or mortgage; except that at least one signature on each such bond shall be a manual signature. Coupons, if any, attached to such bonds shall bear the facsimile signature of such official of the financing entity as may be designated as provided in this subsection (7). Said resolution or trust agreement, indenture, or mortgage may provide for the authentication of the pertinent bonds by the trustee.

(8) Bonds issued under this section may be sold by the financing entity in such manner and for such price as the financing entity, in its discretion, may determine, at par, below par, or above par, at private sale or at public sale after notice published prior to such sale in a newspaper having general circulation in the municipality, or in such other medium of publication as the financing entity may deem appropriate, or may be exchanged by the financing entity for other bonds issued by it under this section.

(9) If any of the officials of the financing entity whose signatures or facsimile signatures appear on any of its bonds or coupons issued under this section cease to be such officials before the delivery of such bonds, such signatures or facsimile signatures, as the case may be, shall nevertheless be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery.

(10) Notwithstanding any other provision of law, any bonds that are issued pursuant to this section are fully negotiable.

(11) In any suit, action, or proceeding involving the validity or enforceability of any bond that is issued under this section or the security therefor, any such bond reciting in substance that it has been issued by the financing entity in connection with a regional tourism project or any activity or operation of the financing entity under this part 3 shall be conclusively deemed to have been issued for such purposes; and such regional tourism project or such operation or activity, as the case may be, shall be conclusively deemed to

have been initiated, planned, located, undertaken, accomplished, and carried out in accordance with the provisions of this part 3.

(12) Pending the preparation of any definitive bonds under this section, a financing entity may issue its interim certificates or receipts or its temporary bonds, with or without coupons, exchangeable for such definitive bonds when the latter have been executed and are available for delivery.

(13) A person retained or employed by a financing entity as an advisor or a consultant for the purpose of rendering financial advice and assistance may purchase or participate in the purchase or distribution of its bonds when such bonds are offered at public or private sale.

(14) No commissioner or other officer of a financing entity issuing bonds under this section and no person executing such bonds is liable personally on such bonds or is subject to any personal liability or accountability by reason of the issuance thereof.

(15) No commissioner or other officer of a regional tourism authority issuing bonds pursuant to this part 3 and no person executing such bonds shall be liable personally on such bonds or shall be subject to any personal liability or accountability by reason of the issuance of the bonds.

(16) Bonds that are issued pursuant to this part 3 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

ARTICLE 46.1

Economic Development
Central Information System

24-46.1-101. Economic development central information system - information - availability. (1) There shall be coordinated by the state library and adult education office of the department of education an economic development central information system. The system shall provide access to information as available pursuant to subsection (3) of this section that would be useful to the economic community, businesses and industries making investment and employment decisions, local chambers of commerce, county and municipal governments, planning agencies, real estate brokers, small business owners, researchers, and others providing data and information services in this state. The system may include information that the state departments and agencies listed in subsection (2) of this section provide for general public use.

(2) The following state departments and agencies may identify the information set forth in subsection (3) of this section that the department or agency provides for general

public use:

(a) Repealed.

(b) The department of agriculture;

(c) The department of education;

(d) The department of health care policy and financing;

(e) The department of higher education;

(f) The department of human services;

(g) The department of labor and employment;

(h) The department of law;

(i) The department of local affairs;

(j) The department of military and veterans affairs;

(k) The department of natural resources;

(l) The department of personnel;

(m) The department of public health and environment;

(n) The department of public safety;

(o) The department of regulatory agencies;

(p) The department of revenue;

(q) The department of state;

(r) The department of transportation;

(s) The Colorado international trade office;

(t) The legislative council;

(u) The office of business development; and

(v) The office of state planning and budgeting.

(3) Each department and agency listed in subsection (2) of this section may identify the following information that the department or agency currently provides for general public use and that may be included in the central information system:

(a) State, county, and municipal demographics;

(b) State vehicle registration;

(c) County drivers license applications and renewals;

(d) State, county, and municipal tax collections and disbursements;

(e) Wholesale and retail trade data;

(f) Labor and employment information including:

(I) State and county labor force and employment data;

(II) State and county unemployment data;

(III) Employment data by industry;

(IV) County and metropolitan statistical area employment data; and

(V) Wage data by industry and job classification;

(g) State export data;

(h) State and county agricultural production;

(i) State, county, and municipal construction data;

(j) Kindergarten through twelfth grade enrollment and graduation rates by public school district;

(k) Higher education enrollment and graduation rates;

(l) Transportation funding, traffic counts, and air traffic data;

(m) Natural resource, mining, and forestry data;

(n) Application and licensing requirements;

(o) All state licensed, registered, or certified businesses or individuals;

(p) Calendars of events, training, or other state business services; and

(q) All other public business and economic development information requested of the state library and adult education office by those using the central information system.

(4) On or before July 1, 1997, each department or agency may provide the information such as that identified in subsection (3) of this section that it provides for general public use to the state library and adult education office of the department of education for inclusion in the central information system and distribution through the access Colorado library and information network. Each department or agency shall provide the information in an open system architecture in cooperation with the office of information technology, created in section 24-37.5-103, and shall update the information as needed to keep the information current.

(5) Any department or agency collecting a fee prior to October 1, 1995, for information that the department or agency will include in the central information system may continue to charge that fee for the information after it is included in the system.

(6) The state library and adult education office of the department of education shall work with the office of information technology, created in section 24-37.5-103, to ensure each department or agency supplies its data to the access Colorado library and information network in the open system architecture, the confidentiality of proprietary information, and the integrity of state computer system security.

(7) As used in this section, unless the context otherwise requires:

(a) "Access Colorado library and information network" means a network of decentralized computer servers providing access to library and government information resources for the general public with access points distributed throughout the state.

(b) "Central information system" means state government information, organized for public access through an integrated menu, whether the information is located on one computer server or a series of connected computer servers.

ARTICLE 46.3

Work Force Development

24-46.3-101. State work force development council - creation - membership. (1) There is hereby created within the department of labor and employment, also referred to in this article as the "department", the state work force development council, also referred to in this article as the "state council". The state council shall be established as a state work force investment board in accordance with the federal "Workforce Investment Act of 1998", 29 U.S.C. sec. 2801 et seq., as amended, also referred to in this article as the "federal act".

(2) Membership of the state council must include:

(a) The governor;

(b) Two members of the house of representatives appointed by the speaker of the house of representatives and two members of the senate appointed by the president of the senate;

(c) Representatives of business in the state, appointed by the governor, who are:

(I) Owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policy-making or hiring authority, including members of local work force investment boards as specified in part 2 of article 83 of title 8, C.R.S.;

(II) Representatives of businesses with employment opportunities that reflect the employment opportunities in the state;

(III) Representatives that are appointed from among individuals nominated by state business organizations and business trade associations;

(d) Other members appointed by the governor, who are:

(I) Local elected officials;

(II) Representatives of labor organizations, nominated by state labor federations;

(III) Representatives of organizations and individuals that have experience with respect to youth activities;

(IV) Representatives of organizations and individuals that have experience and expertise in the delivery of work force investment activities, including chief executive officers of community colleges and community-based organizations in the state;

(V) The lead state agency officials with responsibility for the programs and activities authorized in the federal act for the establishment of one-stop systems and carried out by the partners at the one-stop career centers. If no lead state agency official has responsibility for such programs or activities, membership shall include a representative in the state with expertise relating to such programs or activities.

(VI) Such other representatives as the governor may designate, including persons with disabilities who can represent statewide cross-disability issues, which may include nonvoting members.

(3) For the purposes of determining a conflict of interest by any member of the state council, a member of the state council may not vote on matters under consideration by the state council regarding the provision of services by such member that would

provide direct financial benefit to such member or the immediate family of such member, or engage in any other activity determined by the governor to constitute a conflict of interest as specified in the state plan.

(4) Members of the state council that represent organizations, agencies, or other entities shall be individuals with optimum policy-making authority within such organizations, agencies, or entities. The members of the state council shall represent diverse regions of the state, including urban, rural, and suburban areas.

(5) A majority of the voting members of the state council shall be representatives of business as described in paragraph (c) of subsection (2) of this section. The governor shall appoint a chairperson of the state council from one of the representatives of business as described in said paragraph (c).

(6) In order to create a small-voting-member state council consistent with the requirements of the federal act, state council members may be appointed to satisfy more than one of the membership categories specified in the federal act for the state work force investment board.

(7) (a) Except as provided in paragraph (b) of this subsection (7), the voting state council members that are members of the general assembly shall serve at the pleasure of the speaker of the house of representatives and president of the senate and shall continue in office until the member's successor is appointed. Lead state agency officials and nonvoting members shall serve at the pleasure of the governor. All other members shall initially serve for staggered terms of one, two, and three years, as designated by the governor upon their appointment.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in paragraph (b) of subsection (2) of this section. Thereafter, the terms of the members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president 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.

(8) The staff of the department, in consultation with the state council and governor, shall establish an annual budget for basic state council functions, activities, meetings, travel, per diem, reports, and staff. Funding for the state council's budget shall come from a portion of the administrative moneys available to the mandatory and additional federal partner programs specified in 29 U.S.C. sec. 2841 (b) (1) and (b) (2). The amount of the administrative moneys from each mandatory and additional federal

partner program to be transferred to the state council shall be determined by the office of state planning and budgeting, proportionate to the annual federal partner program or activity grant amounts to the state and appropriated by the general assembly. In addition to the federal partner programs grant funding, the state council shall seek other federal, state, and private grants, gifts, and contributions to fund state council special duties, demonstration projects, and initiatives.

24-46.3-102. Transfer of functions. (1) The staff of the department shall, on and after July 1, 2008, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the office of work force development prior to said date concerning the duties and functions transferred to the staff of the department pursuant to this section.

(2) (a) On and after July 1, 2008, the officers and employees of the office of work force development prior to said date whose duties and functions concerned the duties and functions transferred to the staff of the department pursuant to this section shall be transferred to the department.

(b) Any such employees who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

(3) On July 1, 2008, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the office of work force development prior to said date pertaining to the duties and functions transferred to the staff of the department pursuant to this section, are transferred to the department and become the property thereof.

(4) Whenever the office of work force development is referred to or designated by a contract or other document in connection with the duties and functions transferred to the staff of the department pursuant to this article, such reference or designation shall be deemed to apply to the department. All contracts entered into by the office of work force development prior to July 1, 2008, in connection with the duties and functions transferred to the staff of the department pursuant to this section are hereby validated, with the department succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to the department for the payment of such obligations.

ARTICLE 46.5

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.

24-46.5-102. Colorado business incentive fund. For the purposes of promoting the economic development of this state, there is hereby created in the state treasury the Colorado business incentive fund. The fund shall consist of moneys transferred in accordance with the provisions of section 43-10-110, C.R.S. No intergovernmental agreement which is funded from the Colorado business incentive fund shall be funded from general fund moneys or other state moneys. Moneys in such fund shall be subject to annual appropriation by the general assembly. Through the creation of this fund, it is the intent of the general assembly to create an enhanced and stable revenue source for moneys to expend for economic development purposes.

24-46.5-103. Intergovernmental agreements. (1) (a) The state of Colorado is hereby authorized to enter into intergovernmental agreements with local governments or the Colorado housing and finance authority, or both, under which moneys from the Colorado business incentive fund shall be expended for economic development purposes. No intergovernmental agreement shall be entered into by the state pursuant to this section prior to the approval of such agreement by the attorney general of the state as to form. For

purposes of this section, the state of Colorado shall be represented by the Colorado economic development commission created pursuant to section 24-46-102 and, in addition to any other duties or powers imposed by law, said commission shall review and recommend to the governor expenditures of moneys of the Colorado business incentive fund for the financing of incentives pursuant to this article.

(b) (I) Any entity establishing a new business facility or operation and participating in the provisions of this article shall give due consideration to the provision of intrastate air service to all areas of Colorado. Any such entity shall file reports as required under section 24-46.6-103. The state shall consider each of the following guidelines in determining whether to enter into an intergovernmental agreement:

(A) The significance of the support and financial incentives to be provided by the local jurisdiction in which the new business facility or operation is to be located;

(B) The significance of the number of jobs in the state which are likely to be generated directly or indirectly as a result of the new business facility or operation and ancillary facilities thereto;

(C) The extent to which the entity establishing the new business facility or operation intends to employ Colorado residents at the new business facility or operation and ancillary facilities thereto;

(D) The extent to which the entity establishing the new business facility or operation intends to contract with Colorado residents and Colorado-based companies for services and goods at the new business facility or operation and ancillary facilities thereto; and

(E) The extent of the public benefits to be derived from the agreement.

(II) The guidelines set forth in subparagraph (I) of this paragraph (b) shall not be a basis for challenging or voiding all or any portion of any intergovernmental agreement.

(2) At a minimum, any intergovernmental agreement relating to the establishment of a new business facility shall be subject to the following requirements:

(a) No intergovernmental agreement shall be entered into unless there is an agreement between the local government or the Colorado housing and finance authority, or both, and the entity which is to establish a new business facility that the entity will operate the facility for no less than thirty years;

(b) The terms of the intergovernmental agreement shall provide that the entity shall employ no less than three thousand employees at the new business facility by July 1 of the tenth year following the effective date of such agreement for the operation of said facility and that the average annual salaries of all employees at the facility at the time specified in the agreement shall be at least forty-five thousand dollars. The terms of such agreement shall further provide for sanctions, including but not limited to termination of the agreement or any benefits thereunder, if the entity fails to meet reasonable projections of the rate of growth in the number of employees.

(c) The terms of the intergovernmental agreement shall provide that the entity

shall employ no less than a total of two thousand employees at ancillary facilities within Colorado to the facility by July 1 of the tenth year following the effective date of such agreement for the operation of said facility and that the average annual salaries of all employees at such ancillary facility at the time specified in the agreement shall be at least twenty-two thousand five hundred dollars. The terms of such agreement shall further provide for sanctions, including but not limited to termination of the agreement or any benefits thereunder, if the entity fails to meet reasonable projections of the rate of growth in the number of employees.

(d) An intergovernmental agreement shall provide that the agreement between the local government or the Colorado housing and finance authority, or both, and the entity include procedures and remedies to enforce the terms of such agreement including, but not limited to, the forfeiture of real and personal property rights and interests or liens upon real and personal property, or both.

(3) Effective January 1, 1992, local governments may enter into intergovernmental agreements in relation to the establishment of new business facilities which shall employ a substantial number of new employees receiving an average annual salary of no less than the average annual salary for such local government. Said local governments shall apply to the state of Colorado in order to qualify for financing pursuant to this article; except that no intergovernmental agreement shall be entered into or financed by the state pursuant to this subsection (3) if the person or entity which would benefit from such agreement is establishing a new business facility for which financing could have been received under the provisions of subsection (1) of this section or has established a new business facility for which financing was received pursuant to said subsection (1). The general assembly may appropriate such moneys as may be available for purposes of funding intergovernmental agreements entered into pursuant to this subsection (3).

(4) As used in subsections (2) and (3) of this section, "salary" means the total compensation paid or stipulated to be paid by the entity to employees, before deductions, for services rendered while on the payroll of the entity. "Salary" does not include any amount paid by the entity on behalf of employees for fringe benefits, including, but not limited to, contributions for group health or life insurance, employee retirement, social security, and workers' compensation. For determining the average annual salaries of the employees at the new business facility and ancillary facilities, each employee's salary shall only be counted up to the amount of one hundred twenty-five thousand dollars.

(5) The amount of incentives financed for any person or entity under intergovernmental agreements under this article by the Colorado business incentive fund shall not exceed one hundred fifteen million dollars.

(6) Notwithstanding any other provision of law to the contrary, a city, town, or county, whether home rule or statutory, or a city and county may contribute moneys for the financing of incentives from the Colorado business incentives fund pursuant to this

section.

ARTICLE 46.6

Intrastate Air Service within the State of Colorado

24-46.6-101. 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 existence and expansion of intrastate air service in this state;

(b) That the recent opening of the Denver International Airport (DIA) has permanently changed intrastate air travel in Colorado since the increased costs of operating out of DIA has forced air carriers to drop or significantly reduce service on their less profitable intrastate routes;

(c) That limited and undependable intrastate air service has adversely impacted the economic well-being of the state through underutilization of DIA as a regional transportation hub, requiring travelers to make a greater investment in travel time and costs, and creating more obstacles to conducting business efficiently;

(d) That it is vital to the continued development of economic opportunity in this state, and especially on the western slope of the state, that the state provide incentives to air carriers that provide intrastate air services; and

(e) That the public purpose to be served by the passage of this article outweighs all other individual interests.

24-46.6-102. Study on intrastate air service in Colorado - funding.

(1) Repealed.

(2) There is hereby created in the state treasury the Colorado intrastate air service study fund. The fund shall consist of moneys received as a result of an intergovernmental agreement between the city and county of Denver and the division of aeronautics, which is hereby authorized to enter into such agreement, or moneys transferred in accordance with the provisions of section 43-10-110 (2) (a) (I), C.R.S., as applicable. Moneys in the fund shall be used to fund a study of intrastate air service in Colorado as provided in subsection (1) of this section. Any moneys received as a result of an intergovernmental agreement between the city and county of Denver and the division of aeronautics remaining in the fund as of July 1, 1997, shall be returned to the city and county of Denver. Any moneys transferred in accordance with the provisions of section 43-10-110 (2) (a) (I), C.R.S., remaining in the fund as of July 1, 1997, shall be transferred to the

governmental entity operating the largest airport in the state during the fiscal year commencing July 1, 1996.

24-46.6-103. Intrastate air carriers - on-time performance - oversales - reports to aeronautics division. (1) (a) Any air carrier that provides intrastate air service within Colorado shall file a semiannual report with the aeronautics division regarding the on-time performance and the number of passengers denied boarding on intrastate flights by the air carrier during the six-month period covered by the report. The report shall be submitted within thirty days after the end of the six-month period covered by the report with the six-month period ending June 30 and December 31.

(b) Any air carrier that fails to file a report when due, as required by this subsection (1), and that fails to cure such failure within thirty days after notification by the division of such failure may, after notice and hearing conducted by the aeronautical board pursuant to section 24-4-105, be subject to the imposition of a monetary penalty of not less than two thousand five hundred dollars nor more than five thousand dollars for each violation. Moneys collected pursuant to this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the aviation fund, created in section 43-10-109, C.R.S.

(c) As used in this section, unless the context otherwise requires, "air carrier" means any person undertaking by any means, directly or indirectly, to provide intrastate air transportation in aircraft with seating capacity for one hundred or fewer passengers.

(2) The report filed pursuant to subsection (1) of this section shall include the following information for each flight by the air carrier during the six-month period covered by the report that originated and terminated at points within Colorado:

(a) The air carrier and flight number;

(b) The origination point and termination point of the flight;

(c) The departure and arrival time for each scheduled operation of the flight, as published in the official airline guide, computer reservation systems, or other service publications;

(d) The scheduled departure and arrival time for each scheduled operation of the flight as listed in a computer reservation system regulated by 14 CFR part 255;

(e) The actual departure and arrival time for each operation of the flight;

(f) The date and day of the week of the scheduled flight operation;

(g) The amount of departure delay, if any, for each operation of the flight;

(h) The amount of arrival delay, if any, for each operation of the flight;

(i) The total number of passengers holding confirmed reserved space, as defined by 14 CFR 250.1, on each operation of the flight that were denied boarding involuntarily;

(j) The mechanical defects discovered and repairs made for each operation of the flight;

(k) For delayed or canceled flights, any weather conditions contributing to the delay or cancellation.

ARTICLE 47

Colorado International Trade Office

24-47-101. Colorado international trade office - created - staff. (1) There is hereby created within the office of the governor the Colorado international trade office, the head of which shall be the director of the Colorado international trade office, which office is hereby created. The director shall be assisted by an associate director and a staff assistant, which offices are hereby created.

(2) The Colorado international trade office shall:

(a) Encourage, promote, and assist in the expansion of Colorado exports, including both goods and services, to international markets;

(b) Develop the ability and resources to deal effectively with and encourage foreign investment in this state;

(c) Endeavor to attract and assist reputable international companies which are interested in establishing facilities in this state which provide jobs for Colorado residents;

(d) Utilize traditionally effective international promotion techniques which are designed to create new channels of distribution for Colorado firms which have no export market, which techniques shall include, but need not be limited to, state-sponsored international trade shows and trade missions where many companies may participate at low cost and guidance in the mechanics of exporting through major seminars, identification of target markets, export troubleshooting, and important trade leads;

(e) Review and analyze proposed international trade agreements to assess their impact on goods and services produced by Colorado businesses and the possibility that Colorado statutes could be determined to be an impermissible barrier to free trade or market access;

(f) Provide input to the office of the United States trade representative in the development of international trade, commodity, and direct investment policies and agreements that reflect the needs of the state of Colorado;

(g) Inform the general assembly about ongoing trade negotiations, trade development, and the possible impacts on Colorado's economy and laws. The director or the director's designee shall submit a report on such matters by November 1 of each year to the finance committees, or their successor committees, of the senate and house of representatives and shall make available to all members of the general assembly a copy of all materials provided to those committees by the state trade representative.

(h) Coordinate with other state and local government economic development entities.

(3) The Colorado international trade office may establish official trading relationships among the state and other international trading nations.

(4) It is the intent of this section that the cost-effective assistance given by the Colorado international trade office result in a broadened state economy with a quantifiable increase in Colorado commodities which are exported, a quantifiable increase in Colorado firms entering the international export market, a quantifiable increase in export-related jobs in Colorado, and such other measurable increases related to international trade as are the result of the efforts of said office.

24-47-102. Satellite trade or investment offices and presences in other nations. (1) The Colorado international trade office is authorized to establish satellite trade or investment offices or presences in other nations as designated in paragraph (c) of subsection (2) of this section for the purpose of implementing the provisions of section 24-47-101; except that no more than one office or presence shall be established in each nation.

(2) (a) A satellite trade or investment office is an office established by the Colorado international trade office in a foreign country, which office is operated solely for purposes of implementing the provisions of section 24-47-101.

(b) A presence is the designation by the Colorado international trade office of a specified entity in a foreign country to act as an agent of the Colorado international trade office for purposes of implementing the provisions of section 24-47-101.

(c) (I) A satellite trade or investment office or presence may be established in Taipei, Taiwan, in Seoul, Korea, and in Tokyo, Japan, and the People's Republic of China.

(II) After June 30, 1988, the Colorado international trade office is authorized to designate additional locations for satellite trade or investment offices or presences in other nations.

(3) The Colorado international trade office is authorized to receive and expend contributions, grants, services, and in-kind donations, including but not limited to office space, from public sources other than the state and from private sources and may use such donations to pay for the direct and indirect costs of establishing or operating satellite trade or investment offices or presences in other nations.

(4) (a) The general assembly shall make an annual appropriation to pay for the direct and indirect costs of establishing and operating a satellite trade or investment office established in another nation in accordance with paragraph (c) of subsection (2) of this section. The annual direct and indirect costs of establishing and operating such office shall be obtained in part from those sources described in subsection (3) of this section; the

value of all donations as described in subsection (3) of this section, including the value of all services and in-kind donations, shall be computed in determining the total amount provided to each office by such sources.

(b) The general assembly shall make an annual appropriation to pay for the direct and indirect costs of establishing and operating each presence in another nation authorized by paragraph (c) of subsection (2) of this section.

24-47-103. Advanced industry - export acceleration program - definitions - repeal. (1) **Legislative declaration.** (a) The general assembly finds and declares that:

(I) Most consumers live outside of the United States of America;

(II) The international monetary fund forecasts that over the next five years eighty-seven percent of world economic growth will occur outside of this country;

(III) It is difficult for Colorado businesses, particularly small and mid-sized ones, to become exporters because of a lack of the requisite information and market research and other challenges related to international trade;

(IV) The Colorado international trade office has several exporting programs that enjoy significant returns on investment as measured by a business's international sales per dollar received.

(b) It is the intent of the general assembly to create a new program that combines financial resources, training, and consulting services to provide a robust and comprehensive trade export promotion service for Colorado businesses.

(2) **Definitions.** As used in this section:

(a) "Advanced industry" means the following industries:

(I) Advanced manufacturing;

(II) Aerospace;

(III) Bioscience;

(IV) Electronics;

(V) Energy and natural resources;

(VI) Infrastructure engineering; and

(VII) Information technology.

(b) "Fund" means the advanced industries export acceleration cash fund created in paragraph (a) of subsection (8) of this section.

(c) "Office" means the Colorado international trade office created in section 24-47-101.

(d) "Program" means the advanced industries export acceleration program created in paragraph (a) of subsection (3) of this section.

(3) The advanced industry export acceleration program is created in the Colorado international trade office. The program is administered by the office and includes export expense reimbursement, export training, and global network consultation.

(4) **International export development expense reimbursement.** (a) Beginning January 1, 2014, the office may reimburse a qualifying business under paragraph (c) of this subsection (4) for up to one-half of its international export development expenses.

(b) The maximum amount that a business may be reimbursed under this subsection (4) is fifteen thousand dollars. The office may conditionally approve an expense prior to the business incurring it.

(c) In order to be eligible for an international export development expense reimbursement from the office, a business must:

(I) Be in an advanced industry;

(II) Be new to exporting or expanding into a new export market;

(III) Employ fewer than two hundred employees globally;

(IV) Have its headquarters located in Colorado or have at least fifty percent of its employees based in Colorado;

(V) Have at least two years of domestic sales experience;

(VI) Show a profit during the last fiscal year;

(VII) Be registered and in good standing with the Colorado secretary of state; and

(VIII) Have a product or service that is ready to be exported.

(d) Eligible international export development expenses include:

(I) Participation in an overseas trade mission;

(II) Participation in an international or domestic trade show;

(III) An international market sales trip;

(IV) Legal fees related to a contract, intellectual property protection, or other issues relating to exporting goods or services;

(V) Design or production of international marketing materials;

(VI) Due diligence on, or credit reviews of, potential international buyers and distributors;

(VII) Compliance with international requirements for labeling, packaging, or shipping;

(VIII) Translation services for a contract, an official document, marketing materials, or a web site;

(IX) Quality or environmental certifications; and

(X) Preparation of product documents, product registration, or assembly or maintenance instructions.

(e) The office shall not reimburse a business under this subsection (4) for any expense that a state agency would be prohibited under state law to reimburse an employee for.

(f) The office may establish conditions based on export sales under which the office receives payments from a business that received an international export development expense reimbursement. The office shall transfer any moneys so received to the state treasurer for deposit in the fund.

(g) On or before December 1, 2013, the office shall establish procedures and timelines for reimbursement applications; criteria for determining reimbursement amounts; recipient reporting requirements; and any other program policies. The office may amend these policies at any time.

(5) **Export training.** (a) The office shall provide export training for advanced industry businesses to learn about the fundamentals of exporting. The office may collaborate with private trade organizations and federal export assistance organizations to conduct the training. To the extent possible, the office shall tailor the curriculum to the needs and demands of each type of advanced industry.

(b) Export training may include conferences, seminars, and workshops on trade-related topics, which include challenges and opportunities in international trade. The conferences may include trade experts, exporting businesses, industry partners, and the office.

(c) The office may charge reasonable fees for a business to attend a training session. The office shall transfer these fees to the state treasurer for deposit in the fund.

(6) **Global network consultation.** (a) The office shall develop a global network of trade consultants in key international markets to assist the office in accelerating advanced industries exports. The types of services the office may utilize the consultants for include:

(I) Market research and other insights about the local markets;

(II) In-country introductions;

(III) Developing market entry strategies;

(IV) Matching Colorado companies with potential trade partners and distributors;

(V) Conducting due diligence on potential trade partners;

(VI) Helping companies define their competitive advantages;

(VII) Understanding a country's importation process, including licensing requirements, tariffs and taxes, and applicable regulations; and

(VIII) Translation services and cultural interpretation.

(b) The office may match a Colorado business with a consultant for the services identified in paragraph (a) of this subsection (6), and other services. The office may pay the consultant on behalf of the business, and then may charge the business receiving the consulting service for some or all of the costs of the consultation. The office shall transfer any of these fees to the state treasurer for deposit in the fund.

(7) **Reporting.** (a) On or before November 1, 2014, and November 1 of the next four years thereafter, the office shall submit a report to the finance and the business, labor, economic, and workforce development committees of the house of representatives and to the business, labor, and technology and the finance committees of the senate, or any successor committees, summarizing program activities during the preceding fiscal year.

(b) Section 24-1-136 (11) does not apply to the report required by paragraph (a) of

this subsection (8).

(8) **Fund.** (a) The advanced industries export acceleration cash fund is created in the state treasury. The fund consists of:

(I) Payments credited to the fund pursuant to paragraph (e) of subsection (4) of this section;

(II) Fees credited to the fund pursuant to paragraph (c) of subsection (5) and paragraph (b) of subsection (6) of this section;

(III) Any gifts, grants, or donations credited to it pursuant to paragraph (b) of this subsection (8);

(IV) Any moneys that the general assembly appropriates to it; and

(V) Three hundred thousand dollars that the state treasurer is required to transfer from the general fund to the fund on January 1, 2014, and January 1 of the next four years thereafter.

(b) (I) The office is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of the program; except that the office may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The office shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the fund.

(II) The general assembly finds that the implementation of this program does not rely entirely or in any part on the receipt of adequate funding through gifts, grants, or donations. Therefore, the office is not subject to the notice requirements specified in section 24-75-1303 (3).

(c) The moneys in the fund are subject to annual appropriation by the general assembly to the office for the purpose of administering the program. The office's administrative expenses for the program in a fiscal year shall not exceed five percent of the moneys transferred or appropriated to the fund in the fiscal year. The office shall make all export expense reimbursements from moneys in the fund.

(d) As provided by law, the state treasurer may invest any unexpended moneys in the advanced industries acceleration cash fund. All interest and income derived from the investment and deposit of moneys in the fund are credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall not be credited or transferred to the general fund or another fund; except that any unexpended and unencumbered moneys remaining in the fund upon the repeal of this section are transferred to the general fund.

(9) **Repeal.** This section is repealed, effective January 1, 2019.

ARTICLE 47.5

Renewable Energy Authority

24-47.5-101. Renewable energy authority - creation - legislative declaration. (1) (a) The general assembly finds, determines, and declares that:

(I) The production and efficient use of energy will continue to play a central role in the future of this state and the nation as a whole; and

(II) The development, production, and efficient use of renewable energy will advance the security, economic well-being, and public and environmental health of this state, as well as contributing to the energy independence of our nation.

(b) The general assembly further finds, determines, and declares that the authority and powers conferred under this article, as well as the expenditures of public money made pursuant to this article, will serve a valid public purpose and that the enactment of this article is expressly declared to be in the public interest.

(2) There is hereby created the Colorado renewable energy authority, referred to in this article as the "authority", which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any department, commission, board, bureau, or agency of the state, except to the extent provided by this article.

(3) (a) The powers of the authority shall be vested in a board of directors.

(b) Until January 1, 2007, the board shall consist of one member appointed by the governor, with the consent of the senate, plus the following four ex officio members: The presidents of the Colorado school of mines, Colorado state university, and the university of Colorado, or their designees, and the director of the national renewable energy laboratory, or his or her designee.

(c) On and after January 1, 2007, the board shall consist of the members designated in paragraph (b) of this subsection (3) and up to two additional members appointed by the governor with the consent of the senate. The terms of the appointed members of the board shall be four years. An appointed member shall be eligible for reappointment. Each member shall hold office until a successor has been appointed and the senate has confirmed the appointment. A vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only. Each appointed member may be removed from office by the governor for cause, after a public hearing, and may be suspended by the governor pending the completion of such hearing.

(4) The members of the board shall elect a chair and a vice-chair. The members of the board shall also elect a secretary and a treasurer, who need not be members, and the same person may be elected to serve as both secretary and treasurer. The powers of the board may be vested in the officers from time to time. Four members shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum of

the members to exercise all the powers and perform all the duties of the board.

(5) Each member of the board not otherwise in full-time employment of the state shall receive a per diem of fifty dollars for each day actually and necessarily spent in the discharge of official duties, and all members shall receive traveling and other necessary expenses actually incurred in the performance of official duties.

24-47.5-102. Renewable energy authority - powers and duties. (1) Except as otherwise limited by this article, the authority, acting through the board, has the power:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities of a body corporate and political subdivision of the state;

(b) To sue and be sued;

(c) To have an official seal and to alter the same at the board's pleasure;

(d) To make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

(e) To maintain an office at such place or places within the state as it may determine;

(f) To acquire, hold, use, and dispose of its income, revenues, funds, and moneys;

(g) To make and enter into all contracts, leases, and agreements that are necessary or incidental to the performance of its duties and the exercise of its powers under this article;

(h) To deposit any moneys of the authority in any banking institution within or outside the state;

(i) To fix the time and place or places at which its regular and special meetings are to be held; and

(j) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this article.

(2) The authority shall:

(a) Direct the allocation of state matching funds to the extent required to support one or more proposals of a consortium consisting of the Colorado school of mines, Colorado state university, university of Colorado, and national renewable energy laboratory, referred to in this article as the "consortium", for federal energy research funding and energy-related research funding from federal agencies and other public and private entities;

(b) Promote rapid transfer of new technologies developed by the consortium to the private sector to attract and promote renewable energy businesses in Colorado;

(c) Develop educational and research programs for Colorado state colleges in collaboration with the consortium that will translate into high-technology employment opportunities for Colorado students and residents;

(d) Become a regional resource and clearing house for renewable energy

information, which the authority shall make available to the general public and to engineering, architectural, and design professionals. The authority shall not construct a headquarters or other building for its own use.

(e) Support development of the consortium, including funding of any joint institute or other entity created by the Colorado school of mines, Colorado state university, and university of Colorado or the consortium to jointly pursue renewable energy research.

(3) On or before March 1, 2007, and each March 1 thereafter, the authority shall submit a report to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or any successor committees, summarizing the energy research projects that received funding under this article in the preceding calendar year. At a minimum, the report shall specify the following information with regard to each such project:

(a) A description of the project, the principal persons or entities involved in the project, and the amount of funding allocated to each principal person or entity;

(b) The manner in which each principal person or entity applied the funding in connection with the project; and

(c) The results achieved by the project, including intellectual property, licensing and commercialization activities, and any other economic benefits to the state.

(4) (Deleted by amendment, L. 2008, p. 383, § 3, effective April 10, 2008.)

24-47.5-103. Funding - appropriations contingent on receipt of federal grant moneys - repeal. (Repealed)

ARTICLE 48

Colorado Office of Space Advocacy

24-48-101 to 24-48-105. (Repealed)

ARTICLE 48.5

Office of Economic Development

PART 1

24-48.5-101. Colorado office of economic development - creation - duties - report. (1) There is hereby created within the office of the governor the Colorado office of economic development, the head of which shall be the director of the office of economic development, which office is hereby created. The director of the office, who shall also serve as the special assistant to the governor for economic development, shall be assisted by an assistant director, which office is hereby created, and a staff for economic development, including but not limited to small business, finance, and marketing.

(2) The Colorado office of economic development shall:

(a) Encourage the expansion and retention of Colorado businesses through business recruitment, retention, and expansion assistance;

(b) Coordinate the marketing of Colorado as a site for expansion or relocation projects for companies in other states or countries;

(c) Coordinate job training and management and financial assistance to existing Colorado companies or to out-of-state companies which are considering expansion or relocation in Colorado;

(d) Provide services to small businesses in Colorado in order to help them expand or remain in business;

(e) Provide technical assistance and research support for business recruitment, retention, and expansion assistance programs supported by local government and private-public partnerships;

(f) Foster a positive business climate by advising the governor and the general assembly on issues affecting the business community;

(g) Repealed.

(h) In its business recruitment, retention, and expansion assistance activities, provide information on the state's program of tax incentives, state and local government procurement policies, and economic development incentives that are available to business enterprises engaged in recycling and waste diversion activities, including research and development efforts and the development of markets for reusable, source-reduced, recycled, and composted products and materials in all forms.

(3) The Colorado office of economic development shall advise and provide guidance to the small business navigator described in section 24-48.5-102 and shall advise and provide guidance to coordinate activities of small business development centers and the business advancement center operated by the university of Colorado.

(4) The Colorado office of economic development shall provide staff support for the gateway computer network.

(5) The Colorado office of economic development shall encourage investment of

public pension funds in economic development activities in this state.

(6) It is the intent of the general assembly in enacting this section that the Colorado economy be broadened as a result of a quantifiable increase in the number of Colorado companies receiving technical and job training assistance and other assistance in business development.

(7) (a) On or before November 1, 2012, and, notwithstanding section 24-1-136 (11), on or before November 1 each year thereafter, the director of the office of economic development, or the director's designee, shall submit a report to the general assembly. The report shall include a review and summary of the activity, information, and data on all the programs that the office administered during the prior fiscal year.

(b) In order to minimize the costs associated with preparing the report required by paragraph (a) of this subsection (7), the office of economic development is authorized to incorporate or append to such report any other reports it is required by law to develop.

24-48.5-102. Small business assistance center. (1) (a) In addition to the powers and duties specified in section 24-48.5-101, the Colorado office of economic development shall include the small business assistance center, which shall provide comprehensive information on the federal, state, and local requirements necessary to begin a business and shall make this information available to the public.

(b) (I) The small business assistance center shall also create a small business navigator that shall provide a single point of contact for small businesses in order to facilitate and assist small businesses by:

(A) Diagnosing problems;

(B) Providing information and streamlining referrals to small business development centers, the Colorado credit reserve program, the federal small business credit initiative, or other such centers or organizations;

(C) Providing information regarding state government contracting offices and processes;

(D) Providing assistance with state rules; and

(E) Conducting any follow-up with the small business as needed.

(II) On or before January 15, 2012, and on or before each January 15 thereafter, the Colorado office of economic development shall submit a report to the business, labor, and technology committee of the senate and the economic and business development committee of the house of representatives, or such successor committees, which report shall include the number of small businesses being served by the small business navigator.

(2) The small business assistance center shall have the authority to accept and expend moneys from sources other than the state of Colorado for the purpose of performing specific projects, studies, or procedures, or to provide assistance. Such

projects, studies, procedures, or assistance shall be reviewed and approved by the Colorado office of economic development and shall be consistent with the duties, authority, and purposes of the Colorado office of economic development as established in this article. Any receipt and expenditure of funds shall be reported to the general assembly as part of the office's annual budget request.

(3) The services rendered by the center shall be made available without charge; except that the applicant shall not be relieved from any part of the fees or charges established for the review and approval of specific permit applications, from any of the apportioned costs of a consolidated hearing conducted under this section, or from the costs of any contracted services as authorized by the applicant under this section.

(4) Any person who provides information developed by the center and charges any fee for such information shall disclose in at least ten-point type, before any obligation is incurred, that such information is available at no cost from the center. Any person who knowingly fails to make the disclosure required by this subsection (4) commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-48.5-102.5. Appropriations for small business development centers - report - legislative declaration - repeal. (1) (a) For the 2013-14, 2014-15, and 2015-16 state fiscal years, the Colorado office of economic development shall expend two hundred thousand dollars each year pursuant to this subsection (1).

(b) The general assembly hereby declares that the moneys appropriated for the purposes of paragraph (a) of this subsection (1) are intended to supplement, not supplant, any other moneys that are appropriated by the general assembly to the Colorado office of economic development for any purpose.

(c) (I) The state director of small business development centers in the Colorado office of economic development shall, after deducting any amounts expended pursuant to subparagraph (II) of this paragraph (c), equitably distribute the remaining moneys appropriated pursuant to this section to each of the small business development centers in the state.

(II) The state director of small business development centers shall use at least ten, but no more than fifteen, percent per year of the moneys appropriated pursuant to this section to increase awareness of small business development centers in the state.

(2) On or before January 15, 2014, on or before January 15, 2015, and on or before January 15, 2016, the Colorado office of economic development shall submit a report to the business, labor, and technology committee of the senate and the business, labor, and economic and workforce development committee of the house of representatives, or any successor committees, regarding the disbursement of moneys expended pursuant to this section and the capital formation and jobs created as a result of receipt of any such moneys.

(3) This section is repealed, effective July 1, 2016.

24-48.5-102.7. Economic gardening pilot project - small business development centers - economic gardening pilot project fund - created - annual report - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Colorado companies to watch" means businesses that have been nominated and met the eligibility criteria for an awards program operated by a national philanthropic foundation identified by the state director, regardless of whether the businesses actually won awards subsequent to nomination.

(b) "Economic gardening" means an approach to economic growth and development that emphasizes nurturing and cultivating local small businesses by providing strategic assistance to second-stage companies.

(c) "Key industry" means an industry critical to the Colorado economy, as identified by the office.

(d) "Office" means the Colorado office of economic development created in section 24-48.5-101.

(e) "Pilot project" means the economic gardening pilot project created in this section.

(f) "Second-stage company" means a privately held business that:

(I) Employs full-time at least six persons but not more than ninety-nine persons;

(II) Has maintained its principal place of business and a majority of its employees in Colorado for at least the previous two years;

(III) Claims at least five hundred thousand dollars but not more than fifty million dollars as annual gross revenue or working capital; and

(IV) Has a product or service that is, or has the potential to be, sold outside the company's local area or state.

(g) "State director" means the state director of small business development centers, or any successor division, in the office.

(h) "Strategic assistance" or "economic gardening strategic assistance" means performing high-level consulting or database research and analysis or the deployment of office and small business development center staff members certified under subsection (4) of this section to perform market research, develop core strategies, conduct business modeling, identify qualified sales leads, provide growth financing referrals, perform search engine optimization, utilize geographic information systems, advise on new media marketing, or assist with network analyses and innovation strategies.

(2) There is hereby created within the office the economic gardening pilot project. The purpose of the pilot project is to stimulate Colorado's economy and create good-paying, sustainable jobs by providing economic gardening strategic assistance services to second-stage companies in accordance with this section.

(3) The state director shall oversee, and direct all resources for the execution of,

the pilot project, including developing the processes for qualifying and selecting second-stage companies, identifying training components for office and small business development center staff members, engaging trained and certified economic gardening private contractors as necessary, and providing economic gardening strategic assistance to companies participating in the pilot project.

(4) (a) (I) On or before September 1, 2013, the state director shall initiate a program to provide or obtain all necessary credentials for high-impact strategic assistance to staff members of the office and small business development centers.

(II) Prior to the date that strategic assistance is provided pursuant to this subsection (4):

(A) At least eight staff members of small business development centers in the state must be certified in economic gardening by a nationally recognized certifying entity identified by the state director; and

(B) The state director shall, as necessary, contract with trained and certified economic gardening private contractors.

(III) After the small business development center staff members are certified pursuant to subparagraph (II) of this paragraph (a), the state director shall use the existing infrastructure of small business development centers to promote the pilot project to second-stage companies and to those small business development center clients and referrals that, in the state director's opinion, show growth potential in jobs, sales, or export potential.

(b) (I) On or before September 1, 2013, the state director shall publish criteria for a second-stage company to be selected to participate in the pilot project. The criteria must include job growth potential, sustainability, export potential, and a workforce comprised of at least fifty percent Colorado residents. Application criteria must also include requirements for data collection, as specified by the state director, to show the impacts of services provided through the pilot project. The state director shall identify second-stage companies eligible to participate by utilizing the office's existing strategic infrastructure and by consulting with local and regional economic development partners, such as local service corps of retired executives, small business counseling offices, chambers of commerce, regional building alliances, economic development corps, and other local or regional economic development entities. The eligible companies and clients shall include second-stage companies in small business development centers' client lists, key industry networks, regional development planning groups, and Colorado companies to watch applicants.

(II) In order to participate in the pilot project, a company selected for participation must pay a one-time fee of seven hundred fifty dollars, which moneys shall be deposited into the economic gardening pilot project fund, created in subsection (5) of this section, for reinvestment in the pilot project.

(c) On or before March 1, 2014, the state director shall select a minimum of

twenty companies to participate in the pilot project.

(d) (I) The state director shall oversee the office and small business development center staff members certified pursuant to paragraph (a) of this subsection (4) or certified private contractors to deploy strategic assistance to all pilot project participants. The state director shall acquire any tools that he or she deems necessary to provide the strategic assistance, including database licenses, permits, and economic gardening certification.

(II) A participating company has twelve months from the date that the state director selects the company to participate in the pilot project to use the strategic assistance and other economic gardening services offered pursuant to the pilot project.

(III) The pilot project terminates on June 30, 2016.

(5) There is hereby created in the state treasury the economic gardening pilot project fund, to be administered by the state director. The fund consists of all fees received pursuant to subparagraph (II) of paragraph (b) of subsection (4) of this section and any moneys appropriated by the general assembly for the purposes of this section. The general assembly shall make annual appropriations of the moneys in the fund to the office for administering the pilot project. Any moneys in the fund not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(6) On or before November 1, 2014, and on or before November 1 each year thereafter through November 1, 2016, the director shall submit a report to the finance and the business, labor, and economic and workforce development committees of the house of representatives and the finance and business, labor, and technology committees of the senate, or any successor committees, summarizing the pilot project activities during the preceding fiscal year. The report must include, at a minimum:

(a) The services offered through the pilot project's strategic assistance;

(b) The office's expenditures on strategic assistance provided to pilot program participants;

(c) The number and types of jobs created as a result of the pilot project;

(d) The increased sales as a result of the pilot project; and

(e) The value of goods or services sold outside the company's local area or state.

(7) This section is repealed, effective July 1, 2017.

24-48.5-103. Motion picture and television advisory commission abolished - reestablished. (Repealed)

24-48.5-104. Functions of commission - legislative declaration. (Repealed)

24-48.5-105. Transfer of functions - Colorado customized training program -

Colorado economic development commission - contracts - continuation of regulations. (1) On and after July 1, 2000, the Colorado office of economic development shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations previously vested in the following programs and commissions concerning the duties and functions transferred to the office pursuant to this section:

(a) (Deleted by amendment, L. 2005, p. 207, § 2, effective August 8, 2005.)

(b) The Colorado economic development commission, a commission currently in the department of local affairs.

(2) On July 1, 2000, employees of the Colorado economic development commission whose principal duties and functions concern the duties and functions transferred to the Colorado office of economic development pursuant to this section and whose employment in said office is deemed necessary by the director of such office to carry out the purposes of this article shall be transferred to such office and shall become employees thereof. Any employees who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with the state personnel system laws and rules.

(3) On and after July 1, 2000, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Colorado economic development commission pertaining to the duties and functions transferred to the Colorado office of economic development pursuant to this section are transferred to said office and become property thereof.

(4) Whenever the motion picture and television advisory commission, as it existed prior to August 8, 2005, or Colorado economic development commission is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Colorado office of economic development pursuant to this section, such reference or designation shall be deemed to apply to such office. All contracts entered into by the motion picture and television advisory commission, as it existed prior to August 8, 2005, or Colorado economic development commission prior to July 1, 2000, in connection with the duties and functions transferred to said office pursuant to this section are hereby validated, with such office succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred pursuant to such contracts are hereby transferred and appropriated to such office for the payment of said obligations.

(5) On and after July 1, 2000, the Colorado office of economic development shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations previously vested in the department of local affairs concerning the joint administration of the Colorado customized training program, a program within the state board for community colleges and occupational education.

24-48.5-106. Certified capital companies - rules. (1) The Colorado office of economic development shall carry out the responsibilities delegated to it pursuant to article 3.5 of title 10, C.R.S., related to certified capital companies.

(2) The director of the Colorado office of economic development shall promulgate rules necessary to carry out the provisions of article 3.5 of title 10, C.R.S., by September 30, 2001. Such rules shall provide that the Colorado office of economic development shall begin accepting applications for certification as a certified capital company no later than October 31, 2001. Such rules shall further provide that any certified capital company may file premium tax credit allocation claims on behalf of its certified investors at any time on or after it becomes certified by the Colorado office of economic development, but in no case earlier than January 31, 2002, for premium tax credits that may be taken beginning in tax year 2003, and no earlier than January 31, 2004, for premium tax credits that may be taken beginning in tax year 2005, and that premium tax credits shall be earned by and vested in certified investors at the time of such investment of certified capital, although such premium tax credits may not be claimed or utilized until the tax year beginning on or after January 1, 2003, with respect to investments of certified capital made subsequent to January 31, 2002, but prior to January 31, 2004, or until the tax year beginning on or after January 1, 2005, with respect to investments of certified capital made subsequent to January 31, 2004.

(3) All direct and indirect expenditures incurred by the Colorado office of economic development in carrying out the responsibilities assigned to the office in this section shall be paid from the division of insurance cash fund, created in section 10-1-103 (3), C.R.S.

(4) Repealed.

24-48.5-107. Film production companies - contact - registration - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Commercial advertising production" means the production of a film that is created to promote specific brands, products, services, retailers, or advocacy positions. Commercial advertising production does not include the production of a film that is for the purpose of advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question.

(b) "Film" means any visual or audiovisual work that contains a series of related images, that is fixed on photographic film, videotape, computer disc, laser disc, or a similar recording medium from which it can be viewed or reproduced, and that is a commercial advertising production or is shown in theaters, licensed for television broadcasting, or licensed for the home viewing market.

(c) "Production activities" means the shooting of a film, support activities related

to such shooting, and any preshooting or postshooting activities that are necessary to produce a finished film, including but not limited to editing and the creation of sets, props, costumes, and special effects.

(d) "Production company" means a person, including a corporation or other business entity, that engages in production activities for the purpose of producing all or any portion of a film in Colorado.

(2) The Colorado office of economic development, or a designee of the director of the office, shall serve as the initial contact for any production company that is engaged in production activities in the state for the purpose of producing all or any portion of a film in the state. The office, or a designee of the director of the office, shall aid any production company in obtaining required permits, coordinating necessary state resources, scheduling the use of state highways or other state-owned property, ensuring that any fees imposed by any department, division, or entity of state government are waived for the production company pursuant to subsection (3) of this section, and shall otherwise assist a production company in filming all or a portion of a film in the state.

(3) Notwithstanding requirements otherwise specified in law, any permit fee that is imposed by any department, division, or entity of state government shall be waived for any production company that is participating in production activities in the state.

(4) The Colorado office of economic development shall satisfy the requirements of this section within the existing resources of the office.

(5) The director of the Colorado office of economic development may designate a person, a public or private entity, or a venture between public and private entities to be responsible for fulfilling the requirements of this section.

24-48.5-108. Bioscience research - evaluation - grants - fund - definitions - repeal. (1) **Legislative declaration.** (a) The general assembly finds that:

(I) Additional resources are needed to assist in improving and accelerating the evaluation process for bioscience research discoveries to determine the best disposition of these discoveries;

(II) The process of advancing bioscience research discoveries toward commercialization needs to be accelerated to support the development of new bioscience products and services in Colorado;

(III) The development of products and services from research discoveries that originate in Colorado will create new bioscience companies and additional primary jobs in Colorado; and

(IV) The state should dedicate resources to support partnership efforts between the bioscience industry and research institutions to build infrastructure that supports the commercialization of therapeutic and diagnostic products, devices, or instruments to improve human health; bioscience technologies that improve agriculture; and biofuels.

(a.3) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(a.5) The general assembly further finds that, to spur economic development and help new companies born out of research institutions to succeed, the state must dedicate resources that will increase the capacity of small companies to develop new technologies and business structures, thereby increasing product development and enhancing the economy of the state.

(b) The general assembly, therefore, declares that it is in the best interests of the state's economic growth to dedicate financial resources to facilitate the development of new bioscience research discoveries in Colorado and promote Colorado-based bioscience technologies.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Biofuel" means a biologically based fuel product developed from plant matter or other biological material, including renewable agricultural sources.

(a.3) "Biofuel research" means the use of microorganisms, specialized proteins, or thermal processes to develop biofuels and the related processes that make traditional manufacturing of energy cleaner and more efficient.

(a.5) "Bioscience company" means a company that is located in Colorado and produces or develops:

(I) Therapeutic or diagnostic products, devices, or instruments to improve human health;

(II) Technologies that rely on bioscience research to improve agriculture; or

(III) Biofuels.

(b) "Bioscience research" means the study of biological processes, organisms, devices, diagnostics, or systems with the objective of developing products that are intended to improve agriculture, the quality of human life, or the environment. "Bioscience research" includes, but is not limited to, biofuel research and life sciences research.

(c) "Director" means the director of the Colorado office of economic development.

(c.5) "Early-stage bioscience company" means a bioscience company that:

(I) Has received less than five million dollars from grants and third-party investors;

(II) Employs fewer than twenty persons; and

(III) Has its headquarters located in Colorado.

(d) "Life sciences research" means basic, applied, or translational research that leads to the development of:

(I) Therapeutic or diagnostic products, devices, or instruments to improve human health;

(II) Technologies that rely on bioscience research to improve agriculture; or

(III) Biofuels.

(e) "Office of technology transfer" means an office that is affiliated with a research institution and that is charged with the responsibility for technology transfer and that arranges for the sale or licensure of a bioscience research project to an outside entity, which is commonly a commercial enterprise.

(f) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(g) "Program" means the bioscience discovery evaluation grant program created in subsection (3) of this section.

(h) "Research institution" means an institution located and operating in Colorado that is a public or private, nonprofit institution of higher education, a nonprofit teaching hospital, or a private, nonprofit medical and research center.

(i) and (j) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(3) **Program.** (a) There is hereby created in the Colorado office of economic development the bioscience discovery evaluation grant program for the purpose of improving and expanding the development of bioscience discoveries with the intent of accelerating the development of new products and services. The Colorado office of economic development shall administer the program. The director shall consult with a Colorado bioscience membership organization in the implementation of the program, including but not limited to the review of program grant applications and the accountability and evaluation of the grantees and the bioscience research projects.

(b) The program shall provide grants to offices of technology transfer, early-stage bioscience companies, and other entities, pursuant to paragraph (b.7) of this subsection (3), on a statewide basis. The grants shall be paid from moneys appropriated to the bioscience discovery evaluation cash fund created in subsection (5) of this section. The grants shall be provided in amounts of:

(I) No more than one hundred fifty thousand dollars for each research project that is described in subparagraph (I) of paragraph (b.5) of this subsection (3); and

(II) No more than two hundred fifty thousand dollars for each early-stage bioscience company that receives a grant described in subparagraph (II) of paragraph (b.5) of this subsection (3). The total sum of moneys awarded as grants from the program to an early-stage bioscience company shall not exceed two hundred fifty thousand dollars.

(b.5) In providing grants to offices of technology transfer and early-stage bioscience companies pursuant to paragraph (b) of this subsection (3), the program shall provide the grants as follows:

(I) At least thirty percent of the moneys transferred to the bioscience discovery evaluation cash fund created in subsection (5) of this section shall be used to provide grants to offices of technology transfer for bioscience research projects that focus on life sciences, engineering, material sciences, computer sciences, photonics, or nanotechnology.

(A) and (B) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(II) At least thirty percent of the moneys transferred to the bioscience discovery evaluation cash fund created in subsection (5) of this section shall be used to provide grants to early-stage bioscience companies that have licensed a technology from a research institution or an office of technology transfer for the purpose of accelerating the commercialization of:

(A) Therapeutic or diagnostic products, devices, or instruments to improve human health;

(B) Bioscience technologies that improve agriculture; or

(C) Biofuels.

(b.7) Any moneys transferred to the bioscience discovery evaluation cash fund created in subsection (5) of this section that are not used to provide grants as described in paragraphs (b) and (b.5) of this subsection (3) may be used by the Colorado office of economic development to support partnership efforts between the bioscience industry and research institutions to build infrastructure that supports the commercialization of:

(I) Therapeutic or diagnostic products, devices, or instruments to improve human health;

(II) Bioscience technologies that improve agriculture; or

(III) Biofuels.

(c) To be eligible for a grant from the program for a bioscience research project that is described in subparagraph (I) of paragraph (b.5) of this subsection (3), an office of technology transfer shall submit to the Colorado office of economic development all of the following:

(I) A description of a bioscience research project that focuses on life sciences, engineering, material sciences, computer sciences, photonics, or nanotechnology;

(A) to (E) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(II) Evidence of a dedicated, matching source of moneys that is at least equal to the amount applied for under the program; and

(III) An analysis demonstrating that the scope of the project is required to enhance the commercialization of the technology that results from the project in Colorado.

(c.3) To be eligible for a grant from the program for a commercialization purpose that is described in subparagraph (II) of paragraph (b.5) of this subsection (3), an early-stage bioscience company shall submit to the Colorado office of economic development all of the following:

(I) An analysis demonstrating that the scope of the project is required to enhance the commercialization of one or more of the following technologies:

(A) Therapeutic or diagnostic products, devices, or instruments to improve human health;

(B) Bioscience technologies that improve agriculture; or

(C) Biofuels;

(II) Evidence of a dedicated, matching source of moneys that is at least equal to

the amount applied for under the program, which source consists entirely of other grants or contributions from third-party investors.

(c.5) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(d) Except as otherwise provided in subparagraph (II) of paragraph (c) of this subsection (3), and subparagraph (II) of paragraph (c.3) of this subsection (3), a grant awarded under the program shall not be used to supplement the funding of the research scope of a bioscience research project that is receiving funding from other sources.

(e) Upon completion of a project for which a grant recipient has received a grant awarded under the program, any unused grant moneys shall be returned by the office of technology transfer or early-stage bioscience company to the Colorado office of economic development. The office of economic development shall transfer the moneys to the state treasurer who shall deposit the same into the fund created in subsection (5) of this section.

(4) **Policies - reporting.** (a) On or before September 1, 2008, the director shall establish policies for the program that include, but need not be limited to:

(I) The procedures and timelines by which an office of technology transfer or an early-stage bioscience company may apply for a grant;

(II) Criteria for determining the grant amounts; and

(III) Reporting requirements for grant recipients that require, at a minimum, each office of technology transfer that receives a grant under the program or its designee to present its bioscience research project to elementary and secondary school science teachers who are employed in the geographic region in which the technology is being developed.

(b) On or before November 1 of each year, the director or the director's designee shall submit a report to the finance committees of the senate and house of representatives, or any successor committees, summarizing the use of all moneys that were awarded as grants from the program in the preceding fiscal year. At a minimum, the report shall specify, with regard to the grant recipients that received funding under the program during the preceding fiscal year, the amount of grant moneys distributed to each grant recipient and a description of each grant recipient's use of the grant moneys.

(I) to (III) (Deleted by amendment, L. 2008, p. 598, § 1, effective April 24, 2008.)

(5) **Fund.** (a) There is hereby created in the state treasury the bioscience discovery evaluation cash fund, referred to in this section as the "fund", that shall consist of moneys that are transferred to the fund pursuant to section 12-47.1-701 (2), C.R.S., any moneys transferred to the fund pursuant to paragraph (e) of subsection (3) of this section, moneys credited to the fund pursuant to section 39-22-604.3, C.R.S., and any other moneys appropriated to the fund by the general assembly. The moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes specified in this section, including administration of the program by the Colorado office of economic development. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived

from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund; except that any unexpended and unencumbered moneys remaining in the fund upon the repeal of this section shall be transferred to the general fund. Any moneys included in an annual appropriation that are not expended or encumbered at the end of the fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

(b) The Colorado office of economic development may use up to five percent of the moneys transferred to the fund for the actual costs incurred in administering the program.

(c) Notwithstanding any provision of this subsection (5) to the contrary, the state treasurer shall transfer any unexpended and unencumbered moneys in the fund as of January 1, 2015, to the advanced industries acceleration cash fund created in section 24-48.5-117 (7) (a). The Colorado office of economic development shall make program grants in accordance with this section until the moneys in the fund are transferred.

(6) This section is repealed, effective January 2, 2015.

24-48.5-109. STEM after-school education pilot grant program - fund - report - repeal. (Repealed)

24-48.5-110. Administration of enterprise zone program - transfer of employee. (1) On and after July 1, 2008, any employee of the department of local affairs prior to said date whose duties and functions concerned the administration of the enterprise zone program assumed by the Colorado office of economic development pursuant to article 30 of title 39, C.R.S., shall be transferred to the office and shall become an employee thereof.

(2) Any employee transferred to the Colorado office of economic development pursuant to subsection (1) of this section who is a classified employee in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their service shall be deemed to have been continuous.

(3) After the separation or termination of employment of any person transferred to the Colorado office of economic development pursuant to subsection (1) of this section, any employee hired by the office to assume the duties and functions concerning the administration of the enterprise zone program shall not become a classified employee in the state personnel system and instead shall be hired pursuant to the procedures established by the office.

24-48.5-111. Clean technology discovery evaluation grant program - clean technology research - evaluation - fund - definitions - repeal. (Repealed)

24-48.5-112. Administration of Colorado innovation investment tax credit - cash fund - created - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Additional funding" means that, on or after January 1, 2011, the state treasurer credits moneys to the fund pursuant to paragraph (a) of subsection (6) of this section.

(a.5) "Affiliate" means any person or entity that controls, is controlled by, or is under common control with another person or entity. For purposes of this paragraph (a.5), "control" means the power to determine the policies of an entity whether through ownership of voting securities, by contract, or otherwise.

(b) "Asset" means any owned property that has value, including financial assets and physical assets. Intellectual property shall not be included when determining total assets.

(c) "Colorado innovation investment tax credit" or "tax credit" means the credit against income tax created in section 39-22-532, C.R.S.

(c.3) "Contingent year" means all or part of a calendar year identified in sub-subparagraph (A) of subparagraph (II) of paragraph (a) of subsection (4) of this section during which additional Colorado innovation investment tax credits are available.

(c.7) "Fund" means the Colorado innovation investment tax credit cash fund created in subsection (6) of this section.

(d) "Office" means the Colorado office of economic development created in section 24-48.5-101.

(e) "Qualified investment" means an investment made during the 2010 calendar year or a contingent year in an equity security that meets all of the following requirements:

(I) The equity security is common stock, preferred stock, an interest in a partnership or limited liability company, a security that is convertible into an equity security, a convertible debt investment, or other equity security as determined by the office;

(II) The investment is at least twenty-five thousand dollars; and

(III) The qualified investor and its affiliates do not hold, of record or beneficially, immediately before making an investment, equity securities possessing more than thirty percent of the total voting power of all equity securities of the qualified small business.

(f) "Qualified investor" means an individual, limited liability company, partnership, S corporation, as defined in section 39-22-103 (10.5), C.R.S., or other

business entity that makes a qualified investment in a qualified small business. "Qualified investor" does not include a C corporation, as defined in section 39-22-103 (2.5), C.R.S.

(g) "Qualified small business" means a corporation, limited liability company, partnership, or other business entity that:

(I) Maintains its principal place of business in the state;

(II) Has at least fifty percent of its gross assets and fifty percent of its employees located within the state. If the entity is a member of an affiliate, the gross assets and the number of employees of all members of the affiliate, wherever those assets and employees are located, shall be included for the purpose of determining the percentage of the entity's gross assets and employees that are located in the state.

(III) (Deleted by amendment, L. 2011, (HB 11-1045), ch. 209, p. 903, § 2, effective May 23, 2011.)

(IV) Has a principal business involved primarily in research and development or manufacturing of new technologies, products, or processes;

(V) Has been actively operating for less than five years; and

(VI) Has total yearly revenues of less than two million dollars and total assets of less than five million dollars, excluding any investment that is the basis of a Colorado innovation investment tax credit.

(2) (a) The office shall receive and evaluate applications that are submitted by qualified investors to receive a Colorado innovation investment tax credit for qualified investments made in a qualified small business during the 2010 calendar year or a contingent year.

(b) To be eligible for a Colorado innovation investment tax credit, a qualified investor shall file an application with the office within ninety days after making a qualified investment. An application shall be made in the manner and form prescribed by the office. The office shall note the time and date of each application received. In addition to any other requirements established by the office, the application shall include:

(I) The name, address, and federal income tax identification number of the applicant;

(II) The number of new employees hired by the qualified small business as a result of the qualified investment;

(III) The name and federal employer identification number of the qualified small business that received a qualified investment made by the applicant;

(IV) The amount of the qualified investment;

(V) The name of any partner, member, or subchapter S shareholder entity, if any, and the federal income tax identification number of such person or entity;

(VI) The date the qualified investment was made; and

(VII) Any additional information that the office requires.

(c) A corporation, limited liability company, partnership, or other business entity may request the office to determine whether it is a qualified small business. Upon

receiving such request or upon receipt of an application for a Colorado innovation investment tax credit from a qualified investor, the office shall determine whether the corporation, limited liability company, partnership, or other business entity that is named in the application or written request is a qualified small business. After determining the qualifications, the office shall certify the qualified small business as being eligible to receive qualified investments for purposes of this section. The certification for a qualified small business, including a business that was certified in the 2010 calendar year, is valid for two years; except that such certification shall be revoked if the qualified small business no longer meets the qualifications. A small business shall notify the office within thirty business days from the date that it no longer meets the qualifications. If the certification is revoked, the office may assess a penalty against the business entity equal to the amount of the Colorado innovation investment tax credits authorized after the date that the business no longer meets the qualifications. The penalty shall be deposited into the state general fund. If the certification is revoked, subsequent investments in the business shall not qualify for a tax credit. All tax credits issued before the revocation of the certification shall remain valid. Any application for a tax credit shall not be denied on the basis of the revocation of the certification if the investment was made before the date of the revocation.

(d) As part of the application for a Colorado innovation investment tax credit, the applicant and the qualified small business that receives the investment shall each provide written authorization to permit the department of revenue to provide tax information to the office for the purpose of determining if there are any misrepresentations on the application. The authorization shall limit disclosure to income tax information for the latest two years for which returns were filed with the department of revenue preceding the date the application is filed and for all tax years through the year in which the investment was made for which a return was not filed as of the date of the application. The applicant shall also provide in the written authorization income tax information for all tax years in which the applicant actually claims a tax credit or carries forward a tax credit on a return filed with the department of revenue. An applicant with an individual ownership interest as a co-owner of a business and that may be entitled to a pro rata share of the tax credit pursuant to section 39-22-532 (5), C.R.S., shall provide a written authorization with content similar to the authorization, and in the same manner, as any other applicant is required to provide.

(e) The office shall review and make a determination with respect to each application for a Colorado innovation investment tax credit within ninety days after receiving the application. The office may request additional information from the applicant in order to make an informed decision regarding the eligibility of the qualified investor or qualified small business.

(3) (a) Subject to the limitation set forth in subsection (4) of this section, the office shall authorize a Colorado innovation investment tax credit for each qualified investor

who makes a qualified investment in a qualified small business. The amount of the credit shall be fifteen percent of the amount of the investment; except that the total amount of the credit for each qualified investment shall not exceed twenty thousand dollars. A qualified investor may not claim more than one tax credit per qualified small business. The office shall issue a tax credit certificate to the qualified investor for each qualified investment stating the amount of the tax credit that is authorized for purposes of section 39-22-532, C.R.S. A tax credit certificate is nontransferable. The office shall certify to the department of revenue the name of each qualified investor who receives a tax credit certificate, the amount of the credit, and other relevant information relating to the tax credits.

(b) A qualified investor shall submit a copy of each tax credit certificate as part of a tax return to the department of revenue in accordance with section 39-22-532 (3), C.R.S., by the due date of the return, including extensions, for the tax year during which the qualified investment was made. If the qualified investor fails to timely file the tax credit certificate, the tax credit expires for that taxable year and there shall be no carry forward of the expired credit. Credits that expire or that otherwise are not timely used by the qualified investor shall not be reissued.

(4) (a) (I) The total amount of Colorado innovation investment tax credits allowed for the 2010 tax year shall not exceed seven hundred fifty thousand dollars.

(II) (A) If, on or after January 1, 2011, there is additional funding, additional Colorado innovation investment tax credits shall be available for qualified investments made during the remainder of the calendar year after the additional funding and any future calendar year; except that no tax credits shall be available after the limit set forth in sub-subparagraph (B) of this subparagraph (II) is met.

(B) The total amount of Colorado innovation investment tax credits allowed pursuant to this subparagraph (II) shall not exceed the total amount of the moneys credited to the fund through the additional funding less any moneys used by the office to provide for the direct and indirect costs associated with the administration of the tax credit.

(C) The office shall post on its web site the amount of the additional Colorado innovation investment tax credits that are available pursuant to this subparagraph (II).

(b) If qualifying applications in the 2010 tax year exceed seven hundred fifty thousand dollars or the additional amount set forth in subparagraph (II) of paragraph (a) of this subsection (4), the office shall authorize Colorado innovation investment tax credits in the order of the date and time that the applications are received by the office, as evidenced by the time and date that the office received the application. If an application is received that, if authorized, would require the office to exceed the seven hundred fifty thousand dollar limit, the office shall only grant the applicant the remaining amount of tax credits that would not exceed the seven hundred fifty thousand dollar limit or the additional amount set forth in subparagraph (II) of paragraph (a) of this subsection (4).

(5) No later than April 30 of the year following a year during which the office authorizes a Colorado innovation investment tax credit, the office shall provide to the department of revenue an electronic report that includes the information set forth in paragraph (b) of subsection (2) of this section and any other information required to administer section 39-22-532, C.R.S. If the office subsequently discovers that an applicant who received a tax credit misrepresented information on the application, the office shall immediately notify the department of revenue and provide the department of revenue all information that relates to that applicant. If the department of revenue determines that there has been a misrepresentation on the application, the department of revenue shall deny the tax credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment. If the misrepresentation relates to whether the investment was made to a qualified small business, the department of revenue shall deny the tax credit only if the applicant knew or should have known at any time before the certification that the representation was false.

(6) (a) There is hereby created in the state treasury the Colorado innovation investment tax credit cash fund to provide for the direct and indirect costs associated with the administration of the tax credit and to offset lost general fund revenue as a result of the tax credit. The office is authorized to seek and accept gifts, grants, or donations from private or public sources. All private and public moneys received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the fund. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this section. Any moneys in the fund not expended for such purpose may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Except as otherwise set forth in paragraph (b) of this subsection (6), any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(b) (I) On June 30, 2010, the state treasurer shall transfer three hundred seventy-five thousand dollars from the fund to the general fund.

(II) On July 1, 2010, the state treasurer shall transfer three hundred seventy-five thousand dollars from the fund to the general fund.

(III) If there is additional funding and the office authorizes a Colorado innovation investment tax credit pursuant to subparagraph (II) of paragraph (a) of subsection (4) of this section, the state treasurer shall transfer an amount equal to the tax credit from the fund to the general fund. Transfers shall be made on June 30 of the year immediately following the contingent year in which the office authorizes the tax credit.

24-48.5-113. Limit on solar device fees - repeal. (1) An agency, institution,

authority, or political subdivision of the state shall:

(a) Not charge permit, application review, or other fees to install an active solar electric or solar thermal device or system that, in aggregate, exceed:

(I) The lesser of the actual costs in issuing the permit or reviewing the application or five hundred dollars for a residential application or two thousand dollars for a nonresidential application if the device or system produces fewer than two megawatts of direct current electricity or an equivalent-sized thermal energy system; or

(II) The actual costs in issuing the permit if the device or system produces at least two megawatts of direct current electricity or an equivalent-sized thermal energy system.

(b) Clearly and individually identify all fees and taxes assessed on an application subject to this subsection (1) on the invoice.

(2) This section is repealed, effective July 1, 2018.

24-48.5-114. Film, television, and media - definitions. As used in this section and sections 24-48.5-115 and 24-48.5-116, unless the context otherwise requires:

(1) (a) "Film" means any visual or audiovisual work, including, without limitation, a video game, television show, or a television commercial, that contains a series of related images, regardless of the medium by which the work is fixed and from which it can be viewed or reproduced, and that is primarily intended to be either:

(I) Commercially exploited by being shown in theaters or on television licensed for the home or international market, or otherwise; or

(II) For internal industrial, corporate, or institutional use.

(b) "Film" does not include an obscene film.

(2) "Obscene" has the same meaning as set forth in section 18-7-101 (2), C.R.S.

(3) "Office" means the Colorado office of film, television, and media created pursuant to section 24-48.5-115.

(4) "Originates" means the production company has been a resident of the state or registered with the secretary of state for at least twelve consecutive months; except that, if the production company creates a business entity for the sole purpose of conducting production activities in the state, then such business entity need not be registered with the secretary of state for twelve consecutive months, but the owner of the business entity must be a resident of the state for at least twelve consecutive months.

(5) "Production activities" means the shooting of a film, support activities related to such shooting, and any preshooting or postshooting activities that commence on or after July 1, 2009, and that are necessary to produce a finished film, including but not limited to editing and the creation of sets, props, costumes, and special effects.

(6) "Production company" means a person, including a corporation or other business entity, that engages in production activities for the purpose of producing all or any portion of a film in Colorado.

(7) "Qualified local expenditure" means a payment made by a production company operating in Colorado to a person or business in Colorado in connection with production activities in Colorado. "Qualified local expenditure" shall include, but need not be limited to:

(a) Payments made in connection with developing or purchasing the story and scenario to be used for a film;

(b) Payments made for the costs of set construction and operations, wardrobe, accessories, and related services;

(c) Payments made for the costs of photography, sound recording and synchronization, lighting, and related services;

(d) Payments made for the costs of editing, post-production, music, and related services;

(e) Payments made for the costs of renting facilities and equipment, including location fees, leasing vehicles, and providing food and lodging to people working on the film production;

(f) Payments for airfare purchased through a Colorado-based travel agency or company;

(g) Payments for insurance and bonding purchased through a Colorado-based insurance agent;

(h) Payments for other direct costs incurred by the film production company that are deemed appropriate by the office; and

(i) Payments of up to one million dollars per employee or contractor, made by a production company to pay the wages or salaries of employees or contractors who participate in the production activities. In order for any wage or salary to be considered a qualified local expenditure, all Colorado income taxes shall be withheld and paid either by the production company or the individual. Any payments in excess of one million dollars per employee or contractor shall be excluded.

24-48.5-115. Film, television, and media - duties - loan guarantee program. (1) There is hereby created within the Colorado office of economic development the Colorado office of film, television, and media, the head of which shall be the director of the Colorado office of film, television, and media. The director of the office shall be assisted by a staff to fulfill the office's mission to promote Colorado as a location for making films. Beginning on July 1, 2012, the director of the office shall report to the director of the office of economic development.

(2) The office shall:

(a) Market Colorado as a destination for making feature films, television shows, television commercials, still photography, music videos, and new media projects;

(b) Assist production companies that are interested in conducting production

activities in Colorado in scouting appropriate locations in the state for the production company's film;

(c) Assist state and local government agencies and organizations in the creation of permitting criteria for production companies that plan to conduct production activities on state or local government property;

(d) Assist production companies in determining the appropriate state or local government agencies to contact to apply for a permit to conduct production activities on state or local government property;

(e) Serve as a general liaison for production companies and assist in coordination efforts among production companies, any state or local government agency, and local businesses and individuals before, during, and after the production company conducts production activities in Colorado;

(f) Serve as a resource for local governments and communities around Colorado when a production company approaches the local government or community regarding the possibility of conducting production activities on the property of the local government or within the community;

(g) Administer the performance-based incentive for film production in Colorado as specified in section 24-48.5-116;

(h) Administer the loan guarantee program as specified in subsection (3) of this section;

(i) Conduct educational seminars to promote the film industry and people working in the film industry in Colorado; and

(j) Perform any other duties in furtherance of the office's mission as deemed necessary by the director of the office and the director of the office of economic development.

(3) (a) The office, with prior approval from the Colorado economic development commission created in section 24-46-102, may enter into a contract or other agreement, or both a contract and other agreement, with a production company to guarantee loans obtained for purposes of financing the production activities, not to exceed twenty percent of the entire budget for the production activities.

(b) The office shall employ the following criteria in determining whether to award a loan guarantee:

(I) The experience, professional qualifications, and business background of the production company shall be such as to give the production activities a reasonable chance of success;

(II) The production company shall be bonded by a major bonding company;

(III) The production company shall have contracted with a major sales company with experience and standing in the film industry, and such sales company shall provide sales estimates that support full repayment of the loan to be guaranteed; and

(IV) The film and the production activities shall result in a positive reflection on

the state.

(c) The office may reject any application for a loan guarantee pursuant to this subsection (3).

(d) The office may provide loan guarantees for production activities; except that such loan guarantees shall be limited to twenty percent of the entire budget for the production activities. Loan guarantees may only be provided to feasible production activities for an amount that is the least amount necessary to cause the production activities to occur, as determined by the office, with prior approval from the Colorado economic development commission. The office may structure the loan guarantees in a way that facilitates the production activities and also provides for a compensatory return on investment or loan guarantee facility fee to the office based on the risk of the production activities.

(e) The office may charge a loan guarantee facility fee calculated on the outstanding principal, which fee shall be collected from the eligible borrower by the eligible lender and paid to the office. Moneys collected shall be deposited in the Colorado office of film, television, and media operational account cash fund created in section 24-48.5-116 (5).

(f) Moneys paid to satisfy a defaulted loan made pursuant to this subsection (3) shall only be paid out of the Colorado office of film, television, and media operational account cash fund created in section 24-48.5-116 (5).

(g) No guarantee agreement made by the office pursuant to this subsection (3) shall constitute or become an indebtedness, a debt, or a liability of the state, nor shall such loan guarantee the giving, pledging, or loaning of the full faith and credit of the state.

(4) No later than July 1, 2017, the state auditor shall complete a performance audit of the office, the performance-based incentive program for film production in Colorado specified in section 24-48.5-116, and the loan guarantee program specified in subsection (3) of this section. The state auditor shall present the performance audit report to the legislative audit committee. After the performance audit report is released by the legislative audit committee, the state auditor shall provide copies, in accordance with section 24-1-136 (9), to the finance committees of the house of representatives and senate.

24-48.5-116. Film, television, and media - performance-based incentive for film production in Colorado - Colorado office of film, television, and media operational account cash fund - creation. (1) Subject to the provisions of this section, on or after July 1, 2012, any production company employing a workforce for any in-state production activities made up of at least fifty percent Colorado residents shall be allowed to claim a performance-based incentive in an amount as follows:

(a) For a production company that originates production activities in Colorado, an

amount equal to twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds one hundred thousand dollars; and

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), for a production company that does not originate production activities in Colorado, an amount equal to twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds one million dollars.

(II) For a production company that produces a television commercial or video game and that does not originate production activities in Colorado, any production company employing a workforce for any in-state production activities made up of at least fifty percent Colorado residents shall be allowed to claim a performance-based incentive in an amount equal to twenty percent of the total amount of the production company's qualified local expenditures if the total of such expenditures equals or exceeds two hundred fifty thousand dollars.

(2) (a) In order for a production company to claim a performance-based incentive for production activities in Colorado pursuant to this section, the production company shall apply to the office, in a manner to be determined by the office, prior to beginning production activities in the state. The application shall include a statement of intent by the production company to produce a film in Colorado for which the production company will be eligible to receive the incentive. The production company shall submit, in conjunction with the application, any documentation necessary to demonstrate that the production company's projected qualified local expenditures will satisfy the expenditures specified in paragraph (a) or (b) of subsection (1) of this section, as applicable.

(b) The office shall review each application submitted by a production company before the production company begins work on a film in Colorado. Based on the information provided in the production company's application, the office shall make an initial determination of whether the production company will be eligible to receive a performance-based incentive and estimate the amount of the incentive that will be due to the production company. The office, with approval of the Colorado economic development commission created in section 24-46-102, shall grant conditional written approval to a production company that, based on the information provided by the production company and based on an analysis of such information by the office and the Colorado economic development commission, will satisfy the requirements of this section and be eligible to claim an incentive.

(c) (I) Upon completion of production activities in Colorado, a production company that received conditional approval for a performance-based incentive from the office shall retain a certified public accountant to review and report in writing, and in accordance with professional standards, regarding the accuracy of the financial documents that detail the expenses incurred in the course of the film production activities in Colorado. If the production company provides a copy of the certified public

accountant's written report and the production company certifies in writing to the office that the amount of the production company's actual qualified local expenditures equals or exceeds the minimum total amount of the production company's qualified local expenditures as specified in subsection (1) of this section, the office shall issue an incentive to the production company.

(II) (A) For purposes of this paragraph (c), "certified public accountant" means a certified public accountant licenced to practice in this state or a certified public accounting firm that is registered in this state.

(B) Any services of a certified public accountant provided to meet the requirements of this paragraph (c) shall be performed in Colorado.

(d) The office shall develop procedures for the administration of this section, including application guidelines for production companies applying to receive a performance-based incentive and for the office to issue payment of the incentives pursuant to this section.

(3) The office shall include data regarding the number of production companies that claimed the performance-based incentive pursuant to this section and the total amount of all incentives claimed during the most recent fiscal year for which such information is available in an annual report to the general assembly.

(4) The total amount of performance-based incentives that the office issues pursuant to this section in any fiscal year shall not exceed the amount appropriated to the office to be used for the purposes of this section in the applicable fiscal year and any moneys not expended or encumbered from previous fiscal years that were appropriated to the office to be used for the purposes of this section.

(5) (a) There is hereby created in the state treasury the Colorado office of film, television, and media operational account cash fund, referred to in this section as the "fund". The fund shall consist of:

(I) Moneys transferred to the fund in accordance with section 12-47.1-701 (2), C.R.S.;

(II) Moneys transferred to the fund, including three million dollars that shall be transferred on July 1, 2012, from the general fund to the Colorado office of film, television, and media operational account cash fund; and

(III) Any gifts, grants, or donations from private or public sources that the office is hereby authorized to seek and accept.

(b) The moneys in the fund shall be annually appropriated to the office for the operation of the office, for the performance-based incentive for film production in Colorado as specified in subsection (1) of this section, and for the loan guarantee program as specified in section 24-48.5-115 (3).

(c) All moneys not expended or encumbered, and all interest earned on the investment or deposit of moneys in the fund, remain in the fund and do not revert to the general fund or any other fund at the end of any fiscal year. Any moneys not expended or

encumbered from any appropriation at the end of any fiscal year remain available for expenditure in the next fiscal year without further appropriation.

24-48.5-117. Advanced industry - grants - fund - definitions - repeal. (1) **Legislative declaration.** (a) The general assembly finds and declares that Colorado is home to a network of assets and resources, which include research universities, community colleges, federal laboratories, innovative companies, manufacturing infrastructure, workforce training institutions, and entrepreneurs. To drive growth in Colorado's economy, the state must focus on increasing the capacity and competitiveness of these assets and resources and thereby attract greater investment and provide a competitive advantage for Colorado's advanced industries. Investment in advanced industries will build public-private partnerships, drive innovation, and increase capital investment in Colorado's economy.

(b) The general assembly further finds and declares that investment in advanced industries will:

(I) Drive growth in high-paying, high-skill jobs;

(II) Align educational institutions to create the workforce for advanced industry needs;

(III) Increase exports and competitiveness in global markets;

(IV) Accelerate the commercialization of technologies; and

(V) Promote research and development capabilities across research universities, community colleges, and federal laboratories.

(c) The general assembly recognizes the value of cross-sector collaboration and partnerships with research institutions and industry and encourages the Colorado office of economic development to play an active role in aligning resources to create and implement strategic initiatives across advanced industries.

(2) **Definitions.** As used in this section:

(a) "Advanced industry" means the following industries:

(I) Advanced manufacturing;

(II) Aerospace;

(III) Bioscience;

(IV) Electronics;

(V) Energy and natural resources;

(VI) Infrastructure engineering; and

(VII) Information technology.

(b) "Fund" means the advanced industries acceleration cash fund created in paragraph (a) of subsection (7) of this section.

(c) "Office of economic development" or "office" means the Colorado office of economic development created in section 24-48.5-101.

(d) "Office of technology transfer" means an office that:

(I) Is affiliated with a research institute;

(II) Is responsible for technology transfers; and

(III) Arranges for the sale or licensure of an advanced industry project to a private entity.

(e) "Program" means the advanced industries acceleration grant program created in subsection (3) of this section.

(f) "Research institution" means an institution located and operating in Colorado that is a:

(I) Public or private, nonprofit institution of higher education or teaching hospital;

(II) Federal laboratory;

(III) Private technology and research center; or

(IV) Private, nonprofit medical and research center.

(3) **Program.** (a) The advanced industries acceleration grant program is created within the office of economic development. The purpose of the program is to accelerate economic growth through grants that improve and expand the development of advanced industries, facilitate the collaboration of advanced industry stakeholders, and further the development of new advanced industry products and services. The office of economic development shall administer the program, which includes proof-of-concept grants, early-stage capital and retention grants, and infrastructure funding grants. All grants are from moneys in the advanced industries acceleration cash fund created in subsection (7) of this section. Except for the reporting requirement in subsection (6) of this section, the program ends on July 1, 2024, and all grants must be disbursed prior to that date.

(b) (I) The office of economic development may award a proof-of-concept grant for an advanced industry research project to an eligible office of technology transfer.

(II) To be eligible for a proof-of-concept grant, an office of technology transfer must:

(A) Submit a description of the advanced industry research project;

(B) Provide an analysis demonstrating that the project will provide significant economic impact or competitive advantage for the state and advanced industries and that it will accelerate the pace of applied research leading to rapid commercialization of products and services resulting from the project; and

(C) Have a dedicated, matching source of moneys from its affiliated research institution that is greater than or equal to one-third of the amount of the requested grant.

(III) In selecting the recipients of a proof-of-concept grant, the office of economic development shall give preference to projects sponsored by an office of technology transfer that:

(A) Include impacts across more than one advanced industry;

(B) Involve more than one research institution or advanced industry stakeholder; or

(C) Originate from a nonprofit research institution.

(IV) Except as set forth in paragraph (b) of subsection (4) of this section, the maximum amount of a proof-of-concept grant is one hundred fifty thousand dollars.

(V) A recipient of a proof-of-concept grant shall use the grant only to accelerate product or service commercialization and shall not use the grant to support basic research.

(c) (I) The office of economic development may award an early-stage capital and retention grant to an eligible company for the purpose of accelerating the commercialization of advanced industry products or services to be manufactured or performed in Colorado.

(II) To be eligible for an early-stage capital and retention grant, a company must:

(A) Be in an advanced industry;

(B) Have its headquarters located in Colorado or have at least fifty percent of its employees based in Colorado;

(C) Have received less than twenty million dollars from other grants and third-party investors;

(D) Have annual revenues of less than ten million dollars;

(E) Provide an analysis demonstrating that the scope of the project is required to enhance the commercialization of one or more advanced industry products or services within the state; and

(F) Have a dedicated, matching source of moneys that is greater than or equal to twice the amount of the requested grant.

(III) In selecting the recipient of an early-stage capital and retention grant, the office of economic development shall give preference to a company whose technology or research and development has application to more than one advanced industry.

(IV) Except as set forth in paragraph (b) of subsection (4) of this section, the maximum amount of an early-stage capital and retention grant is two hundred fifty thousand dollars.

(d) (I) The office of economic development may award an infrastructure funding grant for an advanced industry project that builds or utilizes infrastructure to support or enhance the commercialization of advanced industry products or services or that contributes to the development of an advanced industry workforce.

(II) To be eligible for an infrastructure funding grant, a project must:

(A) Substantially increase alignment between private companies within an advanced industry and research institutions; and

(B) Have a matching source of moneys that is greater than or equal to twice the amount of the requested grant.

(III) In selecting recipients for the infrastructure funding grants, the office of economic development shall give preference to projects that:

(A) Accelerate economic growth in more than one advanced industry or include more than one research institution or advanced industry stakeholder;

(B) Originate from nonprofit research institutions;

(C) Focus on applied research and development, technology acceleration, or production-oriented or manufacturing-oriented facilities; or

(D) Focus on workforce development that addresses the advanced industries' workforce skills that are needed to facilitate commercialization of products or services.

(IV) Except as set forth in paragraph (b) of subsection (4) of this section, the maximum amount of an infrastructure funding grant is five hundred thousand dollars.

(4) **Common grant policies.** Any grant awarded pursuant to subsection (3) of this section is subject to the following:

(a) In order to be eligible for a grant, a grant applicant must:

(I) Identify the number of jobs that will be created or retained in the state, anticipated capital invested or retained in the state, and any other projected economic impacts that will result from the grant; and

(II) Submit any information required by the office of economic development to be eligible for a grant;

(b) A limit on the maximum amount of grants does not apply to any applicant that qualifies for a preference identified in subsection (3) of this section;

(c) The office of economic development shall not pay a grant to a recipient unless the recipient has received the matching source of moneys that is required for the grant;

(d) (I) Upon completion of a project that was the basis of a grant, a recipient shall identify how the grant was used, the number of jobs created or retained in the state, capital invested or retained in the state, and any other economic impacts that resulted from the grant; and

(II) Return any unused grant moneys to the office of economic development, which shall transfer the moneys to the state treasurer for deposit in the advanced industries acceleration cash fund.

(5) **Grant administration.** (a) On or before September 1, 2013, the office of economic development shall establish procedures and timelines for grant applications; criteria for determining grant amounts, including how preferences will be applied; grantee reporting requirements; and any other program policies. The office may amend these policies at any time.

(b) Prior to awarding a grant, the office of economic development shall consult with the economic development commission about all of the potential grants and other monetary incentives that an office of technology transfer, company, or project is eligible to receive from the state.

(c) The office of economic development shall consult with Colorado-based advanced industries associations or other representatives from advanced industries about the program. This consultation must include reviewing of program grant applications and monitoring and evaluating the grantees and the advanced industry projects.

(d) Subject to the available moneys, there is no limit on the number of grants that

the office of economic development may annually award.

(e) (I) In the 2014 calendar year, the office of economic development shall award, at a minimum, an amount equal to one-half of the amount credited to the fund on March 1, 2014, pursuant to section 39-22-604.3, C.R.S., for program grants to clean technology companies or projects.

(II) In the 2015 calendar year and each calendar year thereafter, the office of economic development shall award, at a minimum:

(A) Five million five hundred thousand dollars for program grants to bioscience companies or projects; and

(B) An amount equal to one-half of the amount credited to the fund during the year pursuant to section 39-22-604.3, C.R.S., for program grants to clean technology companies or projects.

(III) The office of economic development may use any moneys in the fund that are not required for the mandatory grants under subparagraph (II) of this paragraph (e) for program grants to companies or projects from any of the seven advanced industries.

(f) The office of economic development shall award at least fifteen percent of the total program grants in a calendar year to each of the three types of grants. If the office is unable to award this percentage in a given year due to a lack of qualified applicants, the deficiency does not roll forward to the next year.

(6) **Reporting.** (a) On or before November 1, 2014, and November 1 of the next ten years thereafter, the office of economic development shall submit a report to the finance and the business, labor, and economic and workforce development committees of the house of representatives and to the business, labor, and technology and the finance committees of the senate, or any successor committees, summarizing all of the grants awarded in the program during the preceding fiscal year. At a minimum, the report must include the amount that each recipient received, a description of each recipient's use of the grant, the number of jobs created or retained in the state, capital invested or retained in the state, and any other economic impacts that resulted from the grant.

(b) Section 24-1-136 (11) does not apply to the report required by paragraph (a) of this subsection (6).

(7) **Fund.** (a) The advanced industries acceleration cash fund is created in the state treasury. The fund consists of:

(I) Moneys transferred to it pursuant to section 24-48.5-108 (5) (c);

(II) Moneys credited to it pursuant to section 39-22-604.3, C.R.S.;

(III) Moneys transferred to it pursuant to section 12-47.1-701 (2), C.R.S;

(IV) Five million dollars, which the state treasurer shall transfer from the general fund to the fund on September 1, 2013;

(V) Moneys credited to it pursuant to subparagraph (II) of paragraph (d) of subsection (4) of this section;

(VI) Any gifts, grants, or donations credited to it pursuant to paragraph (b) of this

subsection (7); and

(VII) Any other moneys that the general assembly appropriates to it.

(b) (I) The office of economic development is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of the program; except that the office may not accept a gift, grant, or donation that is subject to conditions that are inconsistent with this section or any other law of the state. The office shall transmit all private and public moneys received through gifts, grants, or donations to the state treasurer, who shall credit the same to the fund.

(II) The general assembly finds that the implementation of this program does not rely entirely or in any part on the receipt of adequate funding through gifts, grants, or donations. Therefore, the office of economic development is not subject to the notice requirements specified in section 24-75-1303 (3).

(c) The moneys in the fund are continuously appropriated to the office of economic development for the purpose of awarding grants allowed by this section and for its administrative costs associated with the program. The office's administrative expenses for the program in a fiscal year shall not exceed five percent of the moneys transferred or appropriated to the fund in the fiscal year.

(d) As provided by law, the state treasurer may invest any unexpended moneys in the advanced industries acceleration cash fund. All interest and income derived from the investment and deposit of moneys in the fund are credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall not be credited or transferred to the general fund or another fund; except that any unexpended and unencumbered moneys remaining in the fund upon the repeal of this section are transferred to the general fund.

(8) **Repeal.** This section is repealed, effective January 1, 2025.

24-48.5-118. Procurement technical assistance task force - members - duties - legislative declaration - repeal. (1) (a) The general assembly hereby finds, determines, and declares that:

(I) Colorado businesses and entrepreneurs need the capability and capacity to compete for government contracts at the federal, state, and local levels;

(II) Government contracting, at all levels, is a competitive process;

(III) A procurement technical assistance program offers education, counseling, and technical assistance to businesses and entrepreneurs to compete for government contracts; and

(IV) The federal government will match the state's investment in a program to provide procurement technical assistance on a one-to-one basis.

(b) The general assembly further finds and declares that the creation of a task force to discuss and determine the future structure and oversight of procurement technical assistance centers in Colorado is necessary to ensure that such centers may continue to

provide efficient and effective procurement technical assistance resources to Colorado businesses and entrepreneurs.

(2) There is hereby created the procurement technical assistance task force, referred to in this section as the "task force". The task force consists of eight members as follows:

(a) Four members of the general assembly, appointed as follows:

(I) One member of the house of representatives appointed by the speaker of the house of representatives;

(II) One member of the house of representatives appointed by the minority leader of the house of representatives;

(III) One member of the senate appointed by the president of the senate; and

(IV) One member of the senate appointed by the minority leader of the senate;

(b) Two representatives from the Colorado office of economic development appointed by the executive director of the Colorado office of economic development;

(c) The executive director of the nonprofit organization that currently provides procurement technical assistance in the state; and

(d) A board member of the nonprofit organization that currently provides procurement technical assistance in the state, who shall be chosen by the two members of the house of representatives who are appointed to serve on the task force.

(3) The task force shall be co-chaired by one legislative member of the task force, who shall be chosen by the members of the task force, and by one member from the Colorado office of economic development, who shall be chosen by the executive director of the Colorado office of economic development.

(4) The task force shall meet as necessary, as determined by the members of the task force, after the first regular session of the sixty-ninth general assembly. The task force may invite representatives from state and local governmental entities, businesses or entrepreneurs, chambers of commerce, or other public or private organizations to participate in the meetings of the task force, as deemed necessary and appropriate by the members of the task force. The task force shall complete its work and make recommendations to the general assembly, if necessary, on or before January 1, 2014.

(5) The task force shall:

(a) Discuss best management practices and create a management strategy for the future of procurement technical assistance centers in the state;

(b) Develop a plan for the long-term funding and sustainability of procurement technical assistance centers in the state;

(c) Formulate a framework for procurement technical assistance centers in the state that will ensure long-term efficiency and effectiveness of the program;

(d) Evaluate best practices derived from the other procurement technical assistance centers throughout the United States, including the possibility of integrating procurement technical assistance centers into the existing small business resource center

structure of the Colorado office of economic development;

(e) Develop a public-private partnership to enhance the procurement technical assistance program; and

(f) If deemed necessary by the members of the task force, make recommendations to the general assembly regarding how to best achieve the desired results for the future of the procurement technical assistance program.

(6) All staff needed to assist the task force in conducting its duties shall be provided by the Colorado office of economic development.

(7) All nonlegislative members of the task force shall serve without compensation. This section shall not be construed to prevent nonlegislative members of the task force from receiving their regular salary if they participate in task force meetings during their regular business hours.

(8) The legislative members of the task force shall be compensated for attendance at meetings of the task force and shall receive reimbursement for actual and necessary expenses incurred in the performance of their duties as members of the task force, as provided in section 2-2-307, C.R.S. The total amount available for reimbursement and compensation pursuant to this subsection (8) shall not exceed five thousand dollars.

(9) For the 2013-14 fiscal year, the general assembly shall appropriate to the Colorado office of economic development an amount not to exceed fifteen thousand dollars to be used by the Colorado office of economic development to cover its costs in connection with the duties of the task force pursuant to this section.

(10) This section is repealed, effective January 1, 2014.

24-48.5-119. Procurement technical assistance centers - funding for 2013-14 fiscal year - repeal. (1) Subject to available appropriations for the purposes of this section, for the 2013-14 fiscal year, the Colorado office of economic development shall assist an organization in the state that offers procurement technical assistance to businesses and entrepreneurs and that was the recipient of a grant from the Colorado office of economic development for such purposes during the 2012-13 fiscal year, in satisfying its financial obligations to receive matching moneys from the federal government for the purpose of providing procurement technical assistance.

(2) This section is repealed, effective January 1, 2014.

PART 2

COLORADO OFFICE OF FILM, TELEVISION, AND MEDIA

24-48.5-201 to 24-48.5-203. (Repealed)

PART 3

CREATIVE INDUSTRIES DIVISION

24-48.5-301. Creative industries division - creative industries cash fund - creation - definition. (1) There is hereby created within the Colorado office of economic development the creative industries division, which shall be referred to in this part 3 as the "division". The director of the division shall be the person who is appointed director of the council on creative industries by the director of the Colorado office of economic development. The division shall be comprised of the council on creative industries and the art in public places program, and the director of the division shall oversee such council and program.

(2) (a) There is hereby created in the state treasury the creative industries cash fund, referred to in this section as the "fund". The fund consists of:

(I) Repealed.

(II) Moneys transferred to the fund in accordance with section 12-47.1-701 (2) (a) (II) (F), C.R.S.;

(II.5) Repealed.

(III) Moneys credited to the fund by the state treasurer for purposes of the art in public places program pursuant to section 24-48.5-312 (7) (b.5);

(IV) Moneys appropriated to the fund by the general assembly, including, but not limited to, moneys appropriated for the purpose of providing need-based funding for infrastructure development within creative districts as authorized by section 24-48.5-314 (5) (b); and

(V) Any gifts, grants, or donations from private or public sources that the division is hereby authorized to seek and accept.

(b) The moneys in the fund shall be annually appropriated to the division for the operation of the division, and for the following:

(I) For purposes of the council on creative industries, including the administration of the council;

(II) Repealed.

(III) For the purchase of works of art pursuant to the art in public places program, taking into consideration the artist's preliminary site visit, the design fee, the total costs of construction and installation of the work of art, jury expenses, and program administration in compliance with the provisions of section 24-48.5-312 (6); and

(IV) For need-based funding for infrastructure development in creative districts as authorized by section 24-48.5-314 (5) (b), to the extent that the general assembly appropriates moneys to the fund for that purpose.

(c) All moneys not expended or encumbered, and all interest earned on the

investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund or any other fund at the end of any fiscal year. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

(3) As used in this part 3, "infrastructure development" includes, but is not limited to:

(a) Installation and maintenance of temporary and permanent art in public spaces;

(b) Professional services related to the development of a creative district, including strategic plan development and architectural, engineering, and design services;

(c) Support of networking, resource, and professional development and branding and marketing skill development training; and

(d) Community engagement and coalition-building strategies.

24-48.5-302. Council on creative industries - legislative declaration. (1) The general assembly finds and declares:

(a) That encouragement and support of the arts and humanities, while primarily a matter for private and local initiative, is also an appropriate matter of concern to the state government;

(b) That many of our citizens lack the opportunity to view, enjoy, or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture, and the performing and visual arts generally;

(c) That, with increasing leisure time, the practice and enjoyment of the arts and humanities are of increasing importance;

(d) That many of our citizens possess talents of an artistic and creative nature that cannot be utilized to their fullest extent under existing conditions;

(e) That the general welfare of the people of the state will be promoted by giving further recognition to the arts and humanities as a vital part of our culture and heritage and as an important means of expanding the scope of our community life;

(f) That it is desirable to establish a council on creative industries and to provide such recognition and assistance as will encourage and promote the state's artistic and cultural progress;

(g) That it is the policy of the state to cooperate with private patrons, private and public institutions, and professional and nonprofessional organizations concerned with the arts and humanities to ensure that the role of the arts and humanities in the life of 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 that is essential for the well-being of the arts and humanities.

24-48.5-303. Council on creative industries - establishment of council - members - term of office - chair - compensation. (1) There is hereby established within the division a council on creative industries, referred to in this part 3 as the "council". The council shall consist of eleven members, including the chair, to be appointed by the governor. The members of the council shall be broadly representative of the major fields of the arts and humanities and related creative industries and shall be appointed from among private citizens who are widely known for their competence and experience in connection with the arts and humanities and related creative industries, as well as their knowledge of community and state interests. In making these appointments, the governor shall seek and consider those recommended for membership by persons or organizations involved in civic, educational, business, labor, professional, cultural, ethnic, and performing and creative arts fields, as well as those with knowledge of community and state interests. At least one such person from each area designated shall be a member of the council, the membership to include both men and women.

(2) On and after July 1, 1990, members appointed to the council, except the chair, shall hold office for terms of three years, commencing on July 1 of the year of appointment. Members of the council, except the chair, shall not be eligible to serve for more than two consecutive terms nor be eligible for reappointment to the council during the three-year period following the expiration of the second of two consecutive terms. Members of the council shall hold office until the expiration of the appointed terms or until successors are duly appointed. Any vacancy occurring on the council other than by expiration of term shall be filled by the governor by the appointment of a qualified person for the unexpired term.

(3) The governor shall appoint a chair of the council who is a person widely recognized for his or her knowledge, experience, and interest in the arts and humanities, as well as his or her knowledge of community and state interests. The chair shall serve at the pleasure of the governor, but not longer than six consecutive years, and shall not be eligible for reappointment during the three-year period following the expiration of such six-year period. The chair shall advise the governor with respect to the development in the arts and humanities in the state of Colorado. If any vacancy occurs in the office of the chair, the governor shall fill within sixty days the vacancy by the appointment of a qualified person in the same manner in which the original appointment was made.

(4) Members of the council shall serve without compensation, but each member shall be reimbursed for his or her necessary traveling and other expenses incurred in the performance of his or her official duties.

24-48.5-304. Council on creative industries - meetings of council - quorum. The council shall meet at the call of the chair, but not less than twice during each calendar year. Five members of the council shall constitute a quorum. All meetings of the council shall be open and public, and all persons shall be permitted to attend any meeting of the council. The chair shall vote only in case of a tie on any question voted on by the council.

24-48.5-305. Council on creative industries - powers of the council. (1) The council has the powers necessary to carry out the duties imposed upon it by this part 3, including, but not limited to, the power:

(a) To employ such administrative, technical, and other personnel, subject to the constitution and state personnel system laws of this state, as may be necessary for the performance of its powers and duties;

(b) To hold hearings, make and sign any agreements, and perform any acts that may be necessary, desirable, or proper to carry out the purposes of the council;

(c) To request from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties under this part 3;

(d) To appoint such advisory committees as it deems advisable and necessary to the carrying out of its powers and duties under this part 3;

(e) To accept, on behalf of the state of Colorado, and expend any federal funds granted by act of congress or by executive order for all or any of the purposes of the council; except that the council may expend such funds only upon appropriation by the general assembly if the federal funds require matching state contributions or capital outlay or create a commitment for future state funding;

(f) To accept any gifts, grants, donations, or bequests for all or any of the purposes of the council;

(g) To propose methods and processes to encourage private and public initiatives that recognize and enhance the role that the arts and humanities play in creative industries;

(h) To advise and consult with national foundations and other local, state, and federal departments and agencies on methods by which to coordinate and assist existing resources and facilities, with the purpose of fostering artistic and cultural endeavors toward the use of the arts and humanities both nationally and internationally, in the best interest of Colorado.

24-48.5-306. Council on creative industries - duties of the council. (1) The duties of the council shall be:

(a) To stimulate and encourage throughout the state the study and development of the arts and humanities, as well as public interest and participation therein;

(b) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

(c) To encourage and assist freedom of artistic expression essential for the well-being of the arts and humanities;

(d) To assist the communities and organizations within the state in originating and creating their own cultural and artistic programs;

(e) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, humanities, music, theater, dance, painting, sculpture, photography, architecture, and allied arts and crafts, and to make recommendations concerning the appropriate methods to encourage participation in and appreciation of the arts and humanities in order to meet the legitimate needs and aspirations of persons in all parts of the state;

(f) To submit a report to the governor not later than ninety days after the end of each fiscal year and at such other times as the governor requests or the council deems appropriate.

24-48.5-307. Council on creative industries - interference by council prohibited. In carrying out its duties and powers under this part 3, the council shall never by action, directly or indirectly, interfere with the freedom of artistic expression of the established or contemplated cultural programs in any local community or institution, nor shall it make any recommendations that might be interpreted to be a form of censorship.

24-48.5-308. State council on the arts cash fund - creation - repeal. (Repealed)

24-48.5-309. Film, television, and media - definitions. (Repealed)

24-48.5-310. Film, television, and media. (Repealed)

24-48.5-311. Film, television, and media - performance-based incentive for film production in Colorado - Colorado office of film, television, and media operational account cash fund - creation. (Repealed)

24-48.5-312. Art in public places program - allocations from capital construction costs - guidelines - fund created - definitions. (1) (a) The state of Colorado, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all of its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and that provides opportunity for artists and other skilled workers to practice their crafts, declares it to be a matter of state policy that, when appropriate, a portion of each capital construction appropriation be allocated for the acquisition of works of art to be placed in public places.

(b) There is hereby established an art in public places program to be administered by the council; except that, on and after July 1, 2010, the program shall be administered by the director of the division. All works of art purchased and commissioned under the art in public places program shall become a part of the state art collection developed, administered, and operated by the council. All works of art purchased or commissioned under this section prior to March 19, 1987, shall be considered a part of the state art collection to be administered by the council.

(2) As used in this section, unless the context otherwise requires:

(a) "Architect" means the person or firm designing the public construction project. "Architect" includes architects, landscape architects, interior designers, and other design professionals.

(b) "Artist" means a practitioner in the visual arts generally recognized by peers or critics as a professional who produces works of art. "Artist" does not include the architect of a public building under construction or any member of the architect's firm.

(c) "Public construction project" means a capital construction project subject to the provisions of section 24-30-1303 (3).

(d) "Works of art" means all forms of original creations of visual art including, but not limited to:

(I) Sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic;

(II) Painting, whether portable or permanently fixed, as in the case of murals;

(III) Mosaics;

(IV) Photographs;

(V) Crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof;

(VI) Calligraphy;

(VII) Mixed media composed of any combination of forms or media;

(VIII) Unique architectural stylings or embellishments, including architectural crafts;

(IX) Environmental landscaping; and

(X) Restoration or renovation of existing works of art of historical significance.

(3) (a) (I) Except as provided in subparagraph (III) of this paragraph (a), each capital construction appropriation for a public construction project shall include as a nondeductible item an allocation of not less than one percent of the state funded portion of the total capital construction costs to be used for the acquisition of works of art.

(II) Except as provided in subparagraph (III) of this paragraph (a), commencing after August 11, 2010, any capital construction project that is the subject of a lease-purchase agreement, as defined in section 24-82-801 (4), that provides for lease payments from moneys that have been appropriated in full or in part by the state shall include as a nondeductible item in the project budget an allocation of not less than one percent of the total construction costs to be used for the acquisition of works of art.

(III) The requirements specified in this paragraph (a) shall not apply to:

(A) Capital construction appropriations covered by section 24-48.5-313;

(B) Agricultural facilities where livestock are housed or agricultural products are grown;

(C) Capital construction appropriations for controlled maintenance as defined in section 24-30-1301 (2);

(D) Any lease-purchase agreements entered into by the state treasurer on behalf of the state pursuant to article 43.7 of title 22, C.R.S.;

(E) Any construction by the Colorado department of public health and environment for cleanup and redevelopment of contaminated sites; and

(F) Any state appropriation for charter school capital construction pursuant to part 4 of article 30.5 of title 22, C.R.S.

(b) If the allocation provided for in paragraph (a) of this subsection (3) is equal to or greater than one thousand dollars, the council shall select a jury as described in paragraph (a) of subsection (6) of this section.

(c) If the allocation provided for in paragraph (a) of this subsection (3) is less than one thousand dollars, the council may, at its discretion, either select a jury or direct that the funds be held within the works of art in public places fund described in subsection (7) of this section for the acquisition of works of art for the state agency for which the capital construction project is to be constructed. Whenever the funds for any state agency equal or exceed one thousand dollars, the council shall select a jury as described in paragraph (a) of subsection (6) of this section.

(d) The works of art acquired under this part 3 shall be placed in a publicly accessible location within the state agency for which the capital construction project is to be constructed. A collection of works of art may be selected for placement within the state agency and, at the discretion of the state agency and the council, made available for loan, circulation, and exhibition in other public facilities.

(4) The office of state planning and budgeting, in both the planning and review stages in the construction of state buildings and other public facilities, shall be

responsible for insuring compliance with the provisions of subsection (3) of this section.

(5) The administration of the art in public places program includes supervision of the jury process that convenes to select the site and the artwork, contracting, purchase, commissioning, and reviewing of design, execution, and placement. Acceptance of works of art shall be the responsibility of the council. These activities shall be conducted in consultation with the executive directors of the respective state agencies. The administration of the art in public places program shall not include bearing the costs of maintaining or insuring the works of art. Such costs shall be the responsibility of the respective state agencies.

(6) All works of art acquired with funds allocated under subsection (3) of this section shall be contracted for separately from all other items in the original construction plans pursuant to the following guidelines:

(a) Selection of artists shall be by the jury method. The council shall select jury members and convene juries. Jury recommendations shall be presented to the council for review and final approval. Any significant changes in the design or construction of the work of art occurring after such final approval of the artist shall be subject to the approval of both the jury and the council. The council shall determine which changes shall be considered significant for the purposes of this paragraph (a). Each jury shall contain at least the following:

(I) A representative from the contracting state agency for which the capital construction project is to be constructed;

(II) The architect;

(III) A professional artist;

(IV) A representative from each community in which a capital construction project is to be constructed;

(V) A member of the council;

(VI) A representative from the contracting state agency who is a tenant or future tenant of the capital construction site;

(VII) A member of the state house of representatives to be appointed by the speaker of the house; and

(VIII) A member of the state senate to be appointed by the president of the senate.

(b) Residents of Colorado shall be the participants of this program except for artists from other states and territories who have achieved national recognition in their specific forms of expression.

(c) Jury members who are not state employees shall be reimbursed for actual and necessary travel expenses incurred in fulfilling their duties under this section. Such expenses shall be deducted from the one percent allocation for art.

(7) Repealed.

(8) For the 2010-11 fiscal year and each fiscal year thereafter, all moneys allocated for the acquisition of works of art pursuant to subsection (3) of this section shall

be transmitted to the state treasurer, who shall credit the same to the creative industries cash fund created in section 24-48.5-301.

(9) Nothing in this section shall be construed to preclude the placement of works of art in public places other than those placed pursuant to this section.

24-48.5-313. Art in public places - works of art in correctional and juvenile facilities. (1) Each capital construction appropriation for a correctional facility shall include as a nondeductible item an allocation of not less than one-tenth of one percent of the capital construction costs to be used for a prison inmate art fund. The moneys in such fund shall be used for materials to allow inmates to create works of art to be included in the construction of or to be placed permanently in such facility. The department of corrections shall administer by rule a competitive program among the inmates of such facility in order to determine which art projects and inmates shall receive an incentive award not to exceed two hundred dollars each. The council shall appoint one of its members to serve in an advisory capacity to the department of corrections on the implementation of this subsection (1).

(2) For the purposes of subsection (1) of this section, "correctional facility" means any state facility in which persons are or may be lawfully held in custody as a result of conviction of a crime.

(3) (a) On and after January 1, 1998, each capital construction appropriation for a juvenile correctional facility shall include as a nondeductible item an allocation of not less than one-tenth of one percent of the capital construction costs to be used for a juvenile art fund. The moneys in such fund shall be used for materials to allow juveniles housed by the department of human services to create works of art to be included in the construction of or to be placed permanently in juvenile facilities. The council shall appoint one of its members to serve in an advisory capacity to the department of human services on the implementation of this subsection (3).

(b) As used in this subsection (3), "juvenile correctional facility" means any facility operated by or under contract with the department of human services pursuant to section 19-2-403, C.R.S.

24-48.5-314. Creative districts - creation - certification - powers of coordinator and division - legislative declaration - definitions. (1) (a) The general assembly hereby finds, determines, and declares that:

(I) A creative district is a well-recognized, designated mixed-use area of a community in which a high concentration of cultural facilities, creative businesses, or arts-related businesses serve as the anchor of attraction. In certain cases, multiple vacant properties in close proximity may exist within a community that would be suitable for

redevelopment as a creative district. Creative districts may be found in all sizes of communities, from small and rural to large and urban. Creative districts may be home to both nonprofit and for-profit creative industries and organizations.

(II) The arts and culture transcend boundaries of race, age, gender, language, and social status. Creative districts promote and improve their communities in particular and the state more generally in many ways. Specifically, such districts:

(A) Attract artists and creative entrepreneurs to a community, thereby infusing the community with energy and innovation, which enhances the economic and civic capital of the community;

(B) Create a hub of economic activity that helps an area become an appealing place to live, visit, and conduct business, complements adjacent businesses, and results in the creation of new economic opportunities and jobs in both the cultural sector and other local industries. Cultural resources attract businesses and assist in the recruitment of employees.

(C) Are a highly adaptable economic development tool that is able to take a community's unique conditions, assets, needs, and opportunities into account, thereby addressing the needs of large and small and rural and urban areas;

(D) Establish marketable tourism assets that highlight the distinct identity of communities, attract in-state, out-of-state, and even international visitors, and become especially attractive destinations for cultural, recreational, and business travelers;

(E) Revitalize and beautify neighborhoods, cities, and larger regions, reverse urban decay, promote the preservation of historic buildings, and facilitate a healthy mixture of business and residential activity that contributes to reduced vacancy rates and enhanced property values; and

(F) Provide a focal point for celebrating and strengthening a community's unique cultural identity, providing communities with opportunities to highlight existing cultural amenities as well as mechanisms to recruit and establish new artists, creative industries, and organizations.

(b) By enacting this section, the general assembly intends that the state provide leadership and a helping hand to local communities desirous of creating their own creative districts by, among other things, certifying districts, offering available incentives to encourage business development, exploring new incentives that are directly related to creative enterprises, facilitating local access to state assistance, enhancing the visibility of creative districts, providing technical assistance and planning help, ensuring broad and equitable program benefits, and fostering a supportive climate for the arts and culture, thereby contributing to the development of healthy communities across the state and improving the quality of life of the state's residents.

(2) As used in this section, unless the context otherwise requires:

(a) "Coordinator" means the person employed on the professional staff of the division who is responsible for overseeing the duties and responsibilities of the division

under this section and performing the specific tasks delegated to such person under this section.

(b) "Creative district" or "district" means a land area designated by a local government in accordance with this section that contains either a hub of cultural facilities, creative industries, or arts-related businesses or multiple vacant properties in close proximity that would be suitable for redevelopment as a creative district.

(c) "Local government" means a city and county, county, city, or town.

(d) "State-certified creative district" means a creative district whose application for certification has been approved by the division pursuant to subsection (4) of this section.

(3) (a) A local government may designate a creative district within its territorial boundaries subject to certification as a state-certified creative district by the division pursuant to subsection (4) of this section.

(b) In order to receive certification as a state-certified creative district under this section, a district must satisfy the criteria specified in this paragraph (b) and any additional criteria required by the division pursuant to paragraph (a) of subsection (4) of this section. At a minimum, the district must:

(I) Comprise a geographically contiguous area;

(II) Be distinguished by physical, artistic, or cultural resources that play a vital role in the quality and life of a community, including its economic and cultural development;

(III) Be the site of a concentration of artistic or cultural activity, a major arts or cultural institution or facility, arts and entertainment businesses, an area with arts and cultural activities, or artistic or cultural production; and

(IV) Be engaged in the promotional, preservation, and educational aspects of the arts and culture of the community and contribute to the public through interpretive, educational, or recreational uses.

(c) Notwithstanding the requirements of paragraph (b) of this subsection (3), in special circumstances a creative district may obtain certification by the division if the land area proposed for certification as a district contains multiple vacant properties in close proximity that would be suitable for redevelopment as a creative district. It shall not be a requirement of certification that the proposed district contain any precise mix of for-profit or nonprofit industries or organizations.

(d) Two or more local governments may jointly apply for certification of a creative district that extends across a common boundary.

(4) (a) (I) Not later than July 1, 2012, the coordinator shall create a process for the review of applications submitted by local governments for certification of state-certified creative districts. The application shall be submitted on a standard form developed and approved by the division. The coordinator shall make a recommendation to the division for action on each application for certification.

(II) After reviewing an application for certification, the division shall approve or reject the application or send it back to the applicant with a request for changes or additional information. Rejected applicants may reapply without prejudice.

(III) Certification shall be based upon the criteria specified in paragraph (b) of subsection (3) of this section as well as any additional criteria required by the division that in its discretion will further the purposes of this section. The division may request that an applicant provide relevant information supporting an application. Any additional eligibility criteria shall be posted by the division on its public web site.

(IV) If the division approves an application for certification, it shall notify the applicant in writing and shall specify the terms and conditions of the division's approval, including the terms and conditions set forth in the application and as modified by written agreement between the applicant and the division.

(b) Upon approval by the division of an application for certification by a local government, a creative district shall become a state-certified creative district with all of the attendant benefits under this section.

(c) The division may remove a certification previously granted under this section for failure by a local government to comply with the requirements of this section or any agreement executed thereunder.

(5) (a) The coordinator shall:

(I) Review applications for certification and make a recommendation to the division for action pursuant to paragraph (a) of subsection (4) of this section;

(II) Administer and promote an application process for the certification of creative districts;

(III) With the approval of the division, develop standards and policies for the certification of state-certified creative districts in accordance with paragraph (b) of subsection (3) of this section and subparagraph (III) of paragraph (a) of subsection (4) of this section. Any approved standards and policies shall be posted on the division's public web site.

(IV) Require periodic written reports from any creative district that has received certification as a state-certified creative district for the purpose of reviewing the activities of the district, including the compliance of the district with the policies and standards developed under this section and with the conditions of an approved application for certification;

(V) Identify available public and private resources, including any applicable economic development incentives and other tools, that support and enhance the development and maintenance of creative districts and, with the assistance of the division, ensure that such programs and services are accessible to such districts; and

(VI) With the approval of the division, develop such additional procedures as may be necessary to administer this section. Any approved procedures shall be posted on the division's public web site.

(b) In addition to any powers explicitly granted to the division under this section, the division shall have such additional powers as are necessary to carry out the purposes of this section. Where authorized by law, such powers may include offering incentives to state-certified creative districts to encourage business development, including, but not limited to, incentives in the form of need-based funding for infrastructure development in state-certified creative districts, exploring new incentives that are directly related to creative enterprises, facilitating local access to state economic development assistance, enhancing the visibility of state-certified creative districts, providing state-certified creative districts with technical assistance and planning aid, ensuring broad and equitable program benefits, and fostering a supportive climate for the arts and culture within the state; except that, notwithstanding any other provision of this section, a creative district created pursuant to this section shall not be eligible to receive any form of financial incentive that is derived from moneys allocated to the local government limited gaming impact fund created in section 12-47.1-1601 (1) (a), C.R.S., without the consent of the applicable eligible local governmental entity or entities, as defined in section 12-47.1-1601 (4) (b), C.R.S., inside the territorial boundaries of which the creative district is located.

(6) The creation of a district under this section may not be used to prohibit any par ticular business or the development of residential real property within the boundaries of the district or to impose a burden on the operation or use of any particular business or parcel of residential real property located within the boundaries of the district.

ARTICLE 48.6

Microenterprise Development Act (Repealed)

24-48.6-101 to 24-48.6-107. (Repealed)

ARTICLE 48.8

State Council on the Arts

24-48.8-101 to 24-48.8-109. (Repealed)

ARTICLE 49

24-49-101 to 24-49-105. (Repealed)

ARTICLE 49.5

Minority Business Office

24-49.5-101. Legislative declaration. The general assembly hereby declares that it is in the best interest of the people of Colorado to promote the interests of minority business by assisting minority business enterprises in establishing information networks with both government and the private sector, assuring a greater flow of information about minority business enterprises and the opportunities available to minority businesses, and providing economic research and information with the ultimate goal of providing the best opportunities for minority business enterprises to enter the mainstream of Colorado's economy.

24-49.5-102. Creation of the minority business office - director. There is hereby created the minority business office within the office of the governor, referred to in this article as the "office". The office shall be in the charge of a director who shall be appointed by the governor. The director and employees of the office shall not be subject to section 13 of article XII of the state constitution.

24-49.5-103. Authority and responsibility of the director. (1) In furtherance of the policy expressed in section 24-49.5-101, the director shall:

(a) Promote the business development of new and existing minority business enterprises in coordination with state economic development activities;

(b) Establish networks among governmental entities, the private sector, and minority business in an effort to promote joint business activities;

(c) Promote minority business participation in federal, state, and local procurement, purchasing, financing, and contracting, in accordance with existing federal and state statutes;

(d) Promote self-sufficiency and survival of minority businesses with the intent of aiding such minority businesses in their attempts to enter the mainstream of Colorado's

economy;

(e) Enhance the access of information on international trade opportunities to minority businesses in conjunction with Colorado's international trade activities;

(f) Provide economic research and information on minority businesses for the use of federal and local governmental agencies, private industry, labor, and professional and other groups. The office shall make efforts to recover the costs associated with this paragraph (f) through user fees.

(2) The director may receive funds from the private sector for the purposes of conducting or implementing projects and other necessary operations of the office. All funds received shall be placed in the minority business fund created in section 24-49.5-104.

(3) The director shall develop and implement performance and accountability standards. Such standards shall include, but shall not be limited to, the following:

(a) The fees established pursuant to paragraph (f) of subsection (1) of this section;

(b) The number of businesses by race and ethnicity including the protected groups known as African Americans, Hispanic Americans, Asian Americans, native Americans, and any other minority ethnic groups assisted by the office and the actual moneys associated therewith;

(c) The type of assistance provided to the businesses assisted;

(d) The number of new jobs created;

(e) The number of existing jobs retained;

(f) An overview of the minority business office's successes and failures;

(g) The amount of revenues added to the state's economy due to the efforts of the minority business office;

(h) The year-end annual report of the minority business office;

(i) The types of businesses assisted;

(j) The geographical location of businesses assisted;

(k) Any suggestions for greater minority participation in the state's economy; and

(l) An accounting of private and public funding and expenditures.

24-49.5-104. Minority business fund - created. (1) There is hereby created in the state treasury a fund to be known as the minority business fund, which shall be administered by the director of the minority business office.

(2) All moneys received from user fees pursuant to section 24-49.5-103 (1) (f) and any other moneys received by the office shall be placed in said fund.

(3) The general assembly shall make annual appropriations of the moneys in the fund to the minority business office for administering the provisions of this article.

(4) Any moneys in the fund not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(5) The general assembly may from time to time make appropriations from the general fund for the use of the minority business office in carrying out the purposes of this article.

24-49.5-105. Historically underutilized businesses - legislative declaration - definitions. (1) The general assembly hereby finds and declares that:

(a) Businesses owned by minorities and women are among the fastest growing in the state but are historically underutilized in government contracts.

(b) Securing government procurement contracts is a major determinant in the success of businesses owned by minorities and women.

(c) The owners of historically underutilized businesses can benefit from surety technical assistance programs that help those businesses qualify for the performance bonds that are required for businesses to bid on public projects.

(d) It is the intent of the general assembly to assist historically underutilized businesses by creating a surety technical assistance program.

(2) In addition to the responsibilities of the director of the minority business office specified in section 24-49.5-103, the director shall establish a program to provide surety technical assistance services for the benefit of historically underutilized businesses and may contract with insurance companies, surety companies, agents, or brokers for the purpose of implementing the program.

(3) The director of the minority business office shall compile a centralized directory of all historically underutilized businesses that have obtained the contract performance and payment bonds required in order to be awarded a government procurement contract. The director shall ensure that the directory is accessible to governmental entities that enter into procurement contracts.

(4) As used in this section, unless the context otherwise requires, "historically underutilized business" means an entity that qualifies as a small business pursuant to 13 CFR 121 and that is a profit-making corporation, sole proprietorship, partnership, or joint venture in which more than fifty percent of the shares of stock or other equitable securities are owned by one or more persons who are members of the following groups:

(a) African American;

(b) Hispanic American, including but not limited to all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American, including but not limited to persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, the United States territories of the Pacific, or the Northern Mariana Islands; and subcontinent Asian American, including but not limited to persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal;

(d) Native American, including but not limited to persons who are American Indians, Eskimos, Aleuts, or Hawaiians of Polynesian descent; or

(e) Women, including women of any group specified in paragraphs (a) to (d) of this subsection (4).

ARTICLE 49.7

Colorado Tourism Office

24-49.7-101. Legislative declaration - policy. (1) The general assembly hereby finds and declares that the tourism and travel industries are vital to the general welfare, economic well-being, and employment opportunities of the state and its communities and citizens and that the continued health and expansion of these industries requires a long-term and continuing investment by the state in the planning, promotion, coordination, and development of Colorado as a quality national and international tourist and travel destination.

(2) The general assembly therefore declares it to be the policy of this state to guide, stimulate, and promote the coordinated, efficient, and beneficial development of tourism and travel in Colorado. In addition, it is the policy of this state to provide a long-term and continuing investment in tourism and travel promotion and to support such investment with general fund revenues.

(3) The general assembly further finds and declares that the promotion and development of tourism and travel requires a unified, consistent, and positive statewide effort to be successful and that it is the policy of the state that all levels of state government participate in attaining the state policies expressed in this section. To this end, all state departments shall cooperate with the Colorado tourism office created in this article and shall, to the extent possible, assist the office in its efforts by making property and services available to the office that will facilitate or reduce the costs of such promotion and development. In addition, the Colorado tourism office and all state departments shall cooperate with the tourism and travel industries to further the policies expressed in this section.

24-49.7-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Additional source fund" means the Colorado travel and tourism additional source fund created in section 24-49.7-106 (2).

(2) "Board" means the board of directors of the Colorado tourism office created in

section 24-49.7-103.

(3) "Fund" means the Colorado travel and tourism promotion fund created in section 24-49.7-106 (1).

(4) "Member" means a member appointed to the board pursuant to section 24-49.7-103.

(5) "Office" means the Colorado tourism office created in section 24-49.7-103.

24-49.7-103. Colorado tourism office - creation - board of directors - definitions. (1) In order to implement the state policies declared in this article, there is hereby created within the office of the governor the Colorado tourism office. The office shall be governed by a board of directors.

(2) (a) The board shall consist of fifteen members. It is the intent of the general assembly that members on the board shall represent diverse geographic areas, statewide associations, and small business owners who can show a direct correlation between the success of the statewide efforts of the office and the economic support of their community and the industry they represent.

(b) Eleven members shall be appointed by the governor and confirmed by the senate. Two of such members shall represent small business owners and two shall be residents of a small community. For the purposes of this subsection (2), "small business" shall be defined for each representative industry by the association that represents that industry and "small community" shall mean a city or town with fewer than fifty persons employed full-time in tourism-based industries in such city or town or a permanent population of less than fifteen thousand people. The governor shall appoint the initial members of the board on or before August 1, 2000. Of the members appointed by the governor, two shall be appointed at large from tourism-based industries and one member shall be appointed from each of the following industries and groups from lists submitted by such industries and groups:

(I) The hotel, motel, and lodging industry;

(II) The food, beverage, and restaurant industry;

(III) The ski industry;

(IV) Private travel attractions and casinos;

(V) Other outdoor recreation industries;

(VI) Tourism-related transportation industries;

(VII) The tourism-related retail industry;

(VIII) The destination marketing industry; and

(IX) Cultural event and facility groups.

(c) Two members shall be from the house of representatives to be appointed as follows: One member shall be appointed by the speaker of the house of representatives, and one member shall be appointed by the minority leader of the house of representatives.

Two members shall be from the senate to be appointed as follows: One member shall be appointed by the president of the senate, and one member shall be appointed by the minority leader of the senate. The four legislative members shall be appointed as soon as practicable after the convening date of the first regular session of each general assembly; except that the initial four legislative members appointed from the sixty-fifth general assembly shall be appointed no later than August 1, 2005. Terms of members appointed pursuant to this paragraph (c) shall expire on the convening date of the first regular session of each general assembly. Subsequent appointments or reappointments shall be made as soon as practicable after such convening date, and members shall continue in office until the member's successor is appointed. Legislative members may be appointed for succeeding terms as long as they are serving as members of the general assembly. The person making the original appointment shall fill any vacancy by appointment for the remainder of an unexpired term.

(3) The term of each member appointed by the governor shall be four years; except that, of such members initially appointed, two shall be appointed for a term of one year, three shall be appointed for a term of two years, three shall be appointed for a term of three years, and three shall be appointed for a term of four years. A member appointed by the governor to fill a vacancy arising other than by expiration of a member's term shall be appointed for the unexpired term of the member whom he or she is to succeed and any such appointment shall be made within ninety days after the vacancy occurs. Any member appointed by the governor shall be eligible for reappointment for one additional four-year term.

(4) A member shall serve at the pleasure of his or her appointing authority. The chairperson of the board shall be elected annually by members of the board at their first meeting held after the commencement of each state fiscal year. A majority of the members of the board shall constitute a quorum for conducting the business of the board. If a quorum is present, the affirmative vote of the majority of the members present at the meeting shall be the act of the board.

(5) The board shall meet quarterly or at such other times as the chairperson may determine.

(6) Members shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties. The board shall adopt such rules governing its procedure as it may consider necessary or advisable and shall keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times.

24-49.7-104. Powers and duties of the board. (1) The board shall have the following powers and duties:

(a) To adopt an annual operating budget for the office;

(b) To set and administer policies regarding expenditures from the fund and the additional source fund for travel and tourism promotion, written and graphic materials, cooperative and matching promotional efforts, and other travel and tourism developmental and promotional activities benefitting the state;

(c) To annually gather and disseminate statistical information on the travel and tourism marketing effort, the amount and manner of expending public and private moneys in promoting travel and tourism, and the economic effect of the travel and tourism marketing effort upon the state. Such information shall be provided to the general assembly and the travel and tourism industry as a benchmark to measure the regional and statewide success of the prior year's efforts and to guide the efforts of subsequent years.

(d) To plan for the promotion and development of the travel and tourism industries;

(e) To cooperate with other public and private agencies and organizations in the development and promotion of Colorado's travel and tourism industries;

(f) To gather and disseminate information on Colorado's travel and tourism industries and to operate state visitors' centers for the purpose of disseminating such information;

(g) To purchase or lease real and personal property deemed necessary for the operation of visitors' centers or for any other activities of the board;

(h) To contract for those services and materials required by the activities of the board. Such services may include any administrative, secretarial, clerical, or other staff or personnel services deemed necessary.

(i) To expend moneys in the fund and the additional source fund for the planning, advertising, promotion, assistance, and development of tourism and travel industries in this state, for reimbursement for actual and necessary expenses of the board as authorized in section 24-49.7-103, and for operational expenses of the board;

(j) To accept and administer federal grant-in-aid moneys and to accept and administer donations and gifts of other moneys, property, or services devoted to the development and promotion of tourism and travel in the state;

(k) To finance and govern the operation and development of a toll-free telephone number and an internet site promoting travel and tourism in the state and the state visitors' guide as state-owned assets;

(l) To engage in activities for which private moneys can be secured and used for promotional activities including, but not limited to, telecommunications promotions, publication of privately financed electronic and paper visitor guides, and similar activities;

(m) To ensure that contracts involving the expenditure of moneys from the fund and the additional source fund are granted on a fair and equitable basis and that the purchasing value of such moneys is maximized to the fullest extent possible;

(n) To sue and be sued as a board, without individual liability, for acts of the

board within the scope of the powers conferred upon it by this article;

(o) To take appropriate actions to establish the office and to facilitate the transfer of travel and tourism promotional activities from the Colorado tourism board and the Colorado travel and tourism authority to the office;

(p) To exercise any other powers or perform any other duties that are consistent with the purposes for which the office was created and that are reasonably necessary for the fulfillment of the board's assigned responsibilities.

(2) It is the intent of the general assembly that, in addition to its other duties, the board attempt to initiate joint efforts between public and private entities, joint marketing programs, and privately financed tourism promotional ventures when such activities are consistent with the powers and duties of the board.

24-49.7-105. Administrative costs - transfer of employees. (1) Except as provided in subsection (2) of this section, any administrative expenses and any staffing or other resource requirements associated with the office or the expenditure of moneys from the fund and the additional source fund shall be met with existing employees transferred from the department of local affairs and the Colorado office of economic development created in section 24-48.5-101 pursuant to subsection (3) of this section and with a combination of existing staff, office space, and resources of the office of the governor at the time the office is created.

(2) The board may expend moneys in the additional source fund for administrative expenses associated with the office or the expenditure of moneys from the fund or the additional source fund.

(3) (a) On and after August 1, 2000, employees of the department of local affairs prior to said date whose duties and functions concerned the duties and functions assumed by the office pursuant to this section and whose employment in the office is deemed necessary by the administrator of the office to carry out the purposes of this article shall be transferred to the office and become employees thereof.

(b) On and after March 18, 2003, three full-time equivalent personnel positions of the Colorado office of economic development created in section 24-48.5-101 shall be transferred to the Colorado tourism office created in section 24-49.7-103. The employees shall be employees appointed by the governor and not classified employees in the state personnel system.

(4) Any employees transferred to the office pursuant to paragraph (a) of subsection (3) of this section who are classified employees in the state personnel system shall retain all rights to the personnel system and retirement benefits pursuant to the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and regulations.

24-49.7-106. Colorado travel and tourism promotion fund - Colorado travel and tourism additional source fund - creation - nature of funds. (1) There is hereby created a fund in the state treasury to be known as the Colorado travel and tourism promotion fund, which shall be administered by the board and which shall consist of:

(a) All moneys transferred thereto in accordance with sections 12-47.1-701 (2) and 38-13-116.7 (3), C.R.S.; and

(b) Any moneys appropriated thereto by the general assembly.

(2) There is hereby created a fund in the state treasury to be known as the Colorado travel and tourism additional source fund, which shall be administered by the board and which shall consist of:

(a) Any grants, donations, gifts, or other moneys provided to the state for the promotion of travel or tourism in the state; and

(b) All moneys that otherwise may be made available to the additional source fund or the office to be expended for the purposes set forth in this article.

(3) (a) The moneys in the fund shall be annually appropriated by the general assembly for the purposes of this article. All moneys not appropriated, including interest earned on the investment or deposit of moneys in the fund, shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year. Any moneys not expended or encumbered from any appropriation at the end of any fiscal year shall remain available for expenditure in the next fiscal year without further appropriation.

(b) The moneys in the additional source fund shall be continuously appropriated for the purposes of this article. All moneys not expended, including interest earned on the investment or deposit of moneys in the fund, shall remain in the additional source fund and shall not revert to the general fund of the state at the end of any fiscal year.

(4) and (5) Repealed.

(6) Notwithstanding any provision of paragraph (a) of subsection (3) of this section to the contrary, on June 30, 2011, the state treasurer shall deduct two million five hundred thousand dollars from the Colorado travel and tourism promotion fund and transfer such sum to the general fund.

24-49.7-107. Exemption from procurement code. Notwithstanding any other law to the contrary, the office and the expenditure of moneys from the fund and the additional source fund shall not be subject to the provisions of the "Procurement Code", articles 101 to 112 of this title.

24-49.7-108. Audit requirements. On or before August 1, 2002, and not less than every five years thereafter, the state auditor shall review or cause to be reviewed the

manner in which moneys from the fund and the additional source fund are expended, any contracts entered into pursuant to this article, and the activities of the board and the office to ensure compliance with the provisions of this article. Upon completing such audit, the state auditor shall provide a report to the governor and the general assembly reviewing the findings of the audit and making recommendations for statutory changes, if any.

ARTICLE 49.9

Colorado Channel Authority

24-49.9-101. Colorado channel authority - creation - legislative declaration. (1) (a) The general assembly finds, determines, and declares that:

(I) It is beneficial to the citizens of Colorado for sessions of the general assembly to be televised via cable television and webcast and that audio of these sessions be broadcast via the internet;

(II) Televising and broadcasting the proceedings of the general assembly will make Colorado state government more open and accessible to the citizens of this state; and

(III) It is desirable for a governmental entity to be created to coordinate programming and televising sessions of the general assembly as well as programming and televising for other state purposes and making audio recordings of these sessions available.

(b) The general assembly further finds, determines, and declares that the authority and powers conferred under this article, as well as the expenditures of public money made pursuant to this article, will serve a valid public purpose and that the enactment of this article is expressly declared to be in the public interest.

(2) There is hereby created the Colorado channel authority, referred to in this article as the "authority", which shall be a body corporate and a political subdivision of the state. The authority shall not be an agency of state government, nor shall it be subject to administrative direction by any department, commission, board, bureau, or agency of the state, except to the extent provided by this article.

(3) (a) The powers of the authority shall be vested in a board of directors, also referred to in this article as the "board".

(b) The board consists of the following nine members:

(I) Three members appointed by the governor with the consent of the senate, at least one of whom is a registered voter in this state who is unaffiliated, as that term is defined in section 1-1-104, C.R.S., and at least one of whom has experience in the business operations of broadcast journalism;

(II) One member appointed by the chief justice of the supreme court;

(III) One member, serving in the house of representatives, appointed by the speaker of the house of representatives;

(IV) One member, serving in the house of representatives, appointed by the minority leader of the house of representatives;

(V) One member, serving in the senate, appointed by the president of the senate;

(VI) One member, serving in the senate, appointed by the minority leader of the senate; and

(VII) One member appointed by the president of the senate and the speaker of the house of representatives who has experience in the operation of a business or fundraising for nonprofit organizations, or both.

(c) (I) Of the members initially appointed to the board, the members appointed by the governor each serve for terms of two years; the member appointed by the chief justice serves for a term of two years; the members of the house of representatives and the senate appointed by the minority leaders of the house of representatives and the senate each serve for a term of three years so long as they also serve as members of the house of the general assembly from which they are appointed; the members of the house of representatives and the senate appointed by the speaker of the house of representatives and the president of the senate each serve for a term of four years so long as they also serve as members of the house of the general assembly from which they are appointed; and the member appointed by the president of the senate and the speaker of the house of representatives serves for a term of two years.

(II) Thereafter, members of the board appointed under subparagraph (III), (IV), (V), or (VI) of paragraph (b) of this subsection (3) serve for terms of four years so long as they also serve as members of the house of the general assembly from which they are appointed, and other members of the board serve for terms of four years.

(III) (A) A vacancy in the members of the board appointed under subparagraph (III), (IV), (V), or (VI) of paragraph (b) of this subsection (3) shall be filled in the same manner as the original appointment, but for the remainder of the unexpired term only; except that these members must at all times consist of a member from each major political party in each house of the general assembly and be appointed by the appropriate appointing authority under subparagraph (III), (IV), (V), or (VI) of paragraph (b) of this subsection (3), as appropriate, to ensure that a member from each major political party in each house is a member of the board.

(B) A vacancy in the membership of other members of the board occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the remainder of the unexpired term only.

(IV) An appointed member shall be eligible for reappointment. Members of the board may be removed by the appointing authorities for cause, after a public hearing, and may be suspended by the appointing authority pending the completion of the hearing.

(4) The members of the board shall elect a chair and a vice-chair. The members of the board shall also elect a secretary and a treasurer, who need not be members of the board, and the same person may be elected to serve as both secretary and treasurer. The powers of the board may be vested in the officers from time to time. Five members shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the board.

(5) If the board determines that the authority has sufficient financial resources, each member of the board not otherwise in full-time employment of the state or a state official shall receive a per diem of one hundred dollars for each day actually and necessarily spent in the discharge of official duties, and all members shall receive reimbursement for travel and other necessary expenses actually incurred in the performance of official duties.

24-49.9-102. Colorado channel authority - powers and duties - fiscal year. (1) Except as otherwise limited by this article, the authority, acting through the board, has the power to:

(a) Have and exercise all rights, duties, privileges, immunities, liabilities, and disabilities of a body corporate and a political subdivision of the state;

(b) Sue and be sued;

(c) Have an official seal and to alter the same at the board's pleasure;

(d) Make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;

(e) Maintain an office at such place or places within the state as it may determine;

(f) Acquire, hold, use, and dispose of property, real and personal, and its income, revenues, funds, and moneys;

(g) Receive and expend gifts, grants, and donations;

(h) Make and enter into all contracts, leases, and agreements, including intergovernmental agreements, that are necessary or incidental to the performance of its duties and the exercise of its powers under this article;

(i) Deposit any moneys of the authority in any banking institution within or outside the state;

(j) Fix the time and place or places at which its regular and special meetings are to be held;

(k) Hire a chief executive officer of the authority and authorize the chief executive officer to hire such other staff as deemed necessary for the operation of the authority; and

(l) Do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this article.

(1.5) Notwithstanding section 29-1-102 (9), C.R.S., for fiscal year 2010-11 and

thereafter, the fiscal year of the authority shall be the period commencing July 1 and ending June 30.

(2) The authority shall televise the proceedings of the Colorado house of representatives and senate and such other programming of a state governmental nature as the board may approve, including making available audio recordings of proceedings of the general assembly.

(3) All electronically recorded proceedings of any public body of the state, as defined in section 24-6-402, and of all other types of meetings, sessions, conferences, or public events televised by the Colorado channel authority shall be the property of the state of Colorado and shall be public records under article 72 of this title. The Colorado channel authority and any other person or entity acting under contract with the authority shall be the official custodian under article 72 of this title of all such materials. Pursuant to section 24-72-205, the Colorado channel authority and, with the permission of the authority, any other person or entity acting under contract with the authority may charge reasonable fees for making materials subject to this subsection (3) available upon specific request. All electronically recorded proceedings of the judicial branch televised by the Colorado channel authority shall be subject to any rules promulgated by the supreme court or by the order of any court pursuant to section 24-72-204 (1) (c) or 24-72-305 (1) (b).

STATE PERSONNEL SYSTEM AND STATE EMPLOYEES

ARTICLE 50

State Personnel System - Department of Personnel

PART 1

DEPARTMENT OF PERSONNEL

24-50-101. Short title - legislative declaration - terminology. (1) This article shall be known and may be cited as the "State Personnel System Act". It is the purpose of this article and the personnel rules adopted pursuant to this article to provide a sound, comprehensive, and uniform system of personnel management and administration for the employees within the state personnel system as defined by the constitution of the state of Colorado and laws enacted pursuant thereto, including all employees of the state colleges and universities not otherwise exempted by law.

(2) Whenever, in any law of this state relating to state employees, reference is made to the civil service, the state civil service, or the classified service, such terms shall

be deemed to refer to the state personnel system. Whenever reference is made to the civil service commission in any law of this state relating to the administration of the state personnel system, such term shall be deemed to refer to the state personnel director. Whenever reference is made to the civil service commission in any law of this state relating to rule-making powers, administrative appeals, or any power vested by the state constitution in the state personnel board, such term shall be deemed to refer to the state personnel board.

(3) (a) It is the purpose of the state personnel system, as a merit system, to assure that a qualified and competent work force is serving the residents of Colorado and that any person has an equal opportunity to apply and compete for state employment. Recruitment shall be from appropriate sources.

(b) It is the duty of the state personnel board to provide fair and timely resolution of cases before it.

(c) It is the duty of the state personnel director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system. It is the responsibility of the state personnel director to provide leadership in the areas of policy and operation of the state personnel system as well as to provide consultant services to executive branch agencies and institutions of higher education to further their professional management of human resources in state government. The state personnel director, pursuant to the "State Administrative Procedure Act", article 4 of this title, shall provide necessary directives and oversight for the management of the state personnel system and in the discharge of his constitutional duty to administer the state personnel system.

(d) The heads of principal departments and presidents of colleges and universities shall be responsible and accountable for the actual operation and management of the state personnel system for their respective departments, colleges, or universities. Such operation and management shall be in accordance with rules and directives of the state personnel director who may conduct a review of such operation and management. Presidents of colleges and universities shall be the appointing authorities for employees of their respective institutions. The appointing authority for a principal department is specified in section 13 (7) of article XII of the state constitution.

(e) The state personnel director shall establish and administer an affirmative action program, including annual documentation by appointing authorities listing methods of remedying, within a time period established by the director, the underutilization of persons covered by part 4 of article 34 of this title.

(4) It is also the policy of the state to base employee advancement and compensation on demonstrated ability and quality of performance in order to encourage and achieve high levels of performance and productivity by state employees.

24-50-102. Department of personnel - state personnel director. (1) Pursuant to section 14 of article XII of the state constitution, there is hereby created the department of personnel, the head of which shall be the state personnel director, who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The state personnel director shall be qualified by education and experience in the field of public or private personnel administration or industrial relations and shall be of known sympathy with the merit principle.

(2) Subject to the provisions of the state constitution, the state personnel director shall have those powers, duties, and functions prescribed for heads of principal departments in the "Administrative Organization Act of 1968". Any assistants and employees of the department shall be appointed pursuant to the provisions of section 13 of article XII of the state constitution.

(3) The state personnel director shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the department of personnel.

(4) Publications by the state personnel director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(5) Repealed.

24-50-103. State personnel board. (1) The state personnel board, referred to in this article as the "board", is created pursuant to the provisions of section 14 of article XII of the state constitution. The board consists of five members to be selected in the manner provided in the state constitution and this section.

(2) The board shall exercise its powers and perform its duties and functions under the department of personnel and the state personnel director as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

(3) (a) In the year 2015 and every third year thereafter and in the year 2016 and every third year thereafter, an election shall be held for a member of the board in the manner provided in this subsection (3).

(b) The elected members of the board shall be elected by persons certified to classes and positions in the state personnel system in accordance with rules promulgated by the board, in consultation with the secretary of state and pursuant to section 24-4-103; except that the ballots for such elections shall be distributed to each employee qualified to vote with any payroll or other type of distribution otherwise made to said employees. However, such distribution shall be no later than fifteen days before the ballots are to be submitted by the voters.

(c) (I) The election of any person declared duly elected to the position of a member of the board may be contested:

(A) When the candidate is not eligible to be a member of the board;

(B) When illegal votes have been received or legal votes rejected at the time of the election in sufficient numbers to change the outcome of the election;

(C) For any error or mistake on the part of the board administrator in conducting, counting, or declaring the result of the election, if such error or mistake would be sufficient to change the outcome of the election;

(D) For misconduct, fraud, or corruption on the part of the board administrator, if such misconduct, fraud, or corruption would be sufficient to change the outcome of the election;

(E) For any other cause which shows that another individual was the legally elected board member.

(II) Notwithstanding the provisions of section 24-50-125.4 (3), an action to contest an election under this subsection (3) shall be brought pursuant to rule 106 (a) (3) of the Colorado rules of civil procedure; except that the action shall be brought only in the Denver district court and only after the contesting party has complied with the rules of the board concerning prior notice and opportunity to cure, and the provisions of rule 106 concerning district attorneys shall not apply to this subsection (3).

(d) The general assembly shall appropriate to the board sufficient funds to carry out the provisions of this subsection (3).

(4) A vacancy in office shall be filled in the manner used for the selection of the person vacating the office and for the unexpired term. Elected member vacancies shall be filled within three months after the date of the vacancy, and, in the event of a vacancy for an elected member position, the governor shall request a supplemental appropriation in an amount sufficient to conduct the election, and the general assembly shall appropriate such amount for that purpose.

(5) A member of the board may be removed in accordance with section 14 (2) of article XII of the state constitution.

(6) An action of the state personnel director or an appointing authority which is appealable to the board pursuant to this article or the state constitution may be reversed or modified on appeal to the board only if at least three members of the board find the action to have been arbitrary, capricious, or contrary to rule or law. Unless otherwise limited by this article or the state constitution, a decision of the board shall be subject to review pursuant to section 24-50-125.4.

(7) The board may authorize administrative law judges, who shall be lawyers with at least five years' experience, to conduct hearings on any matter within the jurisdiction of the board upon terms and conditions determined by the board and subject to the provisions of article 4 of this title. The board shall employ such personnel as may be necessary for the performance of its duties, including an administrator who shall serve as

secretary to the board. The administrator shall maintain full records of the proceedings of the board and shall be responsible for any other duties as the board may assign. Funds for these purposes shall be appropriated by the general assembly.

(8) Members of the board shall be compensated at the rate of seventy-five dollars per day for each day in which they are actually engaged in the performance of their duties plus reimbursement for actual and necessary expenses incurred in the performance of their duties. The board shall meet as often as necessary to conduct its business. The board shall elect a chairman and a vice-chairman, one of whom shall be a gubernatorial appointee, from among its members. Meetings shall be called by the chairman or a majority of the board. All members of the board shall be given reasonable notice of all meetings, and three members of the board shall constitute a quorum for the transaction of business. The affirmative vote of at least three members of the board shall be necessary to reverse or modify any action of the state personnel director or appointing authority.

(9) The board and any political subdivision of the state may contract for the furnishing of personnel services by the department of personnel to such subdivision.

24-50-103.5. Department of personnel - review. (1) The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that by establishing a system for review, it will be in a better position to evaluate the need for modification of the department of personnel, referred to in this section as the "department", and for modification of the rules and regulations of the board.

(2) (a) The legislative audit committee shall cause to be conducted a performance audit of the department and the board. The performance audit shall be completed at least seven months prior to July 1, 1981. In conducting the audit, the legislative audit committee shall take into consideration, but not be limited to considering, the factors listed in paragraph (b) of subsection (3) of this section. Upon completion of the audit report, the legislative audit committee shall hold a public hearing for purposes of review of the report.

(b) A further performance audit as required in this section shall be completed at least seven months before July 1, 1985, and every four years thereafter.

(3) (a) Committees of reference in each house of the general assembly shall hold public hearings, receiving testimony from the public, the state personnel director, and the chairman of the board, and in such a hearing the department and the board shall have the burden of demonstrating the extent to which a change in the administration, rules and regulations, or operations of the department or the board may increase the efficiency of administration or operation of the department or the board.

(b) In such hearing, the committee shall take into consideration the following factors, among others:

(I) The extent to which the department and the board have operated in the public interest and economy, and the extent to which their operations have been impeded or enhanced by existing statutes, procedures, and any other circumstances, including budgetary, resource, and personnel matters;

(II) The extent to which the department and the board have recommended statutory changes to the general assembly which would benefit the public as opposed to the persons they regulate;

(III) The extent to which the board has adopted rules and regulations, procedures, or practices which enhance or impede the efficiency or economy of state government;

(IV) The efficiency with which formal complaints filed with the department or the board concerning regulation policies, procedures, or practices have been processed to completion by the department or the board and the decisions thereof;

(V) The effectiveness of the department and the board in implementing incentive systems to reward and encourage excellence in public service, particularly in middle and top management levels;

(VI) The effectiveness of the department or the board in filling job vacancies;

(VII) The effectiveness of staffing levels of the department, particularly in view of the decentralization of functions of the department to other departments of state government;

(VIII) The effectiveness of the department and the board as perceived by executive directors of other departments of state government and members of the general assembly;

(IX) The extent to which changes are necessary in the enabling laws of the department or the board to adequately comply with the factors listed in this paragraph (b); and

(X) The extent to which the authority of the department or the board should be or has been restricted by the annual general appropriation bill.

24-50-103.7. Model child care program study. (Repealed)

24-50-104. Job evaluation and compensation - state employee reserve fund - created - definitions. (1) **Total compensation philosophy.** (a) (I) It is the policy of the state to provide prevailing total compensation to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent work force. For purposes of this section, "total compensation" includes, but is not limited to, salary, group benefit plans, retirement benefits, merit pay, incentives,

premium pay practices, and leave. For purposes of this section, "group benefit plans" means group benefit coverages as described in section 24-50-603 (9).

(II) The state personnel director shall establish technically and professionally sound survey methodologies to assess prevailing total compensation practices, levels, and costs. Except as provided in subparagraph (III) of this paragraph (a), for purposes of this paragraph (a), to determine and maintain salaries, state contributions for group benefit plans, and merit pay that are comparable to public and private employment, the state personnel director shall annually review the results of appropriate surveys by public or private organizations, including surveys by the state personnel director. Any surveys provided on a confidential basis shall not be revealed except to the state auditor's office and the private firm conducting the audit required in paragraph (b) of subsection (4) of this section. The state personnel director shall adopt appropriate procedures to determine and maintain other elements of total compensation, including the payment of incentive awards to employees in the state personnel system. The state personnel director's review and determination of total compensation practices shall not be subject to appeal except as otherwise authorized by law or state personnel director procedures.

(III) (A) The methodologies used for purposes of determining and maintaining prevailing compensation for state law enforcement officers employed by the Colorado state patrol shall be the same as the methodologies established pursuant to subparagraph (II) of this paragraph (a); except that the amount of salary shall be at least ninety-nine percent of the actual average salary provided to the top three law enforcement agencies within the state that have both more than one hundred commissioned officers and the highest actual average salary.

(B) As used in this subparagraph (III), "state law enforcement officer" means the chief and any commissioned or noncommissioned officer and trooper of the Colorado state patrol.

(b) The state personnel director shall use a systematic approach to objectively determine classes of positions and the uniform alignment of classes and occupational groups for all jobs in the state personnel system. The state personnel director shall conduct timely, ongoing, and technically sound evaluation and analyses of jobs in order to group similar duties and responsibilities into clearly distinguished classes and occupational groups that relate to the compensation structure through the assignment of appropriate pay grades. If the state personnel director proposes or the department of personnel recommends any changes to classes or occupational groups or to the pay grades for such classes or groups as a result of the evaluation and analyses required under this paragraph (b), the director shall notify all affected employees and employee organizations of such changes. Upon request of any affected employee or employee organization, the state personnel director shall meet and confer in good faith with such employee or organization regarding the proposed or recommended changes prior to finalizing and implementing any such change.

(c) (I) The state personnel director shall establish a merit pay system in order to provide periodic salary increases for employees in the state personnel system. The purpose of the merit pay system is to provide salary increases for employees based on performance evaluations and salary placement within the appropriate salary range. The state personnel director shall develop the merit pay system so that a merit pay increase is based on the relationship of performance rating distribution and salary range distribution. The merit pay system must include the following characteristics:

(A) Salary range is divided into quartiles, except as set forth in subparagraph (I.1) of this paragraph (c);

(B) The lowest quartile or distribution zone in relation to the midpoint has the highest rate of merit pay, and the rate for each successive quartile or distribution zone is less than the preceding quartile or distribution zone, except as provided in sub-subparagraph (E) of this subparagraph (I);

(C) Performance evaluations are divided into three performance categories, except as set forth in subparagraph (I.1) of this paragraph (c);

(D) The highest performance category has the highest rate of merit pay, and the rate for each lower performance category is less than the preceding category, except as provided in sub-subparagraph (E) of this subparagraph (I); and

(E) Employees who receive an unsatisfactory performance evaluation are not eligible for merit pay.

(I.1) On or after September 1, 2015, the state personnel director shall review the effectiveness of the use of quartiles for salary range and three performance categories in the merit pay system. Based on the review, the state personnel director may adjust the number of distribution zones or performance categories to be used in the system. Thereafter, the state personnel director shall conduct a biennial review of the distribution zones and performance categories and may adjust the number of distribution zones or performance categories based on the review. The minimum number of distribution zones the state personnel director may establish is three, and the maximum number is six.

(I.2) If a state department or institution of higher education has a performance review system that has a different number of performance categories than the number used by the state personnel director in the merit pay system, the state personnel director shall establish a method for converting the departmental or institutional categories into the categories used in the merit pay system.

(I.3) Based on professionally sound survey methodologies, the state personnel director shall establish annually one or more priority groups of employees that have priority to receive merit pay based on available moneys. The priority groups must be based on length of service, relation to the salary range midpoint, performance, recruitment, retention needs, and other factors established by the director. The amount of merit pay that an employee in the state personnel system may receive depends first on the employee's priority group and then on the amount of merit pay, if any, associated with the

employee's performance category and salary range.

(I.5) (A) Except as set forth in sub-subparagraph (B) of this subparagraph (I.5), the merit pay system applies uniformly across state departments and institutions of higher education subject to the provisions of subparagraph (I.9) of this paragraph (c). For each state fiscal year the state personnel director shall determine the appropriate merit pay rates that apply to all state departments and institutions and the priority group or groups that receive merit pay.

(B) Notwithstanding any provision of this section to the contrary, an institution of higher education may enact its own merit pay system, so long as the system is consistent with the provisions of this subsection (1).

(I.7) An employee who is at or above the maximum amount for his or her salary range is not eligible for a merit pay salary increase, but is eligible for a merit pay payment that is nonbase building.

(I.9) Merit pay is subject to available appropriations. Except as set forth in subparagraph (II) of paragraph (j) of this subsection (1), the general assembly shall appropriate any moneys for merit pay in the annual general appropriation act in suitable personal services line items or other line items that include salary appropriations.

(II) In addition to any other requirements set forth in this paragraph (c), the department of personnel shall develop the merit pay system so that it:

(A) Is simple and understandable to employees in the state personnel system;

(B) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(C) Is developed with input from employees in the state personnel system, managers, and other affected parties;

(D) Emphasizes planning, management, and evaluation of employee performance; and

(E) Repealed.

(F) Prohibits a forced distribution of performance ratings.

(G) Repealed.

(III) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(IV) Each state department and institution of higher education shall ensure that it has a performance review system that can be used to implement a merit pay system. The state personnel director shall encourage state departments and institutions of higher education to implement performance evaluations of employees that are as objective as possible and that, as soon as possible and wherever feasible, include an assessment from multiple sources of each employee's performance. Such sources shall include, where applicable, the employee's self-assessment; the employee's superiors, subordinates, and peers; and any other applicable sources of an employee's performance. The state personnel director shall adopt procedures to establish a process to resolve employee disputes related to performance evaluations that do not result in corrective or disciplinary action against the employee. Each program established by a state department or institution

of higher education pursuant to this subparagraph (IV) shall be subject to the director's approval.

(c.5) (I) The state personnel director shall provide for the evaluation of employee performance. Each employee shall be evaluated at least once a year. The evaluation of performance shall be used as a factor in compensation, promotions, demotions, removals, reduction of force, and all other transactions as determined by the state personnel director in which considerations of quality of service are properly a factor.

(II) A supervisor, including a supervisory state employee not within the state personnel system, who does not evaluate subordinate employees in the state personnel system as required by this paragraph (c.5) on at least an annual basis shall be suspended from work without pay for a period of not less than one workday. The provisions of this subparagraph (II) shall only apply to supervisors who are state employees.

(III) The head of each principal department and each state-supported institution of higher education, respectively, shall determine annually on May 1 whether each supervisor in the department or institution has completed the mandatory performance evaluation required for each employee in the state personnel system during the preceding twelve months. If any evaluations have still not been completed by July 1, the supervisor may be subject to demotion. If a supervisor has not timely completed annual performance evaluations for two consecutive years, the supervisor shall be demoted to a nonsupervisory position.

(IV) The state personnel director shall adopt procedures for the implementation of the provisions of this paragraph (c.5). Nothing in this paragraph (c.5) shall be construed to limit the ability of the state personnel director to provide for additional sanctions for noncompliance with the provisions of this paragraph (c.5).

(V) The state personnel director shall monitor compliance with the requirements of this paragraph (c.5) and paragraph (c) of this subsection (1) and shall annually report the director's findings pertaining to the prior fiscal year no later than January 1 of the following fiscal year to the joint budget committee of the general assembly. The report shall include, by department or institution, the number of supervisors who were suspended or demoted, the percentage of all supervisors who complied with the requirements of this paragraph (c.5), the total amount of dollars that were awarded to employees for merit pay, the total amount of those dollars awarded for each priority group and each salary range and performance category, any reversion amounts that were transferred for the prior state fiscal year pursuant to subparagraph (IV) of paragraph (j) of this subsection (1), the line item appropriation related to each reversion amount, and the balance in the department's account within the state employee reserve fund as of the date of the report.

(c.7) In addition to the periodic salary increases authorized by paragraph (c) of this subsection (1), the performance review component of the merit pay system established pursuant to subparagraph (IV) of paragraph (c) of this subsection (1) shall be

used for the purpose of determining eligibility for a performance-based award permitted pursuant to section 24-38-103 (1.5). The award shall be in addition to any other compensation authorized by law, and it shall not affect the compensation that the employee is entitled to receive in subsequent years.

(d) (Deleted by amendment, L. 2000, p. 1117, § 1, effective May 26, 2000.)

(e) The state personnel director shall sustain an employee's base salary in the event such employee's position is placed in a lower pay range due to an allocation of such employee's position, a system maintenance study of all positions in a class, a general job evaluation study of the state personnel system, or the annual compensation survey for a period not to exceed three years from the effective date of such placement.

(f) Initial hiring shall typically be at the minimum rate in the pay grade. On a showing of recruiting difficulty or other unusual condition, the appointing authority may authorize the appointment of a person at a higher base salary within the pay grade.

(g) Benefits shall include insurance, retirement, and leaves of absence with or without pay and may include jury duty, military duty, or educational leaves. The state personnel director shall prescribe procedures for the types, amounts, and conditions for all leave benefits that are typically consistent with prevailing practices, subject to the provisions governing the benefits provided in subsection (7) of this section. The general assembly shall approve any changes to leave benefits granted by statute before such changes are implemented. The state personnel director shall prescribe by procedure any nonstatutory benefits.

(h) The state personnel director may, following consultation with the state auditor and consistent with article III and sections 13, 14, and 15 of article XII of the state constitution, establish special procedures for classifying those employees of the state auditor's office who are within the state personnel system in order to take into consideration the special situations, circumstances, and duties unique to such employees. Such special procedures shall incorporate the directives, requirements, and elements of sections 13, 14, and 15 of article XII of the state constitution, including, but not limited to, the grading and compensation of persons in the state personnel system according to standards of efficient service that are the same for all persons having like duties.

(i) (Deleted by amendment, L. 2003, p. 1926, § 1, effective May 22, 2003.)

(j) (I) As used in this paragraph (j), unless the context otherwise requires:

(A) "Department" means a principal department of the executive branch of state government specified in section 24-1-110.

(B) "Eligible department" means a department that received an appropriation for which there is a reversion amount.

(C) "Fund" means the state employee reserve fund created in subparagraph (II) of this paragraph (j).

(D) "Personal services-related line item" means a line item entitled "personal services", "group health, life, and dental insurance", "short-term disability insurance",

"amortization equalization disbursements", "supplemental amortization equalization disbursements", "salary survey", or "shift differential".

(E) "Qualifying cash fund" means a cash fund for which there is express authorization for a reversion pursuant to this paragraph (j) from the cash fund to the state employee reserve fund.

(F) "Reversion amount" means the final, adjusted amount of state moneys appropriated from the general fund or a qualifying cash fund for a state fiscal year in a personal services-related line item, a line item entitled "operating expenses", or any successor line item designated by the joint budget committee for the same purposes in the annual general appropriation act to a department that is unexpended and unencumbered as of the date the state controller publishes the comprehensive annual financial report of the state for the state fiscal year. The joint budget committee shall notify the state controller and state treasurer of a successor line item from which there may be a reversion amount. There is no "reversion amount" related to any line item that moneys are transferred from or to pursuant to section 24-75-108.

(II) The state employee reserve fund is hereby created in the state treasury. Within the fund there is an account dedicated to each department. A department's account consists of moneys transferred pursuant to subparagraph (IV) of this paragraph (j) and any transfers directed by the governor pursuant to subparagraph (VI) of this paragraph (j). Moneys within a department's account are continuously appropriated to such department for the purpose of providing merit pay to certified employees as provided in this subsection (1). A department may not expend any moneys from its account without the approval of the director of the office of state planning and budgeting.

(III) Any moneys in the fund not expended as provided in subparagraph (II) of this paragraph (j) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in a department's account shall be credited to the same account. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(IV) On the date the state controller publishes the comprehensive annual financial report of the state, the state controller and state treasurer shall transfer an amount of moneys equal to a reversion amount from the general fund or a qualifying cash fund to the state employee reserve fund to be allocated to the eligible department's account.

(V) Notwithstanding any provision of this section to the contrary, the state treasurer shall not transfer any moneys from a qualifying fund if:

(A) The reversion is required pursuant to section 24-37.5-112 (2); or

(B) There are insufficient moneys in the fund for the full transfer. In such case, the state treasurer shall transfer as much as is available.

(VI) In order to provide moneys to a department that is unable to generate substantial reversion amounts because of the manner in which moneys are appropriated to

the department or other factors, the governor may direct the state treasurer to reallocate moneys among department accounts in the fund. The total amount reallocated pursuant to this subparagraph (VI) during a state fiscal year shall not exceed two million dollars. No other reallocation of moneys among accounts is permitted.

(2) **Records.** To facilitate the reporting of estimated costs required of the state personnel director pursuant to paragraph (c) of subsection (4) of this section, the records of all positions in the state personnel system shall be current and included in the state personnel data system by January 1 of each year.

(3) Repealed.

(4) **Annual compensation process.** (a) The purpose of the annual compensation process is to determine any necessary adjustments to state employee salaries, state contributions for group benefit plans, and merit pay. The annual compensation survey, based on an analysis of surveys by public or private organizations, including surveys by the state personnel director, shall include a fair sample of public and private sector employers and jobs, including areas outside the Denver metropolitan area. In order to establish confidence in the selection of surveys, the state personnel director shall meet and confer in good faith with management and state employee representatives.

(b) (I) The state personnel director shall prepare an annual compensation report based on the analysis of surveys conducted pursuant to paragraph (a) of this subsection (4). The purpose of the annual compensation report shall be to reflect all adjustments necessary to maintain the salary structure, state contributions for group benefit plans, and merit pay for the upcoming fiscal year. For the merit pay component, the state personnel director shall include a description of the amount necessary for merit pay for all eligible state employees, as well as the amount necessary for each priority group of state employees. The state personnel director shall also include a detailed analysis of salary ranges for all employees in the state personnel system and how employees' salaries are distributed within these ranges. Each department may provide the state personnel director with a recommendation regarding the amount of moneys that should be appropriated to the department for merit pay for the upcoming fiscal year. The state personnel director shall establish deadlines for the recommendations and shall include a summary of all the recommendations he or she receives in the annual compensation report. The state auditor is responsible for contracting with a private firm to conduct a performance audit of the procedures and application of data, including any survey conducted by the state personnel director. Beginning January 1, 2005, the audits shall be conducted every four years. A report shall be submitted to the governor and the general assembly by the June 30 immediately following the completion of the audit.

(II) The general assembly reviewed the reporting requirements to the general assembly in subparagraph (I) of this paragraph (b) during the 2008 regular session and continued the requirements.

(c) By August 1, 2003, and by August 1 of each year thereafter, the state

personnel director shall submit the annual compensation report and recommendations and estimated costs for state employee compensation for the next fiscal year, covering salaries, state contributions for group benefit plans, and merit pay, to the governor and the joint budget committee of the general assembly. The recommendations shall reflect a consideration of the results of the annual compensation survey, fiscal constraints, the ability to recruit and retain state employees, appropriate adjustments with respect to state employee compensation, and those costs resulting from implementation of section 24-50-110 (1) (a). The recommendations for state contributions for group benefit plans shall specify the annual group benefit plan year established pursuant to section 24-50-604 (1) (m). The annual compensation report shall include the results of the surveys of public or private employers and jobs for prevailing total compensation and the reasons for any deviation from prevailing total compensation in the recommendations submitted to the governor and the joint budget committee. The state personnel director shall also publish such report. This paragraph (c) is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirements of this section are effective until changed by the general assembly acting by bill.

(d) (I) For fiscal years commencing prior to the 2003-04 fiscal year and after the 2003-04 fiscal year, the recommended changes to salaries and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act shall be effective on July 1 of the ensuing fiscal year unless the general assembly, acting by bill, establishes a different effective date for that fiscal year or the governor orders otherwise pursuant to section 24-50-109.5 and such order is adopted by the general assembly through a joint resolution declaring a fiscal emergency and approved by the governor in accordance with section 39 of article V of the Colorado constitution.

(II) For the 2003-04 and 2004-05 budget years, to the extent such changes are funded, the recommended changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective January 1 of the next fiscal year. For the 2005-06 fiscal year and each fiscal year thereafter, to the extent such changes are funded, the recommended changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective on the first day of the annual group benefit plan year established pursuant to section 24-50-604 (1) (m).

(III) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(IV) (Deleted by amendment, L. 2010, (HB 10-1181), ch. 351, p. 1624, § 13, effective June 7, 2010.)

(e) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(f) Any moneys appropriated pursuant to this subsection (4) shall not be used to achieve parity for employees outside the state personnel system.

(5) **Pay plans.** (a) The state personnel director shall establish pay plans as technically and professionally necessary and shall establish any procedures and directives required to implement the state's prevailing total compensation philosophy as defined in subsection (1) of this section.

(b) No employee in any pay plan may exceed an established maximum salary amount for such plan, except as provided in paragraph (e) of subsection (1) of this section. The maximum monthly salary for any employee whose position is assigned to a nonmedical pay plan in effect prior to July 1, 1991, shall be calculated based on the 1991 maximum of five thousand seven hundred ninety-four dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991; except that classes in the medical pay plan requiring licensure as a physician or dentist shall be subject to a maximum monthly salary calculated on the basis of the 1991 maximum of seven thousand eight hundred twelve dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991. Effective July 1, 2010, the maximum monthly salary in the medical pay plan shall be seventeen thousand nine hundred twenty-seven dollars, plus any subsequent adjustments made under this paragraph (b). Such amounts shall be adjusted by the state personnel director in accordance with the change in the employment cost index for the preceding calendar year or the percentage increase in state general fund appropriations in relation to such appropriations for the preceding fiscal year, whichever is greater. In no event shall such amounts exceed the maximum found in the market as determined by the annual compensation survey. The maximum monthly salary for the senior executive service plan shall not exceed the maximum monthly salary of any nonmedical pay plan by more than twenty-five percent.

(c) The senior executive service is limited to one hundred twenty-five positions. The state personnel director shall establish criteria for inclusion in the senior executive service and shall review each nominated position before it is placed in the pay plan for the senior executive service. The head of the department or agency or state auditor for employees of the state auditor's office shall make appointments to the senior executive service based on competitive selection and is responsible for the management of the employees in such plan. Any person in the senior executive service has no right to any position within the state.

(d) In the medical pay plans, there are no anniversary-based merit increases. The salaries in such pay plans are based on the negotiation of an annual contract between the employee and the department head or the state auditor, when appropriate, and the amount of such salaries may increase, decrease, or remain unchanged from year to year. Any employee dismissed for failure to perform under such contract may only appeal directly to the state personnel board.

(e) In the pay plans for the senior executive service and those positions specified in section 13 (2) (a) (XI) of article XII of the state constitution, there are no anniversary-based merit increases. The salaries in such pay plans are based on policies set forth by the

state personnel director. The amount of such salaries may increase, decrease, or remain unchanged from year to year.

(6) **Job evaluation.** (a) System maintenance studies involving the assignment of classes to increased pay grades shall be incorporated into the annual total compensation request reported to the general assembly and shall be effective on July 1 of each year unless otherwise ordered by the governor acting pursuant to section 24-50-109.5.

(b) (I) The state personnel director shall allocate individual positions to the proper classes based on an objective evaluation of the job assignment.

(II) Any employee directly affected by the allocation of the employee's position to a class in a lower pay grade under subparagraph (I) of this paragraph (b) may file a written appeal with the state personnel director within ten days after receiving the notice of allocation of positions. The state personnel director, or the director's designee, shall review the appeal in summary fashion on the basis of written material that may be supplemented by oral argument at the sole discretion of the director or designee. At the director's discretion, an advisory panel of qualified job evaluators may be convened to assist the director in making a decision. Except as otherwise provided in subparagraph (III) of this paragraph (b), the director shall issue a written decision within ninety calendar days after the receipt of a timely appeal. If the director does not issue a decision within ninety calendar days after receipt of a timely appeal, the original allocation decision shall be final. An allocation decision may be overturned only if the director finds it to have been arbitrary, capricious, or contrary to rule or law. The state personnel director shall establish a process for timely resolving appeals within the ninety-day period and the criteria for selection of and method of service upon an advisory panel. Any decision shall be subject to judicial review pursuant to section 24-4-106.

(III) When an employee who has filed an appeal with the state personnel director pursuant to subparagraph (II) of this paragraph (b) also files an appeal with the state personnel board pursuant to section 24-50-123 or the Colorado civil rights division pursuant to section 24-50-125.3, the ninety-day period specified in subparagraph (II) of this paragraph (b) shall be tolled until there is a final agency action by the board only if the appeal filed with the board or the civil rights division arises out of the same incident as the appeal filed with the director, is filed before the expiration of the ninety-day period, and is filed before the director has issued a written decision.

(7) **Leaves.** (a) No employee shall earn more than ten days of sick leave per fiscal year. No employee may retain accumulated sick leave in excess of forty-five days at the end of any fiscal year; except that any employee who had accumulated sick leave prior to July 1, 1988, shall retain such leave and may accumulate a maximum of forty-five additional days. Any excess accumulation may be converted to annual leave at the rate of five days of sick leave to one day of annual leave up to a total of two days per fiscal year. A medical certificate form from a health care provider shall be required for absences of more than three full consecutive working days, or the use of sick leave shall be denied.

(b) The procedures of the state personnel director shall provide that no more than two days of paid leave per fiscal year shall be granted for organ, tissue, or bone marrow donation for transplants. Such leave may not be accumulated.

(c) The state personnel director may establish procedures to allow the transfer of annual leave between employees when one employee, or an immediate family member of the employee, experiences an unforeseeable life-altering event beyond the employee's control. The recipient of any annual leave shall have a minimum of one year of state service and exhausted all applicable paid leave, including any compensatory time.

(d) An employee certified as a disaster service volunteer of the American red cross may be granted paid leave for specialized disaster relief services. Such leave shall not exceed five days for a local disaster or fifteen days for a national disaster in a twelve-month period. Such leave may not be accumulated. During this period of leave, an employee shall not be deemed to be an employee for purposes of the "Workers' Compensation Act of Colorado", as provided in articles 40 to 47 of title 8, C.R.S. The leave authorized by this paragraph (d) shall run concurrent with and shall not be in addition to any paid leave of absence required by law for service by a member in a Colorado civil air patrol mission as provided in section 28-1-104, C.R.S., or for qualified volunteer service in a disaster as provided in section 24-33.5-825.

(7.5) Repealed.

(8) **Payroll.** (a) Salaries for positions in the state personnel system paid on a monthly basis shall be paid as of the last working day of the month; except that:

(I) Salaries for the month of June shall be paid on the first working day of July; and

(II) For state personnel employees in the department of transportation hired before August 5, 1998, as amended, salaries for the month of December shall be paid on the first working day in January, unless any such employee informs the controller of the department of transportation of the employee's desire to be paid in the same manner as other employees in the state personnel system as provided in this subsection (8), in which case, the employee shall be paid in such manner.

(a.5) For state employment positions that are not in the state personnel system and that are not otherwise covered by paragraph (a) of this subsection (8), salaries paid on a monthly basis for the month of June shall be paid on the first working day of July.

(a.6) For state employment positions that are not otherwise covered by paragraph (a) or (a.5) of this subsection (8), whether or not the positions are in the state personnel system:

(I) Salaries paid on a biweekly basis for the pay period commencing on May 31, 2003, and ending on June 13, 2003, shall be paid on July 1, 2003;

(II) Effective July 1, 2003, for work performed through June 30, 2012, salaries paid on a biweekly basis for the fourteen-day pay period preceding the first fourteen-day pay period for which salaries paid on a biweekly basis for any work performed during the

month of June are paid on or after July 1 shall be paid on the first working day of July; and

(III) Effective July 1, 2012, salaries paid on a biweekly basis shall be paid fourteen days after the last day of the fourteen-day pay period.

(b) Monthly salaries shall be converted to annual salary as the basis for calculating amounts due for periods other than monthly.

(c) The state personnel director or the director's designee shall regulate, approve, and review all payroll deductions other than those expressly authorized by statute or state-sponsored for all state employees. The state personnel director may assess a charge to the organization that receives the benefit from such a payroll deduction to offset the cost to the state for this service.

(d) No payroll deduction shall be made on behalf of a state employee without prior written authorization from the state personnel director or the director's designee. The state personnel director or the director's designee may authorize a payroll deduction only after receiving a written request for such payroll deduction from the employee, a department or agency representative, or an organization.

(9) **Liability.** (a) Except for gross negligence or fraud, no state employee responsible for calculating pay shall be in any manner liable for overpayment or underpayment of salaries.

(b) No employee whose salary may be increased by an allocation of the employee's position to a class in a higher pay grade shall have any claim against the state unless the final allocation decision is made effective more than one year from the time the written allocation request was received by the appropriate personnel office. In such case, the employee is entitled to the difference between the salary of the old grade and the new salary for such period over twelve months.

24-50-104.5. Compliance with federal laws. (1) The state personnel director shall establish the general criteria and processes necessary for the state personnel system to fully comply with all applicable federal employment laws. Holidays and periods of authorized paid leave falling within a regularly scheduled workweek shall be counted as work time in determining overtime for employees performing essential law enforcement, highway maintenance, and other support services directly necessary for the health, safety, and welfare of patients, residents, and inmates of state institutions or state facilities.

(2) The state personnel director may establish an internal review process of alleged violations of such federal laws. Such a review shall be conducted in summary fashion on the basis of written material. Except as otherwise provided in subsection (3) of this section, the state personnel director shall issue a written decision within ninety days after receipt of the written complaint. Any aggrieved party may also seek judicial review as specified by the applicable law.

(3) When an employee who has sought a review with the state personnel director pursuant to subsection (2) of this section also files an appeal with the state personnel board pursuant to section 24-50-123 or the Colorado civil rights division pursuant to section 24-50-125.3, the ninety-day period specified in subsection (2) of this section shall be tolled until there is a final agency action by the board only if the appeal filed with the board or the civil rights division arises out of the same incident as the review sought with the director, is filed before the expiration of the ninety-day period, and is filed before the director has issued a written decision.

24-50-105. State personnel system - cost of administration. (Repealed)

24-50-106. Transfer to new pay plan. (Repealed)

24-50-107. Grade reduction by job evaluation action. (Repealed)

24-50-108. No claim against state. (Repealed)

24-50-109. Insufficient funds. (Repealed)

24-50-109.5. Fiscal emergencies - emergency orders. (1) As used in this section, "fiscal emergency" means any crisis concerning the fiscal condition of state government which is caused by a significant general fund revenue shortfall or significant reductions in cash or federal funds received by the state, which threatens the orderly operation of state government and the health, safety, or welfare of the citizens of the state, and which is declared a fiscal emergency by joint resolution adopted by the general assembly and approved by the governor in accordance with section 39 of article V of the state constitution.

(2) With the advice and assistance of the state personnel director, the governor shall take such actions as necessary to be utilized by each principal department and each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., to reduce state personnel expenditures in the event of a fiscal emergency. Such actions shall include, but need not be limited to, separations, voluntary furloughs, mandatory furloughs, suspension of increases in salary and state contributions for group benefit plans, suspension of merit pay, job-sharing, hiring freezes,

forced reallocation of vacant positions, or a combination thereof. Any suspension of salary increases or increases in state contributions for group benefit plans shall apply statewide to all employees in the state personnel system. If mandatory furloughs are utilized in any principal department or institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., such furloughs shall be implemented by each appointing authority so that all employees under such authority, regardless of status, position, or level of employment, are furloughed for the same length of time, consistent with section 24-2-103 (2). Employees of the following agencies and employees with duties as described shall not be subject to mandatory furlough: The Colorado state patrol, correctional officers, police officers, employees of the department of human services providing hands-on care, and employees providing hands-on nursing care.

(3) Promptly after the adoption of a joint resolution declaring a fiscal emergency, the head of each principal department and the governing board of each institution of higher education and the Auraria higher education center established in article 70 of title 23, C.R.S., shall order into effect, on an emergency basis and in accordance with the actions taken by the governor pursuant to subsection (2) of this section, those measures they find necessary and appropriate to reduce the personnel expenditures of their departments or institutions to enable them to operate within available revenues. No such order shall have an effect beyond the time period specified in the joint resolution declaring the fiscal emergency.

24-50-110. Budget control - personal services. (1) In order to provide controls and proper identification of personal services costs necessary to carry out the policy of the state regarding compensation of state employees, the following administrative and fiscal procedures shall apply:

(a) Whenever the authorities or responsibilities within state government are altered by the general assembly, executive order of the governor, or action of an executive director of a principal department or whenever in the course of administering the state personnel system the state personnel director conducts a study of positions or classes in the state personnel system, the state personnel director shall estimate the increased costs of personal services, if any, resulting from such actions and shall submit such estimated costs to the joint budget committee of the general assembly and to the office of state planning and budgeting.

(b) In their annual budget requests, the heads of all principal departments of state government shall set forth separately the projected costs of personal services arising from anticipated classification reviews, promotions, and other increases in compensation or bonuses for employees in their departments. The costs of personal services shall include any merit pay.

(c) No funds appropriated to any principal department for purposes other than personal services shall be used for personal services; except that the head of a principal department may use such funds for temporary personal services upon a showing of emergency or unusual circumstances where such use is necessary to the proper functioning of the department. Each such use shall be approved in advance by the governor and shall be reported to the general assembly.

(d) (I) Except as set forth in subparagraph (II) of this paragraph (d), each principal department shall annually reconcile the number of positions it has authorized for the prior fiscal year with the number of appropriated full-time equivalent employees for the same fiscal year. On or before September 1 of each year, a department shall submit a copy of such reconciliation to the department of personnel. On or before October 1 of each year, the department of personnel shall prepare a report that consolidates all of the departmental reconciliations and provide the report to the office of state planning and budgeting and the joint budget committee. The department of personnel has the authority to abolish any nonappropriated or vacant classified positions identified in this reconciliation.

(II) On or before September 1 of each year, the department of higher education shall report to the department of personnel the number of positions authorized at each institution of higher education, but the department is not subject to the reconciliation requirement set forth in subparagraph (I) of this paragraph (d).

(III) This paragraph (d) is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirements of this section are effective until changed by the general assembly acting by bill.

24-50-111. Appointments and promotions to offices - competitive examinations. (Repealed)

24-50-112. Examinations - when held - standards - eligible list. (Repealed)

24-50-112.5. Selection system. (1) (a) The state personnel director shall establish procedures and directives necessary to implement a merit-based statewide selection system to be used uniformly by all principal departments. Such procedures and directives shall include, but are not limited to, procedures for acceptance of applications, job qualification standards for candidates, extension of eligible lists, consistent evaluation and examination procedures for equivalent job classifications, and development and administration standards for the comparative analysis process.

(b) Appointments and promotions to positions shall be based on a fair and open

comparative analysis of candidates based on objective criteria. Selections shall be made without regard to race, color, creed, religion, national origin, ancestry, age, sexual orientation, marital status, or political affiliation and without regard to sex or disability except as otherwise provided by law.

(2) **Employment lists.** (a) Employment lists shall be used in the following order of priority: Departmental reemployment lists, promotional eligible lists, and eligible lists. Where there is no departmental reemployment list, an appointing authority may consider another department's reemployment list, together with eligible lists. Departmental reemployment lists shall contain the names of certified employees in a given department laid off for lack of work, lack of funds, or reorganization.

(b) Candidates shall be placed on an eligible list and ranked based on the comparative analysis. Qualified candidates shall receive veterans' preference as prescribed by section 15 of article XII of the state constitution and subsection (7) of this section. The person to be appointed to any position under the state personnel system shall be one of the six persons ranking highest on the eligible list or such lesser number as qualify.

(3) **Comparative analysis of candidates.** (a) Each appointing authority shall develop the comparative analysis of candidates based on objective criteria to be used by the appointing authority. A comparative analysis must be a professionally accepted standard that compares specific job-related knowledge, skills, abilities, behaviors, and other competencies. A comparative analysis may include, but is not limited to, a written examination, oral board, or search committee. Only qualified applicants shall be included in a comparative analysis process. Applicants shall not be rejected solely because they do not have the education required, except where education is a prerequisite for a profession or is required by law. Where education is not a prerequisite or is not required by law, an applicant's experience shall be considered.

(b) Promotional comparative analysis shall be limited to qualified employees, including persons on reemployment lists. Performance evaluations may be utilized as part of a promotional comparative analysis plan.

(4) **Appeals.** (a) Any person directly affected by the selection and comparative analysis process action may file a written appeal with the state personnel director. The appeal must be filed within ten days after the administration of the comparative analysis. The director or a designee of the director shall review the appeal in summary fashion on the basis of written material submitted in connection with such appeal, which may be supplemented by oral argument at the discretion of the director or designee.

(b) The state personnel director may convene an advisory panel of qualified human resource selection professionals, with one member selected by the aggrieved person, to assist the director in making a decision. Except as otherwise provided in paragraph (d) of this subsection (4), the director shall issue a written decision within ninety days after receipt of a timely appeal. The selection and comparative analysis

process action may be overturned only if the director finds the action to have been arbitrary, capricious, or contrary to rule or law. If the director fails to issue a decision within said ninety-day period, the original comparative analysis and outcome shall be final. A written decision on any appeal filed pursuant to this subsection (4) or the outcome of an appeal resulting from the failure to issue such a decision shall be subject to judicial review pursuant to section 24-4-106, unless the matter is appealed to the state personnel board pursuant to paragraph (e) of this subsection (4).

(c) The state personnel director shall establish a process for timely resolving appeals within the ninety-day period and criteria for advisory panel selection and service. The process for resolving appeals shall specify that if an employee who has filed an appeal with the state personnel director also files an appeal with the state personnel board pursuant to section 24-50-123 or the Colorado civil rights division pursuant to section 24-50-125.3, only if the appeal filed with the board or the civil rights division arises out of the same incident as the appeal filed with the director, and if the appeal is filed before the expiration of the ninety-day period and before the director has issued a written decision, the ninety-day period shall be tolled until there is a final agency action by the board. The board shall establish rules for certification of a person to a position when an appeal is pending relative to the selection and comparative analysis process for that position.

(d) When an employee who has filed an appeal with the state personnel director pursuant to this subsection (4) also files an appeal with the state personnel board pursuant to section 24-50-123 or the Colorado civil rights division pursuant to section 24-50-125.3, the ninety-day period specified in paragraph (b) of this subsection (4) shall be tolled until there is a final agency action by the board only if the appeal filed with the board or the civil rights division arises out of the same incident as the appeal filed with the director, is filed before the expiration of the ninety-day period, and is filed before the director has issued a written decision.

(e) After the state personnel director's final decision pursuant to this subsection (4), any person directly affected by the comparative analysis process may file a written appeal with the state personnel board. The petition must be filed within ten days after the state personnel director's final decision has been received by the affected person. The board may grant the petition only when it appears that the decision of the appointing authority violates the comparative analysis standards set forth in this section, in any other provision of law, or in any rules or procedures relating to the comparative analysis process. The board shall review and summarily grant or deny a petition within one hundred twenty days of receipt of the petition. Any petition granted shall be determined in accordance with section 24-50-125.4.

(5) **Appointments.** (a) Only a qualified candidate shall be appointed to a position in the state personnel system. A qualified employee may transfer between positions in the same class or to a different class at the same pay grade. The gaining organization shall assume all liability for the employee's base salary, credited leave

accruals, and other applicable personnel system benefits.

(b) The board shall establish probationary periods for all persons who are initially appointed or promoted into a different position or who are in a position reallocated to a higher pay grade. The probationary period shall not exceed twelve months for any class or position. The person shall be certified to such class or position after satisfactory completion of any probationary period as demonstrated by performance evaluations. Unsatisfactory performance shall be grounds for dismissal of the person by the appointing authority during such probationary period without right of appeal. Any certified employee who is promoted to a different class or position and who fails to perform satisfactorily during the probationary period shall be reverted to a position in the former certified class or be disciplined.

(6) **State auditor's employees.** The state personnel director may, following consultation with the state auditor and consistent with the principles of separation of powers, establish special procedures governing appointment and promotion of employees of the state auditor's office. The procedures shall address the special situations, circumstances, and duties unique to employees of the state auditor's office. All procedures shall be consistent with sections 13, 14, and 15 of article XII of the state constitution.

(7) **Veterans' preference for spouse.** (a) If a candidate is the spouse of a disabled veteran who is unable to work, and who can provide proof of such disability pursuant to paragraph (b) of this subsection (7), and who is eligible for preference in hiring pursuant to section 15 of article XII of the state constitution, the candidate is eligible for preference in hiring as follows:

(I) If a numerical method is used for the comparative analysis of candidates, five points shall be added to the comparative analysis score of the candidate.

(II) If a nonnumerical method is used for the comparative analysis of candidates, the candidate shall be added to the interview eligible list.

(b) To be eligible for preference pursuant to this subsection (7), a candidate who is the spouse of a disabled veteran must provide a letter, obtained by the disabled veteran from the United States department of veterans affairs, certifying that the veteran is a disabled veteran and is unable to work due to the nature of his or her disability as determined by the United States department of veterans affairs. For purposes of this subsection (7), the certification letter is valid for twelve months following the date of issuance by the United States department of veterans affairs. In addition, the candidate must provide proof that he or she is the legally recognized spouse of the veteran who obtained the letter pursuant to this paragraph (b).

(c) A candidate is not eligible for preference pursuant to this subsection (7) with respect to a promotional opportunity. Any promotional opportunity that is also open to persons other than employees for whom such appointment would be a promotion shall be considered a promotional opportunity for the purposes of this paragraph (c).

24-50-113. Promotions. (Repealed)

24-50-114. Temporary appointments - term - tenure. (1) Pending the availability of an eligible list determined by the state personnel director to be appropriate for a class, the appointing authority, with the prior approval of the state personnel director, may fill a vacancy for a permanent position by temporary appointment of a qualified, certified employee in accordance with the promotional policy established by the board. In the absence of such an eligible employee, temporary appointments of qualified persons may be made from without the state personnel system. A temporary appointment shall not exceed nine months in length, except for personal services contracts as permitted by part 5 of this article. An appointing authority must wait at least four months between temporary appointments for the same position that are made pursuant to this subsection (1). If the vacancy is for a permanent position, an eligible list shall be established within the nine-month period following the temporary appointment.

(2) The state personnel director may, by rule, authorize principal department heads and presidents of colleges and universities to employ persons from outside the state personnel system on a temporary basis while an eligible list is being provided or in emergency or seasonable situations nonpermanent in nature, but in each case the period of employment shall not exceed nine months, except for personal services contracts as permitted by part 5 of this article.

(3) Temporary appointees from outside the state personnel system shall have none of the protection of tenure afforded by this part 1 to certified employees.

(4) In case of emergency threatening the public health, welfare, or safety, a temporary appointment may be made without prior approval of the state personnel director, but such appointment may not continue without such approval for more than fifteen days.

(5) Except as provided in subsection (4) of this section, the prior approval of all temporary appointments to permanent positions shall be obtained from the state personnel director before such temporary appointments are made. The director may not delegate the authority to approve such temporary appointments. If any such appointment is made before the prior approval of the director is obtained, the appointment shall be considered void from the beginning and the person appointed to such position shall be immediately terminated.

24-50-115. Employment lists - appointments - probationary periods. (Repealed)

24-50-115.5. Former employees of state fair and industrial exposition commission. (Repealed)

24-50-116. Standards of performance and conduct. Each employee shall perform his duties and conduct himself in accordance with generally accepted standards and with specific standards prescribed by law, rule of the board, or any appointing authority.

24-50-117. Prohibited activities of employees. No employee shall engage in any employment or activity which creates a conflict of interest with his duties as a state employee. The board shall promulgate general rules on incompatible activities, conflicts of interest, and employment outside the normal course of duties of state employees.

24-50-118. Service and performance evaluations - system and use. (Repealed)

24-50-119. Incentive and recognition plans. (Repealed)

24-50-120. Leaves of absence. (Repealed)

24-50-120.5. Disaster service leave. (Repealed)

24-50-121. Transfer of employees. (Repealed)

24-50-122. Opportunities for training - professional development center cash fund - creation - rules. (1) The state personnel director shall be responsible for the establishment and maintenance of training programs for employees in the state personnel system. He or she shall identify training needs for current and anticipated classes of positions within the classified system, shall identify and recommend to the governor and the general assembly the most economical and effective means of meeting those training needs, and shall regularly assess the effectiveness of such training as may be conducted. State funds shall not be expended for the training of employees in the state personnel system without the approval of the state personnel director.

(2) The executive director of the department of personnel shall establish any fees

necessary to pay for the direct and indirect costs of the training programs specified in subsection (1) of this section. All moneys collected shall be transmitted to the state treasurer, who shall credit the same to the professional development center cash fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of establishing and maintaining the training programs specified in subsection (1) of this section. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or any other fund.

24-50-123. Grievances - review. (1) The board shall, by rule promulgated in accordance with article 4 of this title, adopt uniform procedures to be used by all principal departments and institutions of higher education in developing grievance processes for their employees. The grievance procedures shall provide an orderly system of review for all grievances and shall define matters that are subject to such grievance procedures.

(2) Matters arising under sections 24-50-125 and 24-50-104 (1) (c) shall not be subject to a grievance procedure under this section.

(3) The decision of the appointing authority shall be final; except that an employee may petition the board for review. The board may grant the petition only when it appears that the decision of the appointing authority violates an employee's rights under the federal or state constitution, part 4 of article 34 of this title, article 50.5 of this title, or the grievance procedures adopted pursuant to subsection (1) of this section. The board shall review and summarily grant or deny a petition within one hundred twenty days of receipt of the petition; except that petitions filed with the board that result in an investigation pursuant to section 24-50-125.3 or 24-50.5-104 are exempt from the one-hundred-twenty-day review requirement. Any petition granted shall be determined in accordance with section 24-50-125.4.

24-50-124. Reduction of employees - definition. (1) (a) When certified employees who, as of January 1, 2013, are within five years from being eligible for full retirement pursuant to section 24-51-602 (1) (a) are separated from state service, they shall be separated or demoted according to procedures established by rule. Such procedures shall require that consideration be given to performance evaluations of the employees and seniority within the total state service. Such employees shall have retention rights throughout the principal department in which they are employed unless the head of the department requests, and the board approves, in advance, limitation of retention rights to major divisions, institutions, or colleges within the principal

department.

(b) The state personnel director shall establish procedures, by rule, for the separation or demotion of any certified employees not covered by paragraph (a) of this subsection (1) from state service due to lack of work, lack of funds, or reorganization. Such procedures shall require that consideration be given to performance evaluations of an employee and seniority within the total state service.

(c) The appointing authorities from all departments shall consider placing a certified employee who has been identified pursuant to the procedures established pursuant to paragraph (b) of this subsection (1) as a person to be separated from state service into a funded, vacant position for which the employee is qualified. The state personnel director shall establish by rule procedures for such placements.

(d) (I) The state personnel director shall establish by rule a layoff plan that may be used by a department to provide postemployment compensation or other benefits for certified employees separated from state service. The plan may include, but is not limited to, a hiring preference, payment towards the continuation of health benefits for a specified time after separation, tuition or educational training vouchers, severance pay, or placement on a departmental reemployment list.

(II) The postemployment compensation or other benefits may be offered through a separation agreement.

(III) In no case shall the total value of the postemployment compensation and other benefits authorized pursuant to this paragraph (d) exceed an amount equal to one week of an employee's salary for every year of his or her service, up to a maximum of eighteen weeks of the employee's salary.

(IV) A certified employee is not entitled to receive any postemployment compensation or other benefits pursuant to this paragraph (d).

(2) A certified employee who is separated from state service shall be placed on a departmental reemployment list for a period of not less than one year, unless the employee waives the right to be so placed as part of a separation agreement.

(3) As used in this section, "separated from state service" means separated from state service due to lack of work, lack of funds, or reorganization.

24-50-125. Disciplinary proceedings - appeals - hearings - procedure. (1) A person certified to any class or position in the state personnel system may be dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony or any other offense which involves moral turpitude, or written charges thereof may be filed by any person with the appointing authority, which shall be promptly determined. In considering the conviction of a crime, the board shall be governed by the

provisions of section 24-5-101.

(2) Any certified employee disciplined under subsection (1) of this section shall be notified in writing by the appointing authority, by certified letter or hand delivery, no later than five days following the effective date of the action, of the action taken, the specific charges giving rise to such action, and the employee's right of appeal to the board. The notice shall include a statement setting forth the time limit for filing an appeal with the board, the address of the board, the requirement that the appeal be in writing, and the availability of a standard appeal form. Upon failure of the appointing authority to notify the employee in accordance with this subsection (2), the employee shall be compensated in full for the five-day period and until proper notification is received.

(3) Within ten days after the receipt of the notification required by subsection (2) of this section or within such additional time as may be permitted by the board in unusual cases for good cause shown, the employee may petition the board for a hearing upon the action taken. Upon receipt of such petition, the board shall grant a hearing to the employee. If the employee fails to petition the board within ten days or within such additional time granted by the board, the action of the appointing authority shall be final and not further reviewable.

(4) The hearing shall be held within ninety days of receipt of the employee's appeal pursuant to the provisions of section 24-50-125.4. The employee shall be entitled to representation of his or her own choosing at his or her own expense, consistent with the rules of the Colorado supreme court concerning the unauthorized practice of law. The board shall cause a verbatim record of the proceedings to be taken and shall maintain the record. At the conclusion of the hearing, but not later than forty-five days after the conclusion of the hearing, the board shall make public written findings of fact and conclusions of law affirming, modifying, or reversing the action of the appointing authority, and the appointing authority shall thereupon promptly execute the findings of the board.

(5) In addition, upon request by the employee or the employee's representative and within the period provided in section 24-50-125.4 (2), the board shall hold a hearing on an appeal for any certified employee in the state personnel system who protests any action taken that adversely affects the employee's current base pay as defined by board rule, status, or tenure. A probationary employee shall be entitled to all the same rights to a hearing as a certified employee; except that such probationary employee shall not have the right to a hearing to review any disciplinary action taken pursuant to subsection (1) of this section while a probationary employee. This subsection (5) shall not apply to appeals brought pursuant to section 24-50-104.

(6) Disciplinary hearings shall be limited to those specified in this section.

(7) Failure, without good cause, of an employee or his representative to appear at a hearing shall be deemed a withdrawal of his appeal, and the action of the appointing authority shall be final. Failure, without good cause, of the appointing authority or his

representative to appear at a hearing shall be deemed cause to dismiss the case and to award the employee all rights, salaries, and benefits as though the employee had won the appeal.

24-50-125.3. Discrimination appeals. An applicant or employee who alleges discriminatory or unfair employment practices, as defined in part 4 of article 34 of this title, in the state personnel system may appeal within ten days of the alleged practice by filing a complaint in writing with the board or the Colorado civil rights division in the department of regulatory agencies, which shall investigate such complaint on behalf of the board pursuant to the procedures and time limits set forth in section 24-34-306. In an appeal involving the civil rights division, the state personnel board shall contract with a third party to investigate the complaint. If, after said civil rights division or third party has found no probable cause or has attempted after a finding of probable cause to resolve the complaint by conference, conciliation, and persuasion, the applicant or employee remains dissatisfied, such person shall have ten days from the date he is notified of the civil rights division's or third party's action in which to appeal to the board. The board may set the complaint for hearing or adopt the findings of the civil rights division or third party as its own. If the complaint is set for hearing, it shall be subject to the same time limits as other appeals heard by the board. If the board adopts a no probable cause finding as its own, such action shall not operate to deny an employee a hearing to which he is otherwise entitled by law or rule.

24-50-125.4. Hearings. (1) Except for discrimination appeals that may also be filed with the Colorado civil rights division in the department of regulatory agencies, all appeals from actions of the state personnel director, appointing authorities, and agencies that are specifically appealable to the board under the state constitution or this article shall be filed with the board within ten days of receipt of notice of such action.

(2) The board shall give written notice of the time and place of a hearing to the parties involved at least twenty days before the date set for the hearing. The hearing shall commence not later than ninety calendar days after submission of the appeal to the board and may be continued only once for good cause for no longer than thirty days with the approval of the board.

(3) The board or an administrative law judge for the board shall issue a written decision within forty-five calendar days after the conclusion of the hearing and the submission of briefs. Any party may appeal the decision of the board to the court of appeals within forty-five days in accordance with section 24-4-106 (11).

(4) If an administrative law judge conducts a hearing on behalf of the board, any party who seeks to modify the initial decision must file an appeal with the board within

thirty days of the initial decision pursuant to section 24-4-105 (14). Within sixty days after the record is designated in accordance with section 24-4-105 (15) (a), the board shall certify the record. The board shall conduct its review in accordance with section 24-4-105 (15) (b) and issue its final decision within ninety days after the record has been certified.

(5) If any party is responsible for any inexcusable delay in conducting the hearing or in the issuance of a decision, the responsible party shall pay the opposing party's costs, including attorney fees.

(6) The board or an administrative law judge for the board may give any written notices or issue any written decisions required in this section by either regular or electronic mail or by facsimile. The board shall promulgate rules in accordance with article 4 of this title to establish a uniform system for service of written notices and decisions.

24-50-125.5. Recovery for improper personnel action. (1) Upon final resolution of any proceeding related to the provisions of this article, if it is found that the personnel action from which the proceeding arose or the appeal of such action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless, the employee bringing the appeal or the department, agency, board, or commission taking such personnel action shall be liable for any attorney fees and other costs incurred by the employee or agency against whom such appeal or personnel action was taken, including the cost of any transcript together with interest at the legal rate. Reimbursement of such attorney fees and other costs shall be made by the employee or the department, agency, board, or commission upon presentation by the employee or agency of a statement of the attorney fees and other costs incurred which has been approved by the state personnel board, and any such claim approved by the state personnel board against an agency shall be a charge on moneys appropriated to the department, agency, board, or commission. Each department, agency, board, or commission shall report to the joint budget committee each year concerning the number of claims made and the amount of moneys paid by the department, agency, board, or commission under this section during the previous fiscal year.

(2) Repealed.

24-50-126. Resignation - procedure and effect. (1) An employee may resign by filing his reasons in writing with the appointing authority.

(2) Qualified employees who have resigned in good standing may be reinstated under conditions which the board shall prescribe by rule.

(3) The board shall by rule prescribe the conditions under which absence without leave will be construed to be an automatic resignation.

24-50-127. Employee records - release of location information concerning individuals with outstanding felony arrest warrants - state personnel director's duties. (1) The state personnel director shall maintain the examination record of every candidate and the employment record of every employee. In addition, the state personnel director shall establish and maintain a personnel data inventory of all employees in the personnel system, which inventory shall contain such items as education, training, skills, and other pertinent data. The state personnel director shall make available such data to department heads for the most efficient utilization of the state's manpower.

(2) (a) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the state personnel director or the director's designee shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The state personnel director or the director's designee and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the state personnel director, the director's designee, nor the division's employees or agents shall be liable in civil action for providing information in accordance with the provisions of this paragraph (a).

(b) As used in paragraph (a) of this subsection (2), "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

24-50-128. Certification required before salary paid. (1) No salary shall be paid to any officer or employee of the state within the state personnel system as provided by the constitution unless the state personnel director has certified that the employment is in accordance with this part 1.

(2) and (3) Repealed.

24-50-129. Appointing authority's salary liability. If any appointment is willfully made contrary to the provisions of this part 1, the appointing authority shall be personally responsible for any salary liability incurred.

24-50-130. Form of records and reports. The state personnel director shall prescribe the form of records and reports required to give effect to this article, and all appointing authorities shall maintain and submit the reports and records required.

24-50-131. Subpoena powers. The board, its administrative law judges, and the state personnel director, in the performance of their duties under this article, shall have the power of subpoena over persons and records, and such powers shall be enforceable by the courts.

24-50-132. Political considerations and prohibited activities. Employees in the state personnel system shall be selected without regard to political considerations, shall not use any state facility or resource or the authority of any state office in support of any candidate, and shall not campaign actively for any candidate on state time or in any manner calculated to exert the influence of state employment.

24-50-133. Subversive acts - disqualification. No person shall be appointed to or retained in any position in the state personnel system who advocates or knowingly belongs to any organization that advocates the overthrow of the government of the United States by force or violence, with the specific intent of furthering the aims of such organization.

24-50-134. Moving and relocation expenses. (1) When an employee in the state personnel system is required by any appointing authority, because of a change in assignment or a promotion or for any other reason related to his duties, to change his place of residence, such employee shall be allowed his moving and relocation expenses incurred by reason of such change of residence, subject to the provisions of this section.

(2) As used in this section, "promotion" means changing an employee from one class of work to a different class of work at a higher pay grade.

(3) As used in this section, "household effects" means and includes only household or personal effects such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual and necessary for the maintenance of a household.

(4) In addition to the allowances specified under subsections (5.1) and (6) of this section, state payment for moving expenses shall be limited to one of the following methods:

(a) Necessary expenses incurred for the packing, insurance, transportation, storage

in transit not to exceed thirty days, unpacking, and installation at the new location of an employee's household effects shall be allowed subject to the provision that state payment shall not be made for household effects in excess of ten thousand pounds net weight for those with dependents and five thousand pounds net weight for those without dependents. Any expenses, including insurance, for household effects exceeding these weight limitations shall be borne by the employee being moved.

(b) Repealed.

(b.1) State payment shall be allowed for rental of trailers or trucks from commercial establishments for movement of household effects and for charges by commercial establishments for towing of house trailers containing the household effects of an employee. If such costs exceed an amount set by fiscal rule promulgated by the controller which fiscal rule may not authorize a sum in excess of one thousand dollars, the claim shall be accompanied by at least two competitive bids, and state payment shall be made at the rates proposed in the lowest bid.

(c) Repealed.

(c.1) An employee, at his option, may pack and unpack his own household effects and move himself by rental trailer or truck. The employee shall be compensated an amount set by fiscal rule promulgated by the controller, which fiscal rule may not authorize a sum in excess of one thousand five hundred dollars, and paid for the truck and trailer rental as prescribed in paragraph (b.1) of this subsection (4).

(5) Repealed.

(5.1) Mileage allowance for one personal automobile shall be authorized and reimbursed at the current rate.

(6) When an employee is required by any appointing authority, because of a change in assignment or a promotion or for any other reason related to his duties, to change his place of residence, such employee shall receive his per diem allowance up to a maximum of thirty days for necessary expenses incurred while locating a permanent residence at the new location. He may exclude at his option interruptions caused by sick leave, vacation, other authorized leave of absence, or ordered travel. The rates of reimbursement under this subsection (6) shall not exceed the rates fixed by executive order.

24-50-135. Exemptions from personnel system. (1) Administrators employed in educational institutions and departments not charitable or reformatory in character shall be exempt from the state personnel system. For purposes of this section, "administrators employed in educational institutions and departments" means:

(a) Officers of an educational institution and their executive assistants; employees in professional positions, including the professional employees of a governing board; and any other employees involved in the direct delivery of academic curriculum;

(b) and (c) (Deleted by amendment, L. 2004, p. 419, § 1, effective August 4, 2004.)

(d) and (e) (Deleted by amendment, L. 2011, (HB 11-1301), ch. 297, p. 1425, § 19, effective August 10, 2011.)

(f) Professional officers and professional staff of the department of higher education; and

(g) (Deleted by amendment, L. 2004, p. 419, 1, effective August 4, 2004.)

(h) Employees in positions funded by grants, gifts, or revenues generated through auxiliary activities. For purposes of this paragraph (h), "auxiliary activities" means institutional activities managed and accounted for as self-supporting activities.

(2) (a) The president of each educational institution or a person designated by the president shall determine which administrative positions in that institution are exempt from the state personnel system under subsection (1) of this section, subject to an appeal to the board; except that a position shall not be determined to be exempt while it is held by an existing employee in the state personnel system. The president of an educational institution may decide not to exempt a position funded through auxiliary activities if the president determines that exempting the position is not in the best interests of the institution.

(b) The executive director of the Colorado commission on higher education shall determine which administrative positions in the department of higher education other than administrative positions in educational institutions are exempt from the state personnel system under subsection (1) of this section, subject to an appeal to the board.

(c) (Deleted by amendment, L. 2011, (HB 11-1301), ch. 297, p. 1425, § 19, effective August 10, 2011.)

(d) No later than December 31 of each year, the executive director of the Colorado commission on higher education shall submit a report to the state personnel director, in the form prescribed by the director, listing all positions in the department of higher education, other than positions at educational institutions, that are exempt from the state personnel system in accordance with this section.

(3) For purposes of this section, a person is in a professional position or is a professional employee or professional staff if the person is in a position that involves the exercise of discretion, analytical skill, judgment, personal accountability, and responsibility for creating, developing, integrating, applying, or sharing an organized body of knowledge that characteristically is:

(a) Acquired through education or training that meets the requirements for a bachelor's or graduate degree or equivalent specialized experience; and

(b) Continuously studied to explore, extend, and use additional discoveries, interpretations, and applications and to improve data, materials, equipment, applications, and methods.

(4) The state personnel director shall establish procedures to approve the

exemption of an employee from the state personnel system pursuant to section 13 (2) (a) (XI) and (2) (a) (XII) of article XII of the state constitution.

24-50-136. Persons brought into the personnel system. (1) Whenever a person currently or previously employed by the state of Colorado, not within the state personnel system, enters or is brought into the state personnel system, the person shall be credited with his or her former state service for purposes of accumulated leave, leave earning rates, seniority, and other benefits, excluding retirement credit, afforded an employee in the state personnel system. Previous employment with the state shall include any period of employment for which an officer or employee received compensation not limited solely to expense reimbursement. Credit for previous state employment shall not be given for temporary employment, including student employment at an institution of higher education or the Auraria higher education center established in article 70 of title 23, C.R.S., or service as a member of a part-time board or commission.

(2) Whenever, by reason of constitutional amendment, legislative enactment, executive order, or action of an executive department functions outside state government are assumed by state government, persons performing such functions shall be credited with the years of service in their former positions for purposes of accumulated leave, leave earning rates, seniority, and other benefits, excluding retirement credit, afforded an employee in the state personnel system.

(3) Whenever employees enter the state personnel system from political subdivisions of the state with merit systems similar to the state personnel system as a result of a formal arrangement with that merit system, the state personnel director shall, by rule adopted in accordance with article 4 of this title, establish rates and conditions of accumulated leave carry-over, leave earning rates, seniority, and other benefits, excluding retirement credit, afforded an employee in the state personnel system. Such rates and conditions shall fairly recognize the employees' prior employment and provide a recruitment incentive to those persons who might benefit state government.

24-50-137. Persons holding exempted positions.

(1) and (2) Repealed.

(3) (Repeal provision deleted by revision.)

(4) Any certified employee of the personnel system who accepts an appointment to an exempt position at the request of the governor or other elected or appointed officials of this state shall be granted leave without pay from his personnel system position for the initial period of appointment to the exempt position. Upon termination of the initial period of such appointment, such employee shall be reinstated to his former position with no loss of any rights or benefits accruing to that position in his absence and with

restoration of all accrued unused leave which he had at the time of acceptance of the exempt appointment. In the event his former position no longer exists, the layoff procedure shall be followed. If such employee does not apply to return to his personnel system position within a thirty-day period of his termination from the exempt position, he shall be deemed to have resigned.

24-50-138. Effect of transfer of powers, duties, and functions. (1) The department of personnel to which powers, duties, and functions of the civil service commission are transferred shall be the successor in every way with respect to such powers, duties, and functions, subject to the provisions of the state constitution. Every act performed in the exercise of such powers, duties, and functions by the department of personnel shall be deemed to have the same force and effect as if performed by the civil service commission prior to July 1, 1971. Whenever the civil service commission is referred to or designated by any law, contract, insurance policy, bond, or other document, such reference or designation shall be deemed to apply to the state personnel board or the state personnel director, as the case may be, in which the powers, duties, and functions of the civil service commission are vested.

(2) No suit, action, or other proceeding, judicial or administrative, lawfully commenced by or against the civil service commission or by or against any officer or member of the civil service commission in his official capacity or in relation to the discharge of his official duties shall abate by this part 1. The court may allow the suit, action, or other proceeding to be maintained by or against the state personnel board or the state personnel director, as the case may be, or any officer affected.

(3) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this part 1.

24-50-139. Administrative law judges - duties - qualifications - repeal. (Repealed)

24-50-140. Reports on other employment systems. In order to provide for the coordination of the state personnel system with other systems of state employees, no later than November 15 of each year, each department or agency of state government having employees who are not within the state personnel system, including but not limited to the state institutions of higher education and the judicial department, shall submit to the joint budget committee and any member of the general assembly so requesting such copy a classification plan for those employees not within the state personnel system, including a preliminary estimate of the number of such employees and their salary levels for the

ensuing fiscal year and a statement of the pay increase policies and procedures utilized by the department or agency. No later than January 1 next following, each such department or agency shall transmit to the joint budget committee and any member of the general assembly so requesting such copy a final estimate of the number of such employees and their salary levels for the ensuing fiscal year.

24-50-141. Rules and regulations - limitations - affirmative action corrective remedies - implementation. (1) It is the intent of the general assembly to encourage the implementation of equal employment opportunities and affirmative action corrective remedies within the state personnel system which preserve the merit principles contained in section 13 of article XII of the state constitution and this article and which disavow and prohibit the imposition of a mandatory quota system. Until January 1, 1980, and while underutilization of and invidious discrimination against members of ethnic and racial minorities and women exist and continue to exist within the state personnel system, the board is authorized to adopt and implement rules and regulations which carry out the intent of this section. Such rules and regulations shall be implemented only upon written findings by the state personnel director in each instance that the following conditions exist with reference to specific appointments and promotions within the state personnel system:

(a) The appointing authority has voluntarily requested referrals for affirmative action purposes;

(b) There is discriminatory underutilization of members of the ethnic or racial minority group or women for which the referral has been requested, within the agency, in the class for which an appropriate eligible list or combination of eligible lists has been compiled; and

(c) The test or selection devices for the compilation of such eligible list or lists have not been validated according to applicable employee selection guidelines.

(2) Rules and regulations of the state personnel system adopted and implemented in accordance with this section, except rules and regulations relating to grievance and appeal procedures within the state personnel system and based on allegations of discrimination, are repealed, effective January 1, 1980, and the authority of the board to adopt and implement any affirmative action corrective remedy or rule, which allows or provides for, or incorporates by reference, requisitions or referrals which are in addition to the names of the three persons ranking highest on the appropriate eligible list or combination of such lists, is terminated on such date.

(3) Repealed.

24-50-142. Repayment of debts to state-supported institutions of higher

education by state employees. (1) When a state employee has an outstanding obligation due to a state-supported institution of higher education, the board shall include provision for referral and collection of the loan or outstanding obligation to the controller pursuant to section 24-30-202.4.

(2) An applicant for employment under the state personnel system shall declare whether he has any outstanding loan or obligation due to a state-supported institution of higher education and whether such loan or obligation is past-due.

24-50-143. Establishment and administration of overtime rules - appeals - election of remedies. (Repealed)

24-50-144. Rules on affirmative action. (Repealed)

24-50-145. Agency-based human resource innovation and management processes - legislative declaration - definitions - guidelines and goals. (1) The general assembly hereby finds and declares:

(a) That the state personnel system must ensure that the process of staffing state government is based on merit and fitness, independent of the political system;

(b) That the public is entitled to a state personnel system that protects the basic merit principles prescribed by the constitution and that constantly improves through innovation, flexibility, and responsiveness to changing human resource management needs;

(c) That a state personnel system based on and pursuing these fundamental goals is essential in order to maintain the confidence of the public in the state personnel system, to attract the best possible applicants for public employment, to create a workplace environment where state employees are motivated to excel, and to encourage long-term careers in state service;

(d) That the state personnel system is designed, in part, to pursue these goals by allowing agencies to implement processes for human resource innovation and management, including, but not limited to, processes for employee recruitment, appointment, promotion, individual position allocation, performance evaluation, and dispute resolution within those agencies that operate within the constitutional framework for the state personnel system.

(2) As used in this section, unless the context otherwise requires, "agency" means any department, board, bureau, commission, division, institution, or other agency of the state, including institutions of higher education.

(3) Each agency is hereby authorized to develop with the state personnel director

or the personnel board, as appropriate, and subject to the Colorado constitution, applicable statutes, personnel board rules, and procedures of the state personnel director, processes for human resource innovation and management applicable to such agency. The state personnel director or the personnel board, as appropriate, shall provide assistance to any agency with implementation and coordination of agency processes for human resource innovation and management and shall consult with agencies to ensure that such processes are administered in adherence to the Colorado constitution, applicable statutes, personnel board rules, and procedures of the state personnel director. The agency processes for human resource innovation and management shall be formulated utilizing the input of the agency's management and nonmanagement employees. The head of an agency developing processes for human resource innovation and management shall be responsible for implementing such processes in that agency and submitting to the state personnel director or the personnel board, as appropriate, a written statement describing any human resource innovation and management processes implemented by the agency. Such written statement shall be submitted to the state personnel director or the personnel board commensurate with the implementation of the processes by the agency. The written statement shall be updated by the head of the agency upon modification or revision of the agency's human resource innovation and management processes.

PART 2

RETIREMENT OF PERSONNEL

24-50-201. Legislative declaration. It is declared to be the policy of this state to encourage able and qualified persons to enter the state personnel system with a view toward acquiring the experience and in-service training and demonstrating the increased capabilities and responsibility necessary for progressive advancement. The policy of this state is to hold out to employees, subject to the provisions of the state constitution and to the rules and procedures of the state personnel system, the hope and expectation of being able to earn promotions in accordance with their individual capabilities and performance, and thereby the state seeks to encourage its more able employees to make their careers in government service.

24-50-202. Establishment of procedure. (Repealed)

24-50-203. Preretirement education and counseling. The state personnel director shall provide a continuous preretirement education and counseling program for employees in the state personnel system, which program is to be carried out at strategic

geographic locations throughout the state. All employees in the state personnel system may participate on a voluntary basis. Each appointing authority shall be responsible for implementing the preretirement program in his organization, in cooperation with the state personnel director.

24-50-204. Retirement. (Repealed)

24-50-205. State personnel director - notice. (Repealed)

24-50-206. Cooperation of public employees' retirement association. The public employees' retirement association shall cooperate with the state personnel director by furnishing any requested information regarding the rights and benefits to which any employee may be entitled.

24-50-207. Retirement - accumulated sick leave. (Repealed)

24-50-208. Voluntary separation incentive program. The state personnel director may adopt procedures establishing a program for voluntary separation incentives available to all state employees in lieu of layoffs based on a determination by the head of a principal department or institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., that the program is necessitated by a shortage of work, shortage of funds, or a reorganization. Any program established pursuant to this section shall not conflict with laws, rules, or procedures governing the state personnel system or the public employees' retirement association. A voluntary separation incentive shall not be considered a perquisite for purposes of section 24-30-202 (22).

PART 3

EMPLOYEES IN MILITARY SERVICE

24-50-301. Status while in military service. Whenever any officer or employee of this state in the state personnel system under the provisions of section 13 of article XII of the state constitution and laws and rules and regulations pursuant thereto enters active military service, including active service for training purposes, with the armed forces of

the United States or other branch of service engaged in the national defense, such officer or employee shall retain all state personnel system rights and privileges and shall retain such status in the state personnel system as held by him at the time of entering the armed forces, with the seniority and promotional rights and benefits provided for in section 24-50-302.

24-50-302. Rights. (1) The rights, privileges, and status retained by such officer or employee shall specifically include the right to reoccupy the place, employment, or position held by him at the time of entering the armed forces upon the expiration of the period of initial service, plus any period of additional service imposed by law, and for one year thereafter; except that, if such officer or employee served in any branch of the armed forces of the United States during any period and if he was separated or served under honorable conditions, the period of such service shall be considered as service in the personnel system of the state of Colorado for the purposes of seniority and for the purposes of promotion from one pay grade to another as well as movement from one step of the pay plan to a higher step in the pay plan and if the place, employment, or class held by such officer or employee at the time of entering the armed forces has been increased in pay grade during the time of such service, such officer or employee shall be entitled to reoccupy such place, employment, or position at such increased pay grade.

(2) Said rights, privileges, and status retained by such officer or employee shall also specifically include the right to remain upon and hold his place upon any list of persons certified as eligible for appointment to places, employment, or positions in the state personnel system at the time of entering the armed forces during such period of initial service, plus any period of additional service imposed by law, and for one year thereafter, regardless of the expiration date of any such list of certified persons; except that, if such officer or employee has not acquired a certified state personnel system status but has been employed by this state for a period of one year or less, such officer or employee shall have the right to reoccupy the place, employment, or position held by him at the time of entering the armed forces upon the expiration of the initial period of service, plus any period of additional service imposed by law, and for one year thereafter, with the right to hold said place, employment, or position for the full term of his probationary period from the date of his reoccupying the same or until an examination is held therefor and a person is duly certified thereto.

24-50-303. No compensation - rights of National Guard. (1) The provisions of this part 3 shall not be interpreted as requiring the payment by this state or any of its departments, agencies, or officers of the compensation of any officer or employee during the period of service as provided in this part 3 or the period within which such officer or

employee retains his status after such service.

(2) Any officer or employee of this state who was a member of the National Guard at the time of entering into the armed forces of the United States shall receive his usual and regular salary or compensation from the state in the year when he first entered the armed forces for a period of time equivalent to the annual encampment period, not exceeding fifteen days.

24-50-304. Applicability. The provisions of this part 3 shall apply to any officer or employee of the state personnel system who entered the armed forces of the United States or other branch of service engaged in national defense on or after August 5, 1964.

PART 4

APPOINTMENTS AND OFFICE HOURS

24-50-401. Office hours of state offices. (1) All offices in the executive and judicial departments of the state government shall be and remain open for business daily, except on Saturdays, Sundays, and legal holidays, from the hour of 8:30 a.m. until the hour of 5:00 p.m.; except that nothing in this section shall affect the validity of any act performed by either of said departments before or after the hours specified in this section.

(2) Notwithstanding the provisions of subsection (1) of this section, when a city or city and county and the suburban area within a ten-mile radius of the boundaries thereof have a population in excess of fifty thousand inhabitants, the offices of any executive department of the state government located therein may vary its business hours from those indicated in subsection (1) of this section whenever the executive director of the principal department, with the approval of the governor, determines that such adjustment of hours will help alleviate peak traffic conditions and provide a more even flow of traffic for the purpose of creating safer highway conditions.

(3) Written notice of the variance permitted under subsection (2) of this section shall be given to the local news media of such cities or cities and counties not less than two weeks preceding the effective date of such variance.

(4) Employees in the state personnel system who are required to work on general election day during the hours the polls are open pursuant to section 1-7-101, C.R.S., shall be granted two hours' administrative leave in which to vote pursuant to the provisions of section 1-7-102, C.R.S. The state personnel director shall promulgate rules in accordance with article 4 of this title for the implementation of this subsection (4).

24-50-402. Appointment by outgoing officers prohibited. No state, county, or

city appointive office, the term of which expires on or after the time fixed by law for the qualification of the officer having the authority to make such appointment, shall be filled by the outgoing appointing officer.

PART 5

CONTRACTS FOR PERSONAL SERVICES

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.

24-50-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Contract" means any type of state agreement, regardless of what it may be called, for the acquisition of services.

(2) "Personal services" means services acquired for the state's direct benefit in its operations.

(3) "Purchased services" means the acquisition of services which directly benefit specific groups or individuals in the public at large as defined by law, from public or private entities licensed, certified, or otherwise authorized by statute to provide such services.

(4) "Services" means the furnishing of labor, time, or effort.

24-50-503. Personal services contracts implicating state personnel system - no separation of existing classified employees - repeal. (1) Contracts for personal services that create an independent contractor relationship and that are not authorized under the provisions of section 24-50-504 are nevertheless permissible under this section to achieve increased efficiency in the delivery of government services when the state personnel director determines that all of the following conditions are met:

(a) The contracting agency clearly demonstrates that the proposed contract will result in overall cost savings to the state and that the estimated savings will not be eliminated by contractor rate increases during the term of the contract, subject to the following:

(I) In comparing costs, there shall be included the state's cost of providing the same service as proposed by a contractor. The state's costs shall include the salaries and benefits of staff that would be needed and the cost of space, equipment, and material needed to perform the function.

(II) In comparing costs, there shall not be included the state's indirect overhead costs unless the costs can be attributed solely to the function in question and would not exist if that function were not performed in state service. For such purpose, "Indirect overhead costs" means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(III) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but need not be limited to, those for inspection, supervision, and monitoring.

(IV) In comparing costs, there shall not be included any savings to the state attributable to lower health insurance benefits provided by the contractor.

(b) The contracting agency clearly demonstrates that the proposed contract will provide at least the same quality of services as that offered by the contracting agency.

(c) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract.

(d) The contract contains nondiscrimination provisions required by law to be included in state contracts.

(e) The contract contains provisions for termination by the state for breach of the contract by the contractor.

(f) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government. In assessing the public's interest, the state personnel director shall take into account:

(I) The consequences and potential mitigation of improper or failed performance

by the contractor;

(II) Whether performance of the contract involves the improper delegation of a policy-making function;

(III) The extent to which the contracting preserves the principles of competence in government and the avoidance of political patronage. For such purpose, there shall be considered the applicability of other laws, including those as enumerated in section 24-50-506, that aid in safeguarding the fundamental principles underlying the state personnel system.

(2) The state personnel director shall not approve a personal services contract under this section if the contract would result directly or indirectly in the separation of certified employees from state service. However, nothing contained in this section shall be construed to prevent the separation of certified employees from state service pursuant to any other provision of law, including but not limited to the provisions of section 24-50-124, for reasons other than privatization.

(3) (a) Notwithstanding any provision of this section to the contrary, any personal services contracts entered into by the department of education pursuant to section 22-60.5-112 (1) (b), C.R.S., shall be valid and shall not be subject to approval pursuant to this section.

(b) This subsection (3) is repealed effective July 1, 2014.

24-50-504. Personal services contracts not implicating state personnel system. (1) Personal services contracts for employees or independent contractors are permissible when the functions contracted are otherwise performed by persons exempt from civil service by section 13 of article XII of the state constitution or by statutes enacted pursuant thereto.

(2) Personal services contracts that create an independent contractor relationship are permissible when the state personnel director determines that any of the following conditions are met:

(a) The contract is for an existing state program that has never been performed by employees in the state personnel system, or the contract is for an existing state program that involves duties similar to duties currently or previously performed by classified employees but the contracted program is different in scope or policy objectives from the programs carried out by such classified employees. For the purposes of this paragraph (a), an "existing state program" is a state program that was in effect and performed by contract prior to April 7, 1993.

(b) The contract is for a new state program, and the general assembly has statutorily authorized the performance of the program by independent contractors. A program is not a new state program within the meaning of this paragraph (b) solely because it is performed at a new facility or location.

(c) The services contracted are not available within the state personnel system, cannot be performed satisfactorily by employees of the state personnel system, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the state personnel system.

(d) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements", include, but are not limited to, agreements to service or maintain equipment, computers, or other products that are entered into in connection with their original lease or purchase.

(e) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the state personnel system. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts include, but are not limited to, obtaining expert witnesses in litigation.

(f) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

(g) The contractor will conduct training courses for which appropriately qualified state personnel system instructors are not available.

(h) The services are of an urgent, temporary, or occasional nature.

(3) Contracts for purchased services, as determined by the state personnel director, that create an independent contractor relationship are permissible.

24-50-504.7. Commission on the privatization of personal services - creation. (Repealed)

24-50-505. Liability and immunity. (1) The contractor shall assume all liability arising from its own acts or omissions under all contracts entered into pursuant to this part 5.

(2) The sovereign immunity and governmental immunity of the contracting agency shall not extend to the contractor, except as otherwise provided by law. Neither the contractor nor the insurer of the contractor may plead the defense of sovereign immunity or governmental immunity in any action arising out of the performance of the contract.

24-50-506. Applicability of other laws. (1) In addition to the other provisions of this part 5 that are intended to safeguard the fundamental principles underlying the state personnel system, personal services contracts entered into pursuant to this article are

subject to all other applicable laws, which may include but are not necessarily limited to the following:

(a) State procurement laws, including the following:

(I) The provisions of part 14 of article 30 of this title; and

(II) The "Procurement Code", articles 101 to 112 of this title;

(b) Laws governing fiscal administration by the state controller, including the provisions of part 2 of article 30 of this title and the fiscal rules promulgated thereunder;

(c) Laws governing the management of state moneys by the state treasurer, including the provisions of article 36 of this title;

(d) The provisions of article 18 of this title establishing standards of conduct for state officers and employees.

24-50-507. Conflict of interest. (1) In addition to any other applicable laws, the provisions of this section shall apply to contracts entered into pursuant to this part 5.

(2) (a) The following individuals shall not solicit or accept, directly or indirectly, any personal benefit or promise of a benefit from an entity or a person negotiating, doing business with, or planning, within the individual's knowledge, to negotiate or do business with the contracting agency:

(I) A member of, or any other person or entity under contract with, any governmental body that exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project, including but not limited to any employee of the contracting agency or any person serving as the monitor of a personal services contract; or

(II) A member of the immediate family of any individual described in subparagraph (I) of this paragraph (a).

(b) No individual described in paragraph (a) of this subsection (2) shall use his or her position, influence, or information concerning such negotiations, business, or plans to benefit himself or herself or another.

(3) A contractor shall agree that, at the time of contracting, the contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the contractor's services. The contractor shall further covenant that, in the performance of the contract, the contractor shall not employ any person having any such known interests.

24-50-508. Intergovernmental agreements - agreements by state institutions of higher education - excluded. (1) The following contracts are not subject to the provisions of this part 5:

(a) In accordance with section 18 (2) of article XIV of the state constitution,

contracts between the state and its political subdivisions or the government of the United States, or any combination thereof; and

(b) Contracts entered into by a state institution of higher education or the Auraria higher education center established in article 70 of title 23, C.R.S., so long as the chief executive officer of the institution or the center, or his or her designee, has determined that the conditions set forth in section 24-50-503 are met for those contracts that implicate the state personnel system.

24-50-509. Review of individual contracts by state personnel director - when not required. The state personnel director may approve the use of contracts without the necessity of reviewing the individual contracts, if the contracts are of the same type and if the state personnel director determines that such contracts meet the requirements of this part 5.

24-50-510. Annual report of contracts. (Repealed)

24-50-511. State personnel director procedures. The state personnel director shall promulgate procedures to implement the policies of this part 5. Such procedures shall include, but not be limited to, provisions for consideration of contractors that utilize a preference for hiring veterans of military service and an annual certification process for ongoing personal services contracts. In promulgating procedures governing the analysis of cost savings pursuant to section 24-50-503 (1), the state personnel director shall consider the recommendations of the office of state planning and budgeting.

24-50-512. State personnel board rules. The state personnel board may promulgate rules consistent with the policies of this part 5.

24-50-513. Contracts of six months or less - permitted. Contracts for a term of six months or less that are not expected to recur on a regular basis are permissible and are not subject to this part 5.

24-50-514. Repeal of part. (Repealed)

PART 6

STATE EMPLOYEES GROUP BENEFITS ACT

24-50-601. Short title. This part 6 shall be known and may be cited as the "State Employees Group Benefits Act".

24-50-602. Legislative declaration. (1) It is declared that the purpose of this part 6 is as follows:

(a) To enable the state to attract and retain qualified employees by providing group benefits similar to those commonly provided in private industry;

(b) To recognize and protect the state's investment in each nontemporary employee by promoting and preserving good health among state employees;

(c) To recognize the service to the state by elected and appointed officials by extending to them the same group benefits as are provided in this part 6 for state employees; and

(d) To provide each employee with benefit choices and education to customize a benefit package that is responsive to each employee's diverse needs.

24-50-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Cafeteria benefits" means "flexible benefits" as defined in subsection (8) of this section.

(2) "Carrier" means an insurer, health maintenance organization ("HMO"), third-party administrator, or other entity with whom the state contracts to provide or administer, or both provide and administer, the group benefit plans.

(3) "COBRA" means the continuation of certain benefits as provided by the federal "Consolidated Omnibus Budget Reconciliation Act of 1985", as amended.

(4) Repealed.

(5) "Dependent" means:

(a) An employee's legal spouse; each unmarried child, including adopted children, stepchildren, and foster children, through the end of the month in which the child turns nineteen years of age, for whom the employee is the major source of financial support or for whom the employee is directed by court order to provide coverage; each unmarried child nineteen years of age, through the end of the month in which that child is no longer a full-time student in an educational or vocational institution, but no longer than through the end of the month in which the full-time student turns twenty-four years of age, and for whom the employee is the major source of financial support or for whom the employee is directed by court order to provide coverage; or an unmarried child of any age who has

either a physical or mental disability, as defined by the carrier, not covered under other government programs, and for whom the employee is the major source of financial support or for whom the employee is directed by court order to provide coverage;

(b) Any person authorized by the director to be a dependent in response to statutory changes made to mandated coverage for group benefits insurance pursuant to title 10, C.R.S.;

(c) An employee's domestic partner, as authorized by the director by rule adopted in accordance with article 4 of this title, who has submitted documentation demonstrating a domestic partnership with an employee as required by such rules;

(c.5) An employee's partner in a civil union who has submitted documentation demonstrating the creation of a civil union with the employee;

(d) Any additional dependents specified by the director by rule adopted in accordance with article 4 of this title.

(6) "Director" means the state personnel director.

(6.5) "Domestic partner" means an adult, at least eighteen years of age:

(a) Who is of the same gender as the employee;

(b) With whom the employee has shared an exclusive, committed relationship for at least one year with the intent for the relationship to last indefinitely;

(c) Who is not related to the employee by blood to a degree that would prohibit marriage pursuant to section 14-2-110, C.R.S.; and

(d) Who is not married to another person.

(7) "Employee" means any officer or employee under the state personnel system of the state of Colorado whose salary is paid by state funds or any employee of the department of education, the Colorado commission on higher education, or the Colorado school for the deaf and the blind whose salary is paid by state funds, or any member of the military employed pursuant to section 28-3-904, C.R.S. "Employee" includes any officer or employee of the legislative or judicial branch, any elected or appointed state official or employee who receives compensation other than expense reimbursement from state funds, any elected state official who does not receive compensation other than expense reimbursement from state funds, and includes any member of the board of assessment appeals. "Employee" does not include persons employed on a temporary basis; except that it shall include a member of the military employed pursuant to section 28-3-904, C.R.S., for more than thirty consecutive days.

(8) "Flexible benefits" means an array of group benefit plans from which an employee can select using the state's contribution, the employee's own funds, or a combination of both, to pay for such benefits.

(9) "Group benefit plans" means any group benefit coverages contracted for or administered by the director, including but not limited to, medical, dental, life, and disability benefits. For purposes of section 24-50-104 (1) (a) (I), "group benefit plans" includes any group benefit coverages offered by a state institution of higher education to

employees of such institution who are in the state personnel system.

(10) "Medicaid" means federal insurance or assistance as such is provided by the provisions of Title XIX of the federal "Social Security Act" and the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.

(11) "Medical benefits" includes, but is not limited to, hospital room and board, other hospital services, certain out-patient benefits, maternity benefits, surgical benefits including obstetrical care, in-hospital medical care, diagnostic X rays, laboratory benefits, physician services, prescription drugs, mental health and substance abuse services, comparable medical benefits for employees who rely solely on spiritual means for healing, and such other similar benefits as the director deems reasonable and appropriate for eligible employees and dependents.

(12) "Medicare" means federal insurance or assistance as such is provided by the "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, or as such act may be amended.

(13) "Short-term disability plan" means a group policy or contract provided by a carrier for the purpose of providing short-term disability income replacement to be provided to any eligible employee who has completed any required waiting period.

24-50-604. Powers and duties of the director. (1) The director shall administer and manage the state employees group benefit plans and, subject to the provisions of this part 6, has the following powers and duties:

(a) The preparation of specifications for the group benefit plans contracted for by the director;

(b) The authority and responsibility to enter into contracts with carriers for group benefit plans and to negotiate and enter into amendments to existing contracts as appropriate. Payments by the state, pursuant to such contracts, are subject to the amounts authorized in sections 24-50-104 (4) and 24-50-609.

(c) The determination of the methods of claims administration;

(d) The determination of the eligibility of employees and their dependents to participate in group benefit plans;

(e) The determination of the amount of employee payroll deductions and the responsibility for collecting such deductions;

(f) The establishment of a grievance procedure by which the director shall act as an appeals authority for complaints by employees and COBRA participants regarding the allowance and payment of claims, eligibility, and other matters;

(g) The establishment, administration, and operation of the group benefit plans reserve fund established pursuant to section 24-50-613;

(h) The continuing study of the operation of group benefit plans, including but not limited to, such matters as gross and net costs, administrative costs, benefits, plan design,

utilization, and claims administration;

(i) The authority to negotiate and enter into amendments to existing contracts providing group benefit plans in order to provide appropriate coverage for employees and their dependents who may become eligible for coverage after the effective date of said contracts and to provide for the enrollment thereof;

(j) The authority to contract with persons, firms, or associations for benefits consulting, including but not limited to, actuarial services, the preparations of specifications for group benefit plans, and other specialized services that cannot be performed by the director or by state employees. Expenditures for these contracts shall be under section 24-50-613 (2).

(k) (I) The authority to establish and operate an employee assistance program intended to address personal problems and workplace issues faced by state employees and employers before the problems and issues severely impact the productivity, safety, work relationships, absenteeism, and accident rates of state employees in the workplace. The program may provide services to state employees and their employers, which may include, without limitation:

(A) Conflict resolution;

(B) Crisis intervention;

(C) Anger management classes;

(D) Employer and employee mediation;

(E) Consultations with supervisors and managers regarding problem employees;

(F) Violence in the workplace training;

(G) Sexual harassment training; and

(H) Any other facilitated groups and workshops addressing workplace issues.

(II) Any state agency or institution that does not make contributions for participation in any employee assistance program established and operated pursuant to this paragraph (k) shall not be allowed to participate in the program. However, nothing in this subparagraph (II) shall be construed to limit the ability of:

(A) Any state employee to participate in the program regardless of whether the state agency or institution that employs the state employee makes contributions to participate in the program; and

(B) Any state agency or institution to participate in the program in the event of a crisis or emergency situation in the workplace regardless of whether the state agency or institution makes contributions to participate in the program.

(III) Dependents of a state employee are not eligible to participate in any employee assistance program established and operated pursuant to this paragraph (k).

(IV) Any employee assistance program established and operated pursuant to this paragraph (k) shall be set forth in procedures adopted in accordance with the provisions of article 4 of this title, and such procedures shall specify, without limitation, the services to be offered by the program, the eligibility guidelines for participation in the program,

and the sources of funding for the program, which, for the 2003-04 fiscal year and any fiscal year thereafter, may include, but need not be limited to, the group benefit plans reserve fund created in section 24-50-613, the risk management fund created in section 24-30-1510, and interest derived from the investment of said funds.

(V) For the 2002-03 fiscal year, any employee assistance program established and operated pursuant to this paragraph (k) shall be funded through a combination of the following resources as determined by the director:

(A) Voluntary assessments against each state agency or institution based on the agency or institution's full-time equivalency count as of August 1, 2002, with the amount of the assessment to be determined by the director and such amount to be identical for each agency and institution;

(B) Until November 30, 2003, mandatory assessments against an employee's share of the medical benefits premium for employees enrolled in group benefit plans that include enrollment in medical benefits, with the amount of the assessment to be determined by the director and such amount to be identical for each employee; and

(C) If necessary, moneys from the group benefit plans reserve fund created in section 24-50-613.

(l) The authority and responsibility to enter into contracts or renewals for group benefit plans that are self-funded, if feasible as determined by the state personnel director.

(m) The authority to establish the annual group benefit plan year for the plan year commencing in the next fiscal year.

(2) The director, pursuant to the provisions of article 4 of this title, shall adopt such procedures consistent with the provisions of this part 6 as the director deems necessary to carry out his or her statutory duties and responsibilities.

(3) The director shall have the authority to adopt procedures to determine benefit eligibility requirements and the percentage of the state contribution to health benefits for all employees, as defined in section 24-50-603 (7), who work less than full time, are governed by the rules established pursuant to subsection (2) of this section, and are hired on or after January 1, 2005. The director shall include any proposed changes to the group benefits policy in the annual compensation report and recommendations submitted to the governor and the joint budget committee of the general assembly pursuant to section 24-50-104 (4) (c).

24-50-605. Group benefit plans - specifications - contracts. (1) (a) The specifications drawn by the director for any group benefit plans include those benefits as determined by the director or as otherwise specifically provided in this part 6. Such specifications shall include provisions for noncancellation for reasons of health of any individual employee by the carrier and transferability to other group benefit coverages or individual policies with the same carrier by the employee, if such provisions do not limit

the ability of the director to prepare specifications including a lifetime maximum benefit per employee or employee's covered dependents.

(b) At any time the director seeks to contract with any carriers under this section, the director shall first give written notice of such intent through an announcement in a publication with statewide circulation.

(c) Specifications and related data shall be prepared by the director for submission to carriers which indicate their interest in preparing proposals for any group benefit plans.

(d) Contracts awarded under this section by the director shall be to the lowest, most responsive offerors, according to criteria predetermined by the director, subject to the provisions of subsection (2) of this section and articles 101 to 111 of this title. The director may accept a responsive proposal for combined group benefit plans.

(e) The director shall review the group benefit plans at least once each year and shall solicit and receive proposals on the group benefit plans at least once every five years.

(f) The specifications drawn by the director for any group benefit plans shall include the mandated coverages required by section 10-16-104, C.R.S.

(2) (a) In order to permit each eligible employee individual selection of a flexible benefits or cafeteria benefits package, the director may establish a variety of group benefit plans.

(b) The director shall enter into contracts with the carriers selected to provide group benefit plans. Such contracts shall include all policy provisions, the premium rates to be charged during the term of the contract, specifications on the method of claims administration, a grievance procedure provision, and such other matters as the director deems necessary. In the director's discretion and based on the plan's experience, the premium rates applying during the first contract term may be adjusted during subsequent contract terms. Changes may also be negotiated in the method of claims administration, the amount to be retained by the carrier, and other matters.

(c) Each contract entered into with a carrier shall be available to be inspected or copied by any employee at the offices of the director, except for proprietary information of carriers as determined by the director.

(d) Every carrier shall prepare and provide the director with reports and financial data as stated in the contract.

(e) Financial data will be available to be inspected or copied by any employee at the offices of the director, except for proprietary and confidential information of carriers and information regarding specific employees. The director shall not enter into contracts with carriers that do not comply with paragraphs (c) to (e) of this subsection (2).

(3) The director shall include the following statement in medical benefit materials, in bold-faced type:

Warning: If you are insured under a separate group medical insurance

policy, you may be subject to coordination of benefits as explained in this booklet.

(4) Repealed.

(5) The director shall evaluate the feasibility of offering a high deductible health plan that would qualify for a health savings account as described in 26 U.S.C. 223, as amended, for state employees. The director shall forward the findings based on such evaluation to the members of the health, environment, and institutions and business affairs and labor committees of the house of representatives and the senate no later than October 1, 2004. In the director's findings, the director shall list any impediments to implementing such high deductible health plans and any measures taken to implement such plans for state employees.

24-50-606. Choice of medical plans requirement - requirement for inclusion of essential providers. (Repealed)

24-50-607. Employees - eligibility - election of coverage. (1) Any state employee eligible as determined by the director for membership in a group benefit plan contracted for pursuant to section 24-50-604 (1) (b) upon the effective date of such plan shall be enrolled in the plan upon making application according to the director's procedures.

(2) The manner and form of election and acceptance by state employees of group benefit plans contracted for pursuant to section 24-50-604 (1) (b) shall be in compliance with procedures established for that purpose by the director.

24-50-608. Dependents - eligibility - election of coverage. (1) Any eligible employee may elect to have the employee's dependents covered by the group benefit plans. Such election shall be made at the time the employee becomes enrolled in the plan under such procedures as the director shall establish. If dependent coverage is not elected at the time that an employee becomes enrolled in an appropriate plan, any subsequent election of dependent coverage shall be made under such conditions as the director may impose.

(2) Any employee who elects coverage, as provided in subsection (1) of this section, and who has a change in the number of dependents may, at the time of such change, increase or decrease the number of dependents covered by the group benefit plans under procedures established by and subject to the approval of the director.

(3) Any employee who has no eligible dependents at the time the employee

becomes enrolled in the group benefit plans and who later has an eligible dependent may, at the time the dependency status changes, elect appropriate coverage for such dependent under procedures established by and subject to the approval of the director.

(4) If a dependent is no longer eligible for coverage because the dependent turned twenty-five years old, the director shall remove the dependent from the group benefit plan by the end of the month in which the dependent turned twenty-five years old. If the director fails to remove the ineligible dependent, the employee and the employee's department shall not be directly financially liable for the premiums paid for the dependent coverage if no claims have been paid for the ineligible dependent. If the director fails to remove the ineligible dependent and a claim has been paid for the ineligible dependent, the employee and the employee's department shall not be directly financially liable for the paid claim. The costs for premiums and claims paid may be paid from the group benefit plans reserve fund established in section 24-50-613.

24-50-609. State contributions - supplemental state contribution fund - creation.

(1) (Deleted by amendment, L. 2003, p. 1934, § 10, effective May 22, 2003.)

(2) (a) (Deleted by amendment, L. 2003, p. 1934, § 10, effective May 22, 2003.)

(b) (I) The total premium for each particular group benefit plan offered to state employees pursuant to this part 6 and for each tier of said plan shall be the same for all eligible employees. The amount of the state contribution for each tier shall be determined by the director in accordance with section 24-50-104 (4) and shall be the same for all eligible employees within the state personnel system; except that, beginning with the 2008-09 state fiscal year, the state contribution shall be supplemented for eligible state employees, as defined in section 24-50-609.5 (2) (a), in accordance with section 24-50-609.5. For purposes of this section, "tier" means the particular coverage options offered to eligible employees, including single employee, employee with one covered dependent, and employee with two or more covered dependents.

(II) Effective December 1, 2002, for the 2003 calendar year, the state of Colorado shall contribute an amount necessary to pay one hundred sixty-six dollars and twelve cents per month per single employee, two hundred thirty-nine dollars and fifteen cents per month per employee with one covered dependent, and three hundred twenty-eight dollars and eighty-seven cents per month per employee with two or more covered dependents for each employee enrolled in group benefit plans that include enrollment in medical benefits. The amounts specified in this subparagraph (II) may be adjusted for future years in accordance with subparagraph (I) of this paragraph (b) and section 24-50-104 (4).

(3) (Deleted by amendment, L. 2003, p. 1934, § 10, effective May 22, 2003.)

(4) For purposes of this section, "employee" does not include elected state officials who do not receive compensation other than expense reimbursements from state

funds.

(5) The supplemental state contribution fund is hereby created in the state treasury. The principal of the fund shall consist of tobacco litigation settlement moneys transferred by the state treasurer to the fund pursuant to section 24-75-1104.5 (1.5) (a) (VI). The principal of the fund is hereby continuously appropriated to the department of personnel and shall be expended in its entirety in each fiscal year by the department to pay the costs of increased nonsupplemental state contributions, as defined in section 24-50-609.5 (3) (c) (II), and supplement the state contribution, as defined in section 24-50-609.5 (2) (d), for each eligible state employee, as defined in section 24-50-609.5 (2) (a), enrolled in a qualifying group benefit plan, as defined in section 24-50-609.5 (2) (c), as required by section 24-50-609.5; except that the department shall expend no more than the amount needed to pay the costs of increased nonsupplemental state contributions and reduce the employee contribution, as defined in section 24-50-609.5 (2) (b), of each eligible state employee for all qualifying group benefit plans to zero. The principal of the fund shall remain in the fund until expended and shall not be transferred to the general fund or any other fund. Interest and income earned on the deposit and investment of moneys in the fund shall be credited to the fund, shall not be transferred to the general fund or to any other fund, and shall be used by the department, subject to annual appropriation, solely to pay the costs of the department related to the supplementation of the state contribution for each eligible state employee required by section 24-50-609.5.

24-50-609.5. Supplemental state contribution for eligible state employees - legislative declaration - definitions. (1) (a) The general assembly hereby finds and declares that:

(I) It is the intent of the general assembly that all children in the state, including lower-income children, have access to affordable and adequate health insurance.

(II) The children of state employees are ineligible for existing federal and state programs, including medicaid and the children's basic health plan, that provide health insurance to lower-income children whose families are not otherwise able to afford health insurance.

(III) Although the state pays a portion of the health insurance premiums for those state employees who enroll in a health insurance plan offered by the state, many lower-income state employees nonetheless cannot afford to pay the required employee contribution to the plan premiums for any plan or the higher employee contribution to a plan with a low deductible and therefore decline to enroll in a health insurance plan or enroll in a high deductible plan, leaving their children without adequate health insurance coverage.

(IV) In order to ensure that children of lower-income state employees have access to affordable and adequate health insurance, it is necessary, appropriate, and in the best

interests of the state to encourage lower-income state employees who have dependents other than their spouses to enroll in health insurance plans offered by the state by supplementing the state contribution to their plan premiums in order to reduce the amount of their required employee contributions to plan premiums or to encourage them to enroll in low deductible plans.

(V) (A) By using disease management programs to reduce the costs of health care for state employees who are enrolled in state group benefit plans that provide medical benefits, the state can provide the group benefit plans to more state employees for less money and achieve better outcomes.

(B) National data indicates that the establishment of disease management programs can reduce by fifty percent asthma-related hospital admissions and thereby help the state provide lower cost group benefit plans for all state employees.

(C) The establishment of a pilot disease management program that includes, but is not limited to, a pilot childhood asthma program will maximize the use of moneys allocated for the purpose of supplementing existing health insurance plans for lower-income state employees.

(b) The general assembly further finds and declares that the intent of the general assembly in providing supplements as specified in this section, and the expectation of the general assembly with respect to the executive administration of the provision of supplements, is:

(I) To provide access to affordable and adequate health insurance to as many children of lower-income state employees as possible; and

(II) Because the high deductibles typical of health insurance plans that offer lower premiums can impair or destroy the economic self-sufficiency of lower-income families when health problems arise, to encourage lower-income state employees with dependents other than their spouses to enroll in higher premium plans with low deductibles.

(2) As used in this section, unless the context otherwise requires:

(a) "Eligible state employee" means an employee, as defined in section 24-50-603 (7), who:

(I) Is eligible, by virtue of his or her state employment, to enroll in a group benefit plan that provides medical or dental benefits;

(II) Has an annual household income of less than three hundred percent of the federal poverty line; and

(III) Has at least one dependent other than the employee's legal spouse.

(b) "Employee contribution" means the amount contributed by an eligible state employee to pay part of the premium for a qualifying group benefit plan in which the eligible state employee is enrolled.

(c) "Qualifying group benefit plan" means a group benefit plan that provides medical or dental benefits.

(d) "State contribution" means the amount contributed by the state to pay part of

the premium for a qualifying group benefit plan in which a state employee is enrolled.

(3) (a) For the 2008-09 state fiscal year and for each state fiscal year thereafter, the state, after first allocating the interest and income and next allocating the principal of the supplemental state contribution fund created in section 24-50-609 (5) to pay the costs of increased nonsupplemental state contributions, shall expend the available principal of the state supplemental contribution fund to pay a monthly supplement to the state contribution for each eligible state employee who timely applies for the supplement pursuant to subsection (4) of this section and enrolls in a qualifying group benefit plan in order to reduce the eligible state employee's employee contribution by the amount of the supplement. The amount of the supplement shall be the amount that reduces the aggregate amount of the eligible state employee's employee contribution for all qualifying group benefit plans to zero; except that, if the available principal of the supplemental state contribution fund is insufficient to provide full supplements for all eligible state employees as specified in paragraph (b) of this subsection (3):

(I) The available principal shall first be used to provide each eligible state employee who has an annual household income of less than two hundred percent of the federal poverty line a supplement in an amount equal to the lesser of the equivalent percentage of the applicable employee contribution for each such eligible state employee that uses all of the available principal or the amount needed to reduce the employee contribution of each such eligible state employee for all qualifying group benefit plans to zero.

(II) Remaining available principal next shall be used to provide each eligible state employee who has an annual household income of two hundred percent or more of the federal poverty line but less than two hundred fifty percent of the federal poverty line a supplement in an amount equal to the lesser of the equivalent percentage of the applicable employee contribution for each such eligible state employee that uses all of the available principal or the amount needed to reduce the employee contribution of each such eligible state employee for all qualifying group benefit plans to zero.

(III) Remaining available principal last shall be used to provide each eligible state employee who has an annual household income of at least two hundred fifty percent of the federal poverty line a supplement in an amount equal to the lesser of the equivalent percentage of the applicable employee contribution for each such eligible state employee that uses all of the available principal of the fund or the amount needed to reduce the employee contribution of each such eligible state employee for all qualifying group benefit plans to zero.

(b) All supplements shall be paid from the available principal of the supplemental state contribution fund created in section 24-50-609 (5). The total amount of all supplements paid for any given fiscal year shall be the lesser of the amount of all available principal of the supplemental state contribution fund or the amount of the available principal needed to reduce the employee contribution of each eligible state

employee for all qualifying group benefit plans to zero. If an eligible state employee who receives a supplement is enrolled in separate qualifying group benefit plans for medical and dental benefits, the state shall supplement the state contribution to the plan that provides medical benefits until the employee contribution for that plan is reduced to zero before supplementing the state contribution to the plan that provides dental benefits.

(c) For purposes of this subsection (3):

(I) "Available principal of the supplemental state contribution fund" or "available principal" means, for any given fiscal year, the sum of the amount of tobacco litigation settlement moneys transferred by the state treasurer to the fund on July 1 of the fiscal year and any other principal of the fund minus the amount of principal allocated during the fiscal year to pay the costs of increased nonsupplemental state contributions pursuant to paragraph (a) of this subsection (3).

(II) "Increased nonsupplemental state contributions" means, for any given fiscal year, the aggregate amount of increases in state contributions, excluding supplements, resulting from:

(A) Enrollment in qualifying group benefit plans of eligible state employees who applied for supplements for the fiscal year and were not enrolled in qualifying group benefit plans during the prior fiscal year; and

(B) Addition of dependents who were not covered by a qualifying group benefit plan during the prior fiscal year to the qualifying group benefit plans of eligible state employees who applied for supplements during the fiscal year.

(4) A state employee shall apply to the department of personnel for a supplement. The application shall be on a form prescribed by the director, and the employee shall provide any supporting information that the director may reasonably require to allow the department to verify that the state employee is an eligible state employee. A state employee shall file an application for a supplement annually during the open enrollment period or open enrollment grace period for enrolling in group benefit plans for the next state fiscal year, and, if the applicant is an eligible state employee and enrolls in a qualifying group benefit plan, the applicant shall receive a supplement for the next state fiscal year. A newly hired state employee shall not be eligible for a supplement in the state fiscal year in which he or she is hired, but may apply for a supplement during the open enrollment period or open enrollment grace period for enrolling in group benefit plans for the next state fiscal year.

(5) Notwithstanding the provisions of section 24-1-136 (11) (a), no later than January 15, 2009, and no later than each succeeding January 15, the department of personnel shall report to the health and human services committees of the house and senate and the joint budget committee of the general assembly or any successor committees regarding the supplemental state contribution program established in this section. The report shall include, at a minimum, information regarding:

(a) The number of eligible state employees receiving supplements in the current

state fiscal year and any prior state fiscal years in which supplements were provided;

(b) The total amount of supplements that have been or will be paid in the current state fiscal year and that were paid in any prior state fiscal years in which supplements were provided;

(c) The average monthly and yearly amounts of the individual supplements provided for the current state fiscal year and for any prior state fiscal years in which supplements were provided;

(d) The number of dependent children of eligible state employees receiving supplements covered by a qualifying group benefit plan during the current state fiscal year and for any prior state fiscal years in which supplements were provided; and

(e) The amount of increased nonsupplemental state contributions, as defined in subparagraph (II) of paragraph (c) of subsection (3) of this section, for the current state fiscal year and for any prior state fiscal years in which supplements were provided.

24-50-610. Payroll deductions - employees. The amount of monthly contributions, if any, to be made by employees enrolled in group benefit plans shall be deducted from the salaries of such employees and remitted to the department of personnel. The procedure for such deductions and remittances, including a procedure for determination of the appropriate amount and collection and remittance of monthly contributions from elected state officials who do not receive compensation other than expense reimbursement from state funds, shall be established by the department of personnel; except that the department of personnel shall not establish any method of collection and remittances of monthly contributions from elected state officials who do not receive compensation other than expense reimbursement from state funds from any entity other than from such individual state officials.

24-50-611. Employer payments. The head of each state agency, department, or institution having employees enrolled in group benefit plans shall make a monthly payment to the department of personnel for each employee so enrolled of an amount as provided for in section 24-50-609. The estimated amount required for such payments shall be included in the annual budgets of such agencies, departments, and institutions.

24-50-612. Administrative duties. (1) It is the duty of the department of personnel to provide such assistance and to perform such duties as are necessary to carry out the state's administrative, accounting, and clerical responsibilities in connection with the operation of group benefit plans.

(2) Repealed.

(3) The director shall hold a public hearing prior to the acceptance of any proposal for a group benefit plan. Notice of the hearing shall be given at least fourteen days in advance by mailing such notice to persons on the list maintained by the department of personnel pursuant to section 24-4-103 (3) (b).

24-50-613. Group benefit plans reserve fund. (1) There is hereby established the group benefit plans reserve fund. The state treasurer shall be ex officio treasurer of this fund, and the state treasurer's general bond to the state shall cover all liabilities for acts as treasurer of the fund. The director shall remit to the treasurer for deposit in the group benefit plans reserve fund all payments received by the director for group benefit plans premium costs from employees and the state as employer. The director shall also remit to the treasurer for deposit in the group benefit plans reserve fund any payments received by the director from the carriers of group benefit plans. Such payments shall not be included in the general revenues of the state of Colorado and shall not be general assets of the state. At the end of the fiscal year, any unexpended funds shall not revert to the general fund but shall be held by the state treasurer in custodial capacity, to be used subject to direction from the director.

(2) (a) Expenditures shall be made from the group benefit plans reserve fund, upon certification by the director, for the payment of premiums, claims costs, and other administrative fees and costs associated with the group benefit plans.

(b) In the event that the director enters into contracts or renewals for group benefit plans that are self-funded, the moneys in the group benefit plans reserve fund shall be expended only for premiums, claims costs, other administrative fees and costs associated with the group benefit plans, and for the purposes of subsection (3) of this section. The moneys in the group benefit plans reserve fund shall not be appropriated by the general assembly or expended by the director for any other purpose.

(3) A premium stabilization reserve account shall be established within the group benefit plans reserve fund the purpose of which is to offset unexpected year-end deficits and extraordinary fluctuations in annual premiums. The moneys in the account shall not be included in the general revenues of the state and shall not be general assets of the state. The moneys in the account shall be expended for purposes of such fund and shall not be appropriated by the general assembly or expended by the director for any other purpose.

(4) The state's cost of administering group benefit plans, other than the costs provided for in subsection (2) of this section, is subject to annual appropriation by the general assembly based on the submission by the director of a budget request containing detailed information on current and projected administrative costs, which include, but are not limited to, personal services, operating expenses, travel expenses, utilization review, and implementation of a flexible benefits plan.

(5) The director, from time to time, shall certify in writing to the state treasurer for

investment such portions of the group benefit plans reserve fund as in the director's judgment may not be needed for the payment of premiums and claims costs to the carriers. Such investments shall be made as determined by the state treasurer and shall be limited to those securities authorized for investment by the board of trustees of the public employees' retirement association pursuant to section 24-51-206. Interest on the investment of the group benefit plans reserve fund shall be credited to the fund.

24-50-614. State payments - authority of controller. The state contributions to group benefit plans shall be paid monthly to the director by the state controller, who shall make a charge against the accounts of the state departments, agencies, and institutions for this purpose. Such charges shall be the amounts necessary to cover the state contributions, as defined in section 24-50-609, for employees and shall be made against both general revenue fund accounts and specific cash fund accounts as required.

24-50-615. Continuation of previously existing benefits for persons absorbed by the state personnel system. Any other provision of law to the contrary notwithstanding, the director shall continue, as a benefits option, the existing group life and health benefits of any person employed by a state agency if such person has been or will be brought or assimilated into the state personnel system on or after January 1, 1972, until such time as similar benefits offered by the director to state employees pursuant to this part 6 are equivalent in benefit and economic cost to the benefits held by said person.

24-50-616. Group benefit plans pilot program - designated area - report - repeal. (Repealed)

24-50-617. Group benefit plans statewide pilot program - director's duties - audit - repeal. (Repealed)

24-50-618. Group benefit plans - institutions of higher education. (1) A state institution of higher education, which, for the purposes of this section, shall include the Auraria higher education center established in article 70 of title 23, C.R.S., or a group of state institutions may establish and offer one or more group benefit plans, in addition to or in lieu of a plan contracted for by the director pursuant to this part 6, to employees of the institution or institutions who are in the state personnel system.

(2) (a) Notwithstanding any provision of subsection (1) of this section to the

contrary, a state institution of higher education or group of institutions shall consult with the governor's office and provide to the director at least twelve months' written advance notice before the institution or group of institutions may:

(I) Cease offering to institutional employees in the personnel system one or more group benefit plans that the director contracted for and that the institution or group of institutions offered in the preceding plan year; or

(II) Offer to institutional employees in the personnel system one or more group benefit plans that were contracted for by the director and that the institution or group of institutions did not offer in the preceding plan year.

(b) If the director concludes on the basis of actuarial data that ceasing to offer one or more group benefit plans as described in subparagraph (I) of paragraph (a) of this subsection (2) is likely, in the first year in which it is not offered, to result in an increase in costs for that plan or any other plan contracted for by the director, the institution or group of institutions may not cease to offer the plan or plans unless specifically authorized to do so by the governor. The director shall provide the conclusion, in writing and with copies of the actuarial data upon which it is based, to the governor's office and the affected institution or group of institutions no later than one hundred eighty days after the date on which the institution or group of institutions provides the notice required in paragraph (a) of this subsection (2).

(3) It is the intent of the general assembly that the director will provide for employees of the state institutions of higher education and for all other state employees the most cost-competitive group benefit plans available.

PART 7

AGENCY-BASED PERSONNEL PILOT PROGRAM

24-50-701 to 24-50-706. (Repealed)

PART 8

STATE EMPLOYEE INCENTIVE PROGRAM

24-50-801. Legislative declaration. The general assembly hereby finds and declares that it is the policy of this state to concentrate on improving the efficiency and effectiveness of state government in order to provide better service to the citizens of the state of Colorado, to increase state government productivity, and to decrease state government costs. The general assembly recognizes that one method of achieving a more efficient and effective state government is to encourage the involvement of state

employees in the development of innovative ideas that will increase the productivity and service level of state government while decreasing the costs of state government. The general assembly realizes that employee incentive programs that reward state employees for innovations by allowing the employees to share the cost savings resulting from such innovations will help encourage employee involvement in making state government more efficient and effective. The general assembly further recognizes that rewarding state employees may also increase employee morale and enthusiasm, decrease employee turnover, and improve customer service.

24-50-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) (a) "Employee" means any employee within the state personnel system except as provided in paragraph (b) of this subsection (1).

(b) "Employee" does not mean:

(I) An employee of the office of state planning and budgeting, the office of the state auditor, the joint budget committee, or the department of personnel;

(II) An elected official or member of the general assembly; or

(III) The executive directors and budget officers of principal departments and their deputies or the presidents of any college or university and their deputies.

(2) "State agency" means any department, board, bureau, commission, division, institution, or other agency of the state, including institutions of higher education.

24-50-803. Employee incentive program - report by state personnel director. No later than December 1, 2004, the state personnel director shall submit a report to the joint budget committee with recommendations for the implementation of an employee incentive program in accordance with the provisions of this part 8.

24-50-804. Development of recommendations for an employee incentive program. (1) In developing recommendations for the implementation of an employee incentive program to be included in the report to be submitted to the joint budget committee pursuant to section 24-50-803, the state personnel director shall consult with representatives from the state personnel board, the office of state planning and budgeting, the office of the state controller, the office of the state auditor, and the four largest employee organizations representing employees in the state personnel system. The director shall also solicit input from employees and managers in the state personnel system and other affected parties.

(2) The state personnel director shall include the following elements in the

recommendations for an employee incentive program:

(a) Criteria for eligibility for the employee incentive program;

(b) A formula for calculating and distributing cost savings;

(c) Employee protections against retaliation for initiating or participating in an employee incentive program;

(d) A means of providing public recognition and financial compensation to employees whose innovations result in cost savings to the state;

(e) A method for the centralized or departmental administration of the employee incentive program; and

(f) A mechanism for returning an amount equal to fifty percent of the cost savings realized by any department as a result of an employee's cost-savings innovation to the Colorado taxpayers and for allowing the department in which the employee is employed to retain an amount equal to fifty percent of such cost savings.

24-50-805. Institutions of higher education - alternative employee incentive programs. Notwithstanding any provision of this part 8 to the contrary, the chief executive officer of a state institution of higher education may establish and implement an incentive program for employees, including classified employees, of the institution. At a minimum, the incentive program shall include the elements described in section 24-50-804 (2) (a) to (2) (e). An incentive program implemented pursuant to this section shall not be subject to approval by the state personnel director.

PART 9

STATE EMPLOYEES' IDEAS THAT IMPROVE STATE GOVERNMENT OPERATIONS

24-50-901. Legislative declaration. The general assembly hereby finds and declares that it is the policy of this state to concentrate on improving the efficiency and effectiveness of state government in order to provide better service to the residents and taxpayers of the state of Colorado, to increase state government productivity, and to decrease state government costs and waste. The general assembly recognizes that one method of achieving a more efficient and effective state government is to encourage the involvement of state employees in the development of innovative ideas that will increase the productivity and service level of state government while decreasing the costs of state government. The general assembly realizes that employee incentive programs that reward state employees for innovative ideas by allowing and incentivizing the employees to share the cost savings resulting from such innovative ideas will help encourage employee

involvement in making state government more efficient and effective. The general assembly further recognizes that rewarding state employees' ideas may also increase employee morale and enthusiasm, decrease employee turnover, and improve customer service.

24-50-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) (a) "Employee" means, except as provided in paragraph (b) of this subsection (1), all state employees, including those employees within the state personnel system and those exempt from the state personnel system as specified in section 13 (2) of article XII of the state constitution.

(b) "Employee" does not include:

(I) An employee of the office of state planning and budgeting, the office of the state auditor, the joint budget committee, or the department of personnel;

(II) An elected official or member of the general assembly;

(III) The executive director, program manager, division director, or budget officer of a principal department; or

(IV) An employee of a governing board of an institution of higher education or a higher education institutional system, an employee of an institution of higher education or of a higher education institutional system, or an employee of the Auraria higher education center created in article 70 of title 23, C.R.S.

(2) "Executive director" means a state agency's executive director or similar senior level manager or managing director.

(3) "Idea application" means the application described in section 24-50-903 (1) (a).

(4) "Projected savings" means an amount calculated by a state agency that may be realized by the agency directly as a result of an employee's idea application.

(5) "Savings realized" means an amount calculated by a state agency that was actually realized by the agency directly as a result of an employee's idea application.

(6) "State agency" means any department, board, bureau, commission, division, institution, office, or other agency of the executive, legislative, and judicial branch of the state government. "State agency" shall not include an institution of higher education.

24-50-903. State employee idea application. (1) (a) (I) No later than October 1, 2010, the state personnel director, or his or her designee, shall create and make publicly available to all employees on the department of personnel's web site an idea application, substantially similar to the Air Force form AF 1000, to allow employees to suggest state agency improvements that may result in cost savings at the state agency where the

employee works. Each state agency executive director shall create agency-specific supplemental submission materials to the idea application if such materials are deemed necessary by the executive director to manage the submission process. Each state agency shall post such materials on its respective web site.

(II) The idea application shall not be used for ideas that:

(A) Would result from obvious and progressive normal business practices, such as a foreseeable expectation that the idea would be implemented in a reasonable time frame as a result of evolving business or industry practice;

(B) Are obvious solutions to mandated budget cuts, such as abolishing vacant funded positions or reducing staff through layoffs;

(C) Result in cost avoidance as the method of documenting cost savings, such as no or lowered increases in costs for staff, supplies, or equipment;

(D) Result in revenue enhancement as the method of documenting cost savings, such as new or increased fees for services; or

(E) Simply shift the cost from one state agency to another.

(b) No later than October 1, 2010, the state personnel director, or his or her designee, shall establish standard evaluation criteria substantially similar to the evaluation criteria used to evaluate the Air Force form AF 1000, by which all idea applications shall be evaluated. The state personnel director, or his or her designee, shall make such criteria available to all executive directors. Each state agency executive director may establish additional evaluation criteria specific to his or her agency if such criteria are deemed necessary by the executive director to manage the submission process.

(c) (I) Any employee may complete an idea application. For processing, the employee shall submit the idea application to the executive director of the employee's state agency. An employee shall not be retaliated against for submitting an idea application.

(II) The identity of an employee who submits an idea application shall remain confidential and shall be redacted from the application until the employee has been determined to be eligible for an honorary award as specified in paragraph (d) of subsection (4) of this section, except that the identity of the employee may be made known to the executive director, or his or her designee, for purposes of obtaining reasonably necessary additional information related to the idea application.

(III) (A) The executive director, or his or her designee, shall provide notification of receipt of the idea application to the employee within fifteen days after submission of such application. The executive director, or his or her designee, may automatically deny an idea application if he or she deems such application to be duplicative of another application that was submitted within the prior twelve-month period or duplicative of a recommendation contained in an audit report from the office of the state auditor or any privately contracted auditor, a joint budget committee staff document, or any other published evaluation of Colorado state government. The executive director, or his or her

designee, shall provide notice of an automatic denial within fifteen days pursuant to this sub-subparagraph (A).

(B) The executive director, or his or her designee, shall cause, within forty-five business days from the date of submission of an idea application that was not automatically denied for reasons listed in this section or agency-specific evaluation criteria as developed by an executive director, a projected savings calculation to be made.

(C) The executive director shall respond with a decision either approving or denying the employee's idea application within sixty business days after the date of submission of the idea application. For any idea application that is approved, the executive director, or his or her designee, shall identify, to the extent possible, any state laws or rules that would need to be changed as part of the review and approval process. The executive director, or his or her designee, shall submit a request for legislation to the committee of reference assigned to such executive director's state agency regarding any approved idea application that requires legislation for implementation. Idea applications that do not require legislation for implementation shall be implemented by the state agency as soon as reasonably possible, and no later than July 1 of the fiscal year following acceptance of the idea application.

(IV) A copy of any employee's idea application that is not approved, along with a copy of the executive director's response, and any document indicating the projected savings shall be submitted by the director to the office of state planning and budgeting created in section 24-37-102 within sixty business days after submission of the idea application for the office of state planning and budgeting to review.

(V) The executive director, or his or her designee, shall maintain copies of all idea applications that are submitted, along with the following information for approved idea applications:

(A) A description of the innovative idea implemented;

(B) The total savings achieved in the first fiscal year or first full twelve-month period after full implementation;

(C) The total dollars awarded as an incentive to the employee who submitted the idea application;

(D) Any affected general appropriations act line item, if applicable; and

(E) An evaluation of the effectiveness in achieving the goals set forth in section 24-50-901 of the implemented idea and the honorary award to the employee.

(2) Commencing on or after October 1, 2010, all state agencies shall advertise that the idea application is available on the department of personnel's web site on any type of electronic payroll statements issued to employees and in any electronic broadcast communication made to employees, so long as the advertisement for the idea application occurs at least monthly.

(3) The idea application and the advertisement described in subsection (2) of this section shall include information related to the honorary award specified in paragraph (d)

of subsection (4) of this section that an employee may earn.

(4) (a) Once an idea application is submitted, reviewed, and accepted by the executive director, or his or her designee, the employee shall be informed of the honorary award he or she may earn.

(b) Thirteen months after the innovative idea described in the idea application is fully implemented, the executive director shall calculate the savings realized for the first twelve months of full implementation. All documentation of the savings realized calculation satisfying the requirements of paragraph (f) of this subsection (4) shall be forwarded to the state auditor for review and verification no later than two months after the twelve months of full implementation of the innovative idea described in the idea application. The state auditor shall have one hundred twenty days from receipt of the savings realized calculation to:

(I) Conduct the review and verification of the savings realized calculation; and

(II) Submit a report with his or her findings, recommendations, and conclusions to the legislative audit committee, which shall hold a public hearing for the purposes of a review of the report.

(c) The state auditor's report described in subparagraph (II) of paragraph (b) of this subsection (4) shall be submitted to the executive director who approved the idea application and to any members of the general assembly who carried any legislation to implement the idea.

(d) (I) Except as provided in subparagraphs (II), (III), and (IV) of this paragraph (d), and unless otherwise prohibited, the savings realized as verified by the state auditor as specified in paragraph (b) of this subsection (4) shall be distributed, no later than the last day of the eighteenth month following the implementation of the innovative idea, as follows:

(A) Five percent, up to five thousand dollars, of the savings realized as a one-time honorary award to the employee who submitted the idea application;

(B) Twenty-five percent, up to twenty-five thousand dollars, of the savings realized to the state agency that the employee's idea application directly affects; and

(C) The remainder after distributions are made pursuant to sub-subparagraphs (A) and (B) of this subparagraph (I) to the state general fund.

(II) For a state agency that constitutes an enterprise for purposes of section 20 of article X of the state constitution, the savings realized as verified by the state auditor as specified in paragraph (b) of this subsection (4) shall be distributed, no later than the last day of the eighteenth month following the implementation of the innovative idea, as follows:

(A) Five percent, up to five thousand dollars, of the savings realized as a one-time honorary award to the employee who submitted the idea application;

(B) The remainder, after the distribution made pursuant to sub-subparagraph (A) of this subparagraph (II), to the state agency and to the general fund. The amount

distributed to the general fund shall be the same percentage of the savings realized that the state agency receives in total annual revenues from the state general fund.

(III) If the savings realized result in savings of federal moneys, the federal moneys saved shall not be distributed as specified in this paragraph (d) but shall either be used for a reallocation of moneys within the state agency or shall revert, depending on the use specified for those particular federal moneys.

(IV) If the savings realized result in savings of moneys from public or private grants, gifts, awards, or donations where the use of such moneys is restricted, such restricted moneys shall not be distributed as specified in this paragraph (d) but shall either be used for a reallocation of moneys within the state agency or shall revert, depending on the use specified for such particular restricted moneys.

(e) (I) Except as provided in subparagraphs (II) and (III) of this paragraph (e), the state agency may use the distribution specified in sub-subparagraph (B) of subparagraph (I) of paragraph (d) of this subsection (4) for any projects that would increase that state agency's efficiency or improve services provided to state residents, but the distribution shall not be used to hire additional full-time equivalent employees or for personnel services expenditures other than the distribution specified in sub-subparagraph (A) of subparagraph (I) of paragraph (d) of this subsection (4).

(II) Any savings realized distributed to the department of transportation pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (d) of this subsection (4) shall be transferred to the state highway fund created in section 43-1-219, C.R.S., and shall only be used for material costs of road and bridge repairs.

(III) This paragraph (e) shall not apply to a state agency that constitutes an enterprise for purposes of section 20 of article X of the state constitution.

(f) Notwithstanding any other provision of this section, the state auditor shall only be required to undertake the review and verification required by paragraph (b) of this subsection (4) where the executive director has made a determination that the savings realized for the first twelve months of full implementation of the innovative idea described in the idea application equals ten thousand or more dollars.

(5) Nothing in this part 9 shall be construed to provide employees with any grievance, dispute resolution, or appeals process with regard to any idea application submitted by the employee.

ARTICLE 50.3

State Administrative Support Services -
Department of Personnel

PART 1

GENERAL PROVISIONS

24-50.3-101. Legislative declaration. The general assembly hereby finds, determines, and declares that the merger of the department of administration, which is responsible for providing specific administrative support services to state agencies, into the department of personnel, which is responsible for the administration of the state personnel system, will result in increased efficiency, reduced costs, increased accountability, and improvements in the provision of services to state agencies and the public. It is for this purpose that the general assembly has enacted this article.

24-50.3-102. Short title. This article shall be known and may be cited as the "State Support Services Reorganization Act".

24-50.3-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of personnel.

(2) "Executive director" means the executive director of the department of personnel.

24-50.3-104. Powers and duties of executive director. (1) Nothing in this article shall be construed to diminish the responsibility of the executive director in administering the state personnel system as required by the state constitution or statutes.

(2) In addition to all other powers and duties conferred or imposed upon the executive director by this article or any other law, the executive director shall:

(a) Study and make recommendations to the governor regarding improvements in techniques used by state agencies for management specialties, including, but not limited to, accounting, purchasing, maintenance of state buildings and grounds, records management, and data processing management;

(b) Coordinate and provide services used by more than one state agency;

(c) Review agencies' programs and management in order to identify problems and suggest improvements to the governor;

(d) Report annually to the governor concerning all findings and recommendations;

(e) Review the accounts of all state agencies with respect to the status of debts owed to the state through any agency, other than taxes recoverable by the department of revenue, and devise methods to increase the efficiency of the agencies and the controller in the collection of such debts;

(f) Supervise the provision of maintenance and other related services to all buildings and grounds in the capitol buildings group.

(3) In order to perform these duties, the executive director shall have the power to:

(a) Promulgate rules and regulations;

(b) Examine the books, accounts, and employees of the various state agencies;

(c) Conduct public or private hearings on any matter relating to the functions of the executive director;

(d) Establish standards for the executive branch regarding the allocation of office space to various functions, the size and density of occupancy of office space, and the amount and quality of office furnishings;

(e) After consultation with other state agencies, promulgate rules and regulations which set out the methods to be employed by state agencies in the collection of debts due the state. Rules and regulations shall be uniform wherever possible for all state agencies and shall include such things as the classification of debts by type, amount, time status as to delinquency, circumstances of debtor, possibility of error, and any other method of classification which aids an agency in efficient efforts to recover amounts due the state. Such rules and regulations shall also specify the requirements for a debt to be classified as "referable to controller" for further collection.

(f) Promulgate rules and regulations for the controller 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 debts; authorization of suit filings; and methods of collection of judgments;

(g) Promulgate procedural rules governing the conduct of hearings before the office of administrative courts.

(4) The executive director shall have such other powers, duties, and functions as are prescribed for heads of principal departments in the "Administrative Organization Act of 1968", article 1 of this title.

(5) Every state department, its officers, and its employees shall cooperate with the executive director in the performance of the executive director's duties.

(6) The executive director shall have the responsibility for the analysis of all state agency programs; the appraisal of the quantity and quality of services rendered by each principal department and by the divisions, sections, and units thereunder; and the development of plans for improvements and economies in the organization and operation of the principal departments and for reporting thereon to the governor and the general assembly.

(7) The executive director may establish such divisions, sections, and other units within the department of personnel as are necessary for the proper and efficient discharge of the powers, duties, and functions of the department. The executive director may allocate, as necessary, such powers, duties, and functions to the divisions, sections, or other units established by the executive director.

(8) Repealed.

24-50.3-105. Transfer of functions - employees - property - records. (1) On and after July 1, 1995, the department of personnel shall execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested prior to July 1, 1995, in the department of administration.

(2) (a) On and after July 1, 1995, all positions of employment in the department of administration concerning the duties and functions transferred to the department of personnel pursuant to section 24-1-128, this article, and article 30 of this title and determined to be necessary to carry out the purposes of these articles by the executive director shall be transferred to the department of personnel and shall become employment positions therein. The executive director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the department and the office of the executive director. Any appointment of employees and any creation or elimination of positions of employment necessary to carry out the purposes of these articles shall be consistent with the plan for reorganizing state support services as set forth in part 2 of this article and shall be implemented after the plan or relevant portion of the plan has been presented to the state support services reorganization committee pursuant to section 24-50.3-202. Appointing authority may be delegated by the executive director as appropriate.

(b) On and after July 1, 1995, all employees of the department of administration whose duties and functions concerned the powers, duties, and functions transferred to the department of personnel pursuant to section 24-1-128, this article, and article 30 of this title, regardless of whether the position of employment in which the employee served was transferred, shall be considered employees of the department of personnel for purposes of section 24-50-124. Such employees shall retain all rights under the state personnel system and to retirement benefits pursuant to the laws of this state, and their services shall be deemed continuous.

(3) On July 1, 1995, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the department of administration pertaining to the duties and functions transferred to the department of personnel are transferred to the department of personnel and shall become the property thereof.

(4) On and after July 1, 1995, whenever the department of administration is referred to or designated by any contract or other document in connection with the duties and functions transferred to the department of personnel, such reference or designation shall be deemed to apply to the department of personnel. All contracts entered into by the said departments prior to July 1, 1995, in connection with the duties and functions transferred to the department of personnel are hereby validated, with the department of personnel succeeding to all rights and obligations under such contracts. Any cash funds,

custodial funds, trusts, grants, and any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department of personnel for the payment of such obligations.

(5) On and after July 1, 1995, unless otherwise specified, whenever any provision of law refers to the department of administration, said law shall be construed as referring to the department of personnel.

(6) All rules, regulations, and orders of the department of administration adopted prior to July 1, 1995, in connection with the powers, duties, and functions transferred to the department of personnel shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. On and after July 1, 1995, the executive director shall adopt rules necessary for the administration of the department and the administration of the administrative support services transferred to the department pursuant to section 24-1-128, this article, and article 30 of this title. Any rules proposed by the executive director on and after July 1, 1995, necessary to carry out the purposes of these articles shall be consistent with the plan for reorganizing state support services as set forth in part 2 of this article and shall be adopted after the plan or relevant portion of the plan has been presented to the state support services reorganization committee pursuant to section 24-50.3-202.

(7) No suit, action, or other judicial or administrative proceeding lawfully commenced prior to July 1, 1995, or that could have been commenced prior to such date, by or against the department of administration or any officer thereof in such officer's official capacity or in relation to the discharge of the officer's duties, shall abate by reason of the transfer of duties and functions from said department to the department of personnel.

(8) (a) The executive director, or a designee of the executive director, may accept and expend, on behalf of and in the name of the state, gifts, donations, and grants for any purpose connected with the work and programs of the department. Any property so given shall be held by the state treasurer, but the executive director, or the designee therefor, shall have the power to direct the disposition of any property so given for any purpose consistent with the terms and conditions under which such gift was created.

(b) Pursuant to paragraph (a) of this subsection (8), the executive director, or a designee of the executive director, may expend gifts, donations, and grants that are custodial funds without further appropriation by the general assembly. Any gifts, donations, and grants accepted by the executive director, or the designee thereof, pursuant to paragraph (a) of this subsection (8) that are not custodial funds are subject to annual appropriation by the general assembly.

24-50.3-106. Authority of revisor of statutes to amend references to department - affected statutory provisions. (1) The revisor of statutes is hereby

authorized to change all references in the Colorado Revised Statutes to the department of administration from the department of administration to the department of personnel with respect to the powers, duties, and functions transferred to the department. In connection with such authority, the revisor of statutes is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to section 24-1-128, this article, and article 30 of this title.

(2) On and after July 1, 1996, the revisor of statutes is hereby authorized to change all references in the Colorado Revised Statutes to the divisions of purchasing, state archives and public records, accounts and controls, telecommunications, central services, risk management, and general government computer center, from said references to the department of personnel and to change all references to the directors of said divisions, except the state controller, to the executive director of the department of personnel with respect to the powers, duties, and functions transferred to the department and the executive director. In connection with such authority, the revisor is hereby authorized to amend or delete provisions of the Colorado Revised Statutes so as to make the statutes consistent with the powers, duties, and functions transferred pursuant to section 24-1-128, this article, and article 30 of this title.

PART 2

REORGANIZATION OF STATE SUPPORT SERVICES

24-50.3-201 to 24-50.3-204. (Repealed)

ARTICLE 50.5

State Employee Protection

24-50.5-101. Legislative declaration. The general assembly hereby declares that the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The general assembly further declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that

legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

24-50.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

(2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.

(3) "Employee" means any person employed by a state agency.

(4) "State agency" means any board, commission, department, division, section, or other agency of the executive, legislative, or judicial branch of state government.

(5) "Supervisor" means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.

24-50.5-103. Retaliation prohibited. (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

24-50.5-104. Complaints by state personnel system employees - limitation period. (1) Any employee in the state personnel system may file a written complaint with

the state personnel board within ten days after the employee knew or should have known of a disciplinary action alleging a violation of section 24-50.5-103 if the employee demonstrates that reasonable communication to the employee's supervisor, appointing authority, or member of the general assembly has occurred in regard to the alleged violation. Within ten days after receiving the complaint, the state personnel board shall send a copy of the complaint to the affected state agency and shall provide the employee with written notice that the complaint has been received and docketed and that sets forth the process for reviewing such complaint. The affected state agency shall submit a written response to the complaint within forty-five days after the date the complaint was filed with the state personnel board. The state personnel board shall set the matter for review in accordance with section 24-50-123 or for hearing to commence not later than ninety days after the receipt of the written response filed by the agency. The hearing date may be continued once only for good cause shown for no longer than thirty days with the approval of the state personnel board. Any hearing conducted pursuant to this section shall take precedence over any other matter pending before the state personnel board.

(2) If the state personnel board after hearing determines that a violation of section 24-50.5-103 has occurred, the state personnel board shall order, within forty-five days after such hearing, the appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee who disclosed information, and, in addition, the state personnel board shall order that the employee filing the complaint be reimbursed for any costs, including any court costs and attorney fees, if any, incurred in the proceeding. Such reimbursement shall be made out of moneys appropriated to the agency that employs such employee. Judicial review of any determination by the state personnel board under this subsection (2) may be had in accordance with section 24-4-106.

(3) It shall be a defense in any grievance or appeal before the state personnel board that the disciplinary action against an employee was initiated in violation of section 24-50.5-103, and the issue of the violation of section 24-50.5-103 shall be determined by the state personnel board as a part of the related grievance or appeal. The failure to raise any such defense shall bar any subsequent cause of action for a violation of section 24-50.5-103 arising out of the same set of facts at issue in the related grievance or appeal.

(4) Whenever the state personnel board determines that an appointing authority or supervisor has violated section 24-50.5-103, the appointing authority or supervisor shall receive a disciplinary action which shall remain a permanent part of the appointing authority's or supervisor's personnel file, and a copy of the disciplinary action shall be provided to the employee. The disciplinary action shall be appropriate to the circumstances, from a mandatory minimum of one week suspension or equivalent up to and including termination. In considering the appropriate disciplinary action pursuant to this subsection (4), the appointing authority or supervisor of the appointing authority or supervisor who has committed such violation shall consider the nature and severity of the

retaliatory conduct involved.

(5) The state personnel board shall promulgate rules consistent with the provisions of this article that establish the procedures for filing complaints with the state personnel board under this section and that identify the rights and obligations of employees under this article.

24-50.5-105. Civil action. Any employee not in the state personnel system, or any employee in the state personnel system who filed a complaint under section 24-50.5-104 (1) but the state personnel board determined after review or hearing that no violation of section 24-50.5-103 occurred, may bring a civil action in the district court alleging a violation of section 24-50.5-103. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

24-50.5-106. Notice to state auditor. Whenever the state personnel board finds that a violation of section 24-50.5-103 involving the disclosure of information concerning waste of public funds or mismanagement of a state agency has occurred, it shall transmit a copy of the investigation report to the state auditor, who shall proceed in accordance with section 2-3-101 (3) (e), C.R.S.

24-50.5-107. Reports to the governor. The state personnel board shall report annually to the governor concerning the complaints filed, hearings held, and actions taken pursuant to this article.

PUBLIC EMPLOYEES' RETIREMENT SYSTEMS

ARTICLE 51

Public Employees' Retirement Association

PART 1

DEFINITIONS

24-51-101. Definitions. As used in this article, unless the context otherwise requires and except as otherwise defined in part 17 of this article:

(1) "Actuarial equivalent" means an amount equal to a specified benefit based on an assumed interest rate and life expectancy.

(2) "Actuarial investment assumption rate" means the assumed rate of return from investments as set by the board with the advice of the actuary.

(3) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values of the plan.

(4) "Actuary" or "actuaries" means the professional consultants retained by the board to review statistics and make periodic evaluations of the finances needed for the payment of future retirement benefits, survivor benefits, and health care subsidies.

(5) "Amortization period" means the number of years which is required to gradually extinguish the unfunded actuarial accrued liabilities of the plan if future actuarial experience exactly matches the assumptions set by the board.

(6) "Association" means the public employees' retirement association created pursuant to the provisions of section 24-51-201.

(6.5) "Base benefit" means the initial benefit for a benefit that becomes effective after March 1, 2009. For a benefit that became effective on or before March 1, 2009, "base benefit" means the total benefit payable as of June 30, 2010, including the sum of the initial benefit, accumulated annual increases, and cost of living increases.

(7) "Benefit" means the monthly payment for service retirement, disability retirement, or survivor benefits. A refund pursuant to the provisions of section 24-51-405 or a single payment to a survivor is not a "benefit".

(8) "Benefit recipient" means a retiree, spouse, cobeneficiary, qualified child, or dependent parent receiving monthly service retirement, disability retirement, or survivor benefits. "Benefit recipient" does not include a person who has received a refund pursuant to the provisions of section 24-51-405 or a single payment.

(9) "Board" means the board of trustees created pursuant to the provisions of section 24-51-202 which has such duties and powers authorized by this article for the management of the association.

(10) "Cobeneficiary" means:

(a) The person selected by the member or ordered by court decree prior to retirement to be the person selected under option 2 or 3 pursuant to the provisions of section 24-51-801 to receive a continuing benefit upon the retiree's death; or

(b) The person designated by a member eligible for service retirement or ordered by a court decree prior to retirement to be the person selected to receive option 3 upon the member's death pursuant to the provisions of section 24-51-906.

(11) Repealed.

(12) (Deleted by amendment, L. 2000, p. 779, § 2, effective March 1, 2001.)

(13) "Contributions" means the total of employer and member contributions paid to the association.

(13.5) "Deferred compensation plan" means an eligible deferred compensation plan established and administered pursuant to the provisions of 26 U.S.C. sec. 457 (b), as amended.

(14) "Dependent parents" means, for survivor benefits purposes, parents who received fifty percent or more of their support from the member at the time of the member's death. "Dependent parents" also means parents who receive fifty percent or more of their support from a benefit recipient at the time they request eligibility for the health care program.

(15) "Dependents" means the spouse, qualified children, and dependent parents of a benefit recipient.

(16) "Disability" means mental or physical incapacitation as determined pursuant to part 7 of this article.

(17) "Disabled" means mentally or physically incapacitated as determined pursuant to part 7 of this article.

(18) "Division" means the state, school, local government, judicial, or Denver public schools division, each of which is identified by a separate trust fund, amortization period, and membership.

(18.2) "DPS" means Denver public schools.

(18.3) "DPS member" means any person who has an existing member account in the DPS plan on December 31, 2009, or has an existing member account based on service performed prior to January 1, 2010, for which such member received compensation on or after January 1, 2010.

(18.5) "DPS plan" means the Denver public schools retirement system retirement and benefit plan enacted by the Denver public schools board of education pursuant to section 22-64-202, C.R.S., and governed by article 64 of title 22 and related plan documents, as amended, from inception to the repeal of said article. After May 21, 2009, the DPS plan may be amended solely for the purposes of complying with the federal "Internal Revenue Code of 1986", as amended, and such amendments shall be included in the DPS plan.

(18.7) "DPS retiree" means a person who is receiving a service retirement or disability benefit from the association pursuant to part 17 of this article.

(19) "Effective date of retirement" means the date after termination of employment on which the member becomes eligible for benefits.

(20) "Employer" means the state of Colorado, the general assembly, any state department, board, commission, bureau, agency, or institution, the Colorado association of school boards, the Colorado high school activities association, the Colorado association of school executives, the fire and police pension association, the special districts association, the Colorado water resources and power development authority, the public employees' retirement association, the Colorado consortium for earth and space science education, all school districts in Colorado, and any political subdivision, city,

municipality, county, housing authority, special district, library district, regional planning commission, public hospital, county or district public health agency, state university, state college, state junior college, or other public entity that is affiliated with the plan.

(21) "Employer contribution" means the money paid by an employer to the association pursuant to the provisions of section 24-51-401 (1.7) for all member salaries paid and other required employer contributions made pursuant to the provisions of section 24-51-402.

(21.5) "Erroneous contribution" means an amount contributed in error to a member contribution account based on compensation that is not salary as defined in subsection (42) of this section.

(22) "Former member" means an individual who received a refund upon termination of employment pursuant to the provisions of section 24-51-405.

(23) "Fund" means the total assets of the association which are credited to the various trust funds established and invested by the association pursuant to the provisions of this article.

(24) "Health care" means the program provided for in part 12 of this article.

(25) (a) "Highest average salary" means:

(I) One-twelfth of the average of the highest annual salaries upon which contributions were paid, whether earned from one or more employers, that are associated with three periods of twelve consecutive months of service credit;

(II) For a member who does not have the requisite three years of service credit, one-twelfth of the average of the total annual salaries earned during membership upon which contributions were paid;

(III) For benefits which become effective on or after January 1, 1982, where the individual earned less than one year of service credit after December 31, 1980, one-twelfth of the average of the highest annual salaries upon which contributions were paid which were associated with five consecutive years of service credit; or

(IV) Notwithstanding any other provision of this paragraph (a) to the contrary, for members of the judicial division retiring on or after July 1, 1997, one-twelfth of the highest annual salary upon which contributions were paid for twelve consecutive months.

(b) (I) In calculating highest average salary pursuant to subparagraph (I) of paragraph (a) of this subsection (25), for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement before January 1, 2009, if any annual salary used in said calculation was associated with service credit earned during the last three years of membership, each annual salary increase shall be limited to fifteen percent. This limitation shall not apply to salary decreases.

(II) In calculating highest average salary pursuant to subparagraph (I) of paragraph (a) of this subsection (25), for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement before January 1, 2009, if all annual salaries used in said calculation were associated with

service credit earned prior to the last three years of membership, no fifteen percent limit shall be applied to the salary differences.

(III) In calculating highest average salary for a member who was a member, inactive member, or retiree on December 31, 2006, and who has an effective date of retirement on or after January 1, 2009, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred fifteen percent of the second annual salary used in the highest average salary calculation.

(IV) In calculating highest average salary for a member who was not a member, inactive member, or retiree on December 31, 2006, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation.

(V) Notwithstanding any other provision of this paragraph (b), in calculating highest average salary for a member or inactive member not eligible for service or reduced service retirement on January 1, 2011, the association shall determine the highest annual salaries associated with four periods of twelve consecutive months of service credit. The lowest of such annual salaries shall be the base salary. The first annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the base salary. The second annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the first annual salary used in the highest average salary calculation. The third annual salary to be used in the highest average salary calculation shall be the actual salary reported up to one hundred eight percent of the second annual salary used in the highest average salary calculation. This subparagraph (V) shall not apply to members of the judicial division, except for DPS members of the judicial division who have exercised portability pursuant to section 24-51-1747 and selected the Denver public schools benefit structure. This subparagraph (V) shall apply to DPS members in accordance with section

24-51-1702 (17).

(c) For retirements on or before January 1, 1989, if a member had a rate of pay reduction occur within any calendar year used in the calculation of highest average salary, the calculation shall be the average of the highest three periods of twelve consecutive months of salary if this results in a higher average salary.

(d) (I) If a member has a rate of pay reduction resulting from the furloughing of such member during the 2002-03 or 2003-04 state fiscal years and the reduction occurs during any period of twelve consecutive months used to calculate the member's highest average salary, the member may pay during the three months prior to the effective date of retirement the full member contribution upon and be credited with an amount equal to any such reduction for the period used in the calculation of highest average salary. If a member pays the member contribution pursuant to this paragraph (d), the employer shall forward to the association the full amount of the employer contribution on the amount of pay reduction within ten business days following notice by the association of the amount due. The rate of employer and employee contributions shall be as set forth in section 24-51-401 (1.7).

(II) Each employer shall forward to the association a list of its retired employees who had a furlough from July 1, 2002, through June 30, 2003. The list shall show the amount of pay reduction that resulted from the furlough of such employee for each month during that period. The retiree may pay the member contribution on such amount in full within thirty days of the date the association notifies the retiree of the amount due. If the employee pays that contribution, then the employer shall forward to the association the full amount of the employer contribution on the amount of pay reduction within ten business days following notice by the association of the amount due pursuant to subparagraph (I) of this paragraph (d). Upon receipt of both contributions, the association shall include the amount of pay reduction that resulted from the furlough for the period used in the calculation of highest average salary.

(26) "Inactive member" means a person who has terminated membership and is not making member contributions but who has money in a member contribution account. "Inactive member" includes persons making continuing payments in lieu of member contributions pursuant to the provisions of section 24-51-606 (2). Inactive members are not "members" as defined in subsection (29) of this section.

(27) "Initial benefit" means the first full monthly benefit paid to the benefit recipient or the first full monthly benefit paid to a benefit recipient after recalculation of the benefit pursuant to the provisions of sections 24-51-1103 and 24-51-1104.

(28) "Interest" means:

(a) The actuarial investment assumption rate compounded annually for any interest charged to a member or benefit recipient pursuant to the provisions of this article;

(b) The applicable actuarial investment assumption rate compounded annually for any interest charged to an employer pursuant to the provisions of this article; and

(c) The rate established by the board for each calendar year pursuant to the provisions of section 24-51-407 for interest on member contributions.

(28.5) "Matching employer contributions" means:

(a) The portion of employer contributions used together with the member contribution account to determine the amount of a member's money purchase retirement benefit pursuant to the provisions of sections 24-51-408 (1) and 24-51-605.5 (2); and

(b) The portion of employer contributions paid together with the refund of the member contribution account to members who have terminated membership pursuant to the provisions of sections 24-51-405 and 24-51-408 (2).

(29) "Member" means any employee of an employer defined in subsection (20) of this section who works in a position which is subject to membership in the association and for whom contributions are made. "Member" includes such employee during leaves of absence without pay during which the employer-employee relationship continues if the period of leave is certified to the association by the employer. "Member" also includes any person hired by an employer affiliated with the Denver public schools division who is not a DPS member, unless otherwise indicated. "Member" does not include persons who have terminated employment or died.

(30) "Member contribution" means the money paid to the association that equals a percentage of the member's salary as determined pursuant to the provisions of section 24-51-401 (1.7). "Member contribution" does not include working retiree contributions as defined in subsection (53) of this section.

(31) "Member contribution account" means an account maintained for each member in the member contribution reserve to which member contributions, interest on member contributions, payments in lieu of member contributions, and payments and interest made for purchases of service credit are credited.

(32) "Members of the judicial division" means justices of the supreme court and judges of the court of appeals, district courts, county courts, probate courts, and juvenile courts.

(33) "Named beneficiary" means any person designated in writing by a member to receive a single payment upon the death of the member when survivor benefits are not payable.

(34) "Plan" means the design of the association which is established for the purpose of providing employers, members, and cobeneficiaries and named beneficiaries of such members, such rights, obligations, and duties as provided for in the provisions of this article.

(34.5) "Portability" means the provisions of section 24-51-1747.

(35) "Premium" means the total amount charged by a life insurer, health insurer, health maintenance organization, health care provider, or by the association for each participant and shall be equal to the total of the amount paid by the participant and the premium subsidy, if any, paid by the plan.

(36) "Projected service credit" means the service credit which would have been earned if the retiree receiving disability retirement benefits had continued membership until reaching sixty-five years of age; except that a member's service credit, including any projected service credit, cannot exceed twenty years.

(37) "Qualified children" means natural or adopted children of a member who are unmarried and under eighteen years of age or who are unmarried and eighteen years of age or older but under twenty-three years of age if enrolled full time in an accredited school within six months after the date of death of such member. "Qualified children" includes any children who become mentally or physically incapacitated prior to attaining such age or marital status which precludes them from obtaining gainful employment, and such children shall continue to be considered qualified children so long as such disability continues.

(38) Repealed.

(39) "Retiree" means a person who is receiving a service or disability retirement benefit from the association pursuant to part 6 or 7 of this article.

(40) "Retirement" means the time when the retiree is receiving retirement benefits pursuant to part 6 or 7 of this article.

(41) "Retirement benefit" means the monthly service retirement benefit or the disability retirement benefit provided for in this article.

(42) (a) "Salary" means compensation for services rendered to an employer and includes: Regular salary or pay; any pay for administrative, sabbatical, annual, sick, vacation, or personal leave; pay for compensatory time or holidays; payments by an employer from grants; amounts deducted from pay pursuant to tax-sheltered savings or retirement programs; amounts deducted from pay for a health savings account as defined in 26 U.S.C. sec. 223, as amended, or any other type of retirement health savings account program; performance or merit payments, if approved by the board; special pay for work-related injuries paid by the employer prior to termination of membership; and retroactive salary payments pursuant to court orders, arbitration awards, or litigation and grievance settlements.

(b) "Salary" does not include: Commissions; compensation for unused sick leave converted at any time to cash payments; compensation for unused sick, annual, vacation, administrative, or other accumulated paid leave contributed to a health savings account as defined in 26 U.S.C. sec. 223, as amended, or a retirement health savings program; housing allowances; uniform allowances; automobile usage; insurance premiums; dependent care assistance; reimbursement for expenses incurred; tuition or any other fringe benefits, regardless of federal taxation; bonuses for services not actually rendered, including, but not limited to, early retirement inducements, Christmas bonuses, cash awards, honorariums and severance pay, damages, except for retroactive salary payments paid pursuant to court orders or arbitration awards or litigation and grievance settlements, or payments beyond the date of a member's death.

(c) Compensation received by DPS members on or before December 31, 2009, shall be governed by part 17 of this article for purposes of determining includable salary. On and after January 1, 2010, compensation received by DPS members shall be governed by paragraphs (a) and (b) of this subsection (42) for purposes of determining includable salary. Any adjustments to compensation shall be governed by the provisions in effect for the period for which the adjustment applied.

(43) "Service credit" means the total of all earned, purchased, projected, and uniformed service credit; however, it does not necessarily equal the number of years employed.

(44) "Service credit purchase agreement" means the agreement between the member and the association with regard to the service credit eligible for purchase, the cost of the purchase, the date the payment is to begin and end, and the method of payment.

(45) "Single payment" means the one-time payment of the moneys credited to the member contribution account of a deceased member or deceased inactive member, together with matching employer contributions. A "single payment" is not a benefit.

(46) "State trooper" means an employee of the Colorado state patrol, Colorado bureau of investigation, or successors to these agencies, who is vested with the powers of peace officers as provided for in section 24-33.5-409.

(47) "Surviving spouse" means the surviving spouse of a deceased member or a deceased inactive member and includes a widow and a widower.

(48) "Survivor benefits" means the monthly benefit payable pursuant to part 9 of this article upon the death of a member or inactive member prior to retirement but does not include a single payment made upon the death of a member or inactive member.

(49) "Termination of employment" means the last day of employment for which a member receives compensation on which contributions are remitted, including payment for accumulated sick or annual leave, or the last day of a period of unpaid leave of absence, whichever is later.

(50) "Termination of membership" means the loss of membership which occurs on the date the member terminates employment, retires, or dies.

(51) "Vested benefit" means an entitlement to a future monthly benefit which is earned upon completion of five years of service credit.

(52) "Voluntary investment program" means a voluntary tax-deferred investment program established and administered pursuant to the provisions of 26 U.S.C. sec. 401 (k), as amended.

(53) "Working retiree contributions" means an amount paid to the association that equals the percentage of salary that would be paid as member contributions pursuant to section 24-51-401 (1.7) (a); except that working retiree contributions shall not be considered member contributions and shall not be deposited in the member contribution account.

PART 2

ADMINISTRATION

24-51-201. Public employees' retirement association - creation. (1) There is hereby created the public employees' retirement association, for the purpose of providing the benefits and programs specified in this article, which shall be a body corporate with the right to sue and be sued and the right to hold property for its use and purposes. Notwithstanding the applicability of article 54.8 of this title and sections 2-3-103, 24-4-103, 24-6-202, and 24-6-402, C.R.S., as provided for in this article, the association shall not be subject to administrative direction by any department, commission, board, bureau, or agency of the state. The association is an instrumentality of the state.

(2) The public employees' retirement association, created pursuant to the provisions of subsection (1) of this section, shall consist of the following divisions:

(a) The state division;

(a.5) The school division;

(b) (Deleted by amendment, L. 97, p. 771, § 5, effective July 1, 1997.)

(c) The local government division;

(d) The judicial division; and

(e) The Denver public schools division.

24-51-202. Board of trustees - creation. There is hereby created the board of trustees of the association, which shall have the responsibilities, duties, and authorities as set forth in this article.

24-51-203. Board - composition and election. (1) The board shall consist of the following fifteen trustees:

(a) The state treasurer;

(b) Four members of the state division elected by the members of that division, at least one of whom shall be an employee of a state institution of higher education and at least one of whom shall not be an employee of a state institution of higher education until, on or after January 1, 2007, one of those trustee positions, unless it is the sole position held by an employee of a state institution of higher education, is vacated and thereafter there shall be three members of the state division elected by the members of that division, at least one of whom shall be an employee of a state institution of higher education and at least one of whom shall not be an employee of a state institution of higher education;

(c) Five members of the school division elected by the members of that division until, on or after January 1, 2007, one of those trustee positions is vacated and thereafter

there shall be four members of the school division elected by the members of that division;

(d) Two members of the local government division elected by the members of that division until, on or after January 1, 2007, one of those trustee positions is vacated and thereafter there shall be one member of the local government division elected by the members of that division;

(e) One member of the judicial division elected by the members of that division;

(f) Two retirees, one of whom shall be elected by those members who have retired from the local government division, the judicial division, or from the state division and one of whom shall be elected by those members who have retired from the local government division, the judicial division, or the school division; except that both retiree trustees cannot have retired from the same division; and

(g) Three trustees appointed by the governor and confirmed by the senate who shall not be members, inactive members, or retirees of the association and who shall have significant experience and competence in investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis. Of the three trustees appointed by the governor, no more than two shall be from the same political party.

(1.5) In addition to the board members specified in subsection (1) of this section, there shall be one ex officio board member from the Denver public schools division. The first term of the ex officio board member appointed pursuant to this subsection (1.5) shall be from May 21, 2009, until December 31, 2009, and the person to serve such term shall be appointed by the Denver public schools retirement system board of trustees. The second term of the ex officio member shall be from January 1, 2010, through June 30, 2012, and the person to serve such term shall be appointed by the Denver public schools board of education. The ex officio board member to serve for the term starting July 1, 2012, and each term thereafter shall be elected by the Denver public schools division through a Denver public schools division member election administered by the association. The Denver public schools division ex officio member position shall exist so long as the Denver public schools division remains as a separate division of the association. The Denver public schools division ex officio member shall be a member or retiree of the Denver public schools division and shall be treated like all other members of the board, subject to the following:

(a) The ex officio member may sit with the board and participate in discussions of agenda items, but shall not be allowed to vote on any matter coming before the board or any committee of the board, or to make any motion regarding any matter before the board or any committee of the board;

(b) The ex officio member may be reimbursed for his or her actual and necessary expenses incurred in the execution of his or her duties as an ex officio member of the board, subject to the same requirements and restrictions as apply to reimbursement of expenses of statutory members of the board;

(c) The ex officio member's fiduciary obligations and responsibilities shall be the same as any other board member, shall flow to the entire association membership, and are not limited to those of the Denver public schools division;

(d) The ex officio member shall be provided the same board and committee meeting materials as are provided to other members of the board, including any information that may be deemed confidential;

(e) The ex officio member shall be allowed to participate in or attend executive or closed sessions of the board or of any committee of the board subject to all association board rules, regulations, and policies, including, but not limited to, confidentiality and conflict of interest;

(f) The ex officio member may not be elected as an officer of the board;

(g) At the request of the ex officio member, the chair of the board may appoint the ex officio member as an ex officio member of any standing committee of the board;

(h) The ex officio member shall be allowed to attend and participate in any open meeting discussion at any board or committee meeting; and

(i) The ex officio member shall observe all rules, regulations, and policies applicable to members of the board and any other conditions, restrictions, or requirements established or directed by vote of a majority of the members of the board.

(2) The board shall set the time and manner for the elections of trustees representing members and retirees. Elected trustees may be reelected to the board for an unlimited number of terms but, except for the state treasurer, no term for any trustee shall exceed four years.

(3) The term for each of the initial three appointed trustees shall be determined by the governor and shall be staggered with a one-year term, a two-year term, and a three-year term with no trustee assigned the same term length. After each of the initial terms conclude, the term for appointed trustees shall be four years. Appointed trustees may be reappointed to the board for an unlimited number of terms.

(4) When a vacancy occurs on the board among the elected trustees, the person who received the next highest number of votes in the most recent election of trustees shall be appointed to serve as trustee until the next election of trustees. If the person who received the next highest number of votes is unwilling to serve as a trustee or if the trustee who created the absence ran unopposed, the board shall appoint a trustee. In either case, the appointed trustee shall be from the same division as the trustee whose absence created the vacancy.

(5) When a vacancy occurs among the three appointed trustees, the governor shall appoint, with consent of the senate, a new trustee with the experience and competence specified in paragraph (g) of subsection (1) of this section to serve the remainder of any unexpired term. Such appointee may serve on a temporary basis if the general assembly is not in session when he or she is appointed until the general assembly is in session and the senate is able to consent to such appointment.

(6) The elected trustees shall serve without compensation but shall be reimbursed by the association for any necessary expenses incurred in the conduct of their official duties and shall suffer no loss of salary from an employer for service on the board.

(7) The appointed trustees shall be compensated by the association for their service on the board.

(8) No person can be or can continue to be a trustee of the board who has been adjudicated of having violated any provisions of this article or who has been convicted of a felony or any crime involving the misappropriation of funds.

24-51-204. Duties of the board. (1) The trustees shall elect from among themselves a chairman and any other officers as may be necessary for the board to carry out its duties and responsibilities.

(2) The board shall set the time and place for meetings and conduct those meetings in accordance with the provisions of part 4 of article 6 of this title and shall maintain a record of its proceedings.

(3) No vote of the board shall take place without a quorum present.

(4) The board shall appoint and set the compensation for an executive director to administer the association.

(5) The board shall adopt and promulgate such rules for the administration of the association and to specify the factors to be used in actuarial determinations or calculations required by this article. All rules shall be promulgated in accordance with the provisions of section 24-4-103, and such rules shall be consistent with the provisions of this article or other provisions of law.

(6) The board shall submit to and the state auditor shall conduct or cause to be conducted financial and performance audits of all financial transactions and accounts kept by or for the association in a manner consistent with the requirements set forth in section 2-3-103, C.R.S.

(7) (a) The board or its designated agent shall submit an annual actuarial valuation report to the legislative audit committee and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities that have accrued.

(b) In the annual actuarial valuation, the board shall first determine the total aggregate actuarial funded ratio of the association, apply the adjustments pursuant to section 24-51-1009.5, and then determine the actuarial funded ratio of each division separately.

(8) The board or its designated agent shall prepare and transmit annually a report to the governor regarding the policies, financial condition, and administration of the association.

(9) The board shall obtain, and the association shall pay for, insurance or shall

self-insure against liability which arises out of, or in connection with, the performance of duties by any trustee or employee of the association.

(10) The board shall perform all duties imposed on it by law, including but not limited to administering the provisions of the DPS plan for qualifying DPS members. The board shall not be liable for actions of members that do not comply with court orders.

(11) The board shall be immune from claims arising from the enforcement and implementation of laws regarding the consolidation or merger of retirement plans under its administration that are made a part of the association.

24-51-205. General authority of the board. (1) The board shall have the authority to determine membership status within the state, school, local government, judicial, and Denver public schools divisions; exemptions from membership; eligibility for benefits, life insurance, health care, the voluntary investment program, the association's defined contribution plan, and the deferred compensation plan; and service credit and salary to be used in calculations pursuant to the provisions of this article. Such decisions by the board may be appealed through the administrative review procedures set forth in the board rules. Such final decision by the board shall be subject only to review by proper court action.

(2) The board is authorized to accept on behalf of the association any moneys or properties received in the form of donations, gifts, appropriations, bequests, forfeitures, or otherwise, or income derived therefrom. The provisions of this subsection (2) shall not be interpreted to allow the board to accept or retain moneys held by the association that are presumed to be abandoned pursuant to the provisions of section 38-13-108.5, C.R.S.

(3) The board is authorized to recover, through legal process or offset, any amount paid as benefits, refunds, single payments, premium subsidies, or other payments, to which the recipient is not entitled, with interest, plus attorney fees and costs associated with such recovery. If it is determined that the recipient was entitled to the amount paid, the recipient shall be entitled to the attorney fees and costs that he or she incurred in defending the legal action or offset initiated by the board.

(3.5) The board is authorized to settle or compromise any dispute on behalf of the association. The board may consider relevant factors regarding any dispute, including but not limited to the cost of litigation, the likelihood of success on the merits, the cost of delay in resolving the dispute, and the actuarial impact on the fund, in determining whether to settle or compromise the dispute.

(4) The board is authorized to use and hold property in a nominee partnership composed of trustees or employees of the association, designated by the board through appropriate resolution, to facilitate investment sale and exchange transactions. The partners of the nominee partnership shall be insured pursuant to the provisions of section 24-51-204 (9).

(5) The board may hold discussions in executive sessions which shall be closed to the public, in accordance with the provisions of section 24-51-204 (2).

(6) (a) The board may delegate any of its responsibilities, duties, and authorities as set forth in this article to the executive director of the association or to designated agents of the association. Subject to paragraph (b) of this subsection (6), the executive director may correct an administrative error made by the board, the executive director, or the employees of the association and may make any appropriate correcting adjustments upon receiving written documentation of the following:

(I) That the error was an administrative error of the plan;

(II) That the error was not caused or contributed to in whole or in part by an employer, member, retiree, or other person eligible to receive payments from the association; and

(III) That the error was discovered on or after July 1, 1997.

(b) The executive director shall file a report monthly with the board setting forth the administrative errors corrected pursuant to paragraph (a) of this subsection (6). Such corrections shall be subject to board review after which the board may take any action it deems appropriate with regard to such errors.

(7) The board is authorized to purchase and maintain appropriate annuity contracts for the purpose of providing a voluntary contribution program to qualified employees of affiliated employers pursuant to section 403 (b) of the federal "Internal Revenue Code of 1986", as amended, and to create a separate trust fund to hold the assets of the program.

24-51-206. Investments. (1) The board shall have complete control and authority to invest the funds of the association. Preference shall be given to Colorado investments consistent with sound investment policy.

(2) Investments may be made without limitation in the following:

(a) Obligations of the United States government;

(b) Obligations fully guaranteed as to principal and interest by the United States government;

(c) State and municipal bonds;

(d) Corporate notes, bonds, and debentures whether or not convertible;

(e) Railroad equipment trust certificates;

(f) Real property;

(g) Loans secured by first or second mortgages or deeds of trust on real property; except that the origination of mortgages or deeds of trust on residential real property is prohibited. For the purposes of this paragraph (g) "residential real property" means any real property upon which there is or will be placed a structure designed principally for the occupancy of from one to four families, a mobile home, or a condominium unit or cooperative unit designed principally for the occupancy of from one to four families.

(g.5) Investments in stock or beneficial interests in entities formed for the ownership of real property by tax-exempt organizations pursuant to section 501 (c) (25) of the federal "Internal Revenue Code of 1986", as amended; except that the percentage of any entity's outstanding stock or bonds owned by the association shall not be limited by the provisions of paragraph (b) of subsection (3) of this section;

(h) Participation agreements with life insurance companies; and

(i) Any other type of investment agreements.

(3) Investments may also be made in either common or preferred stock with the following limitations:

(a) The aggregate amount of moneys invested in corporate stocks or corporate bonds, notes, or debentures which are convertible into corporate stock or in investment trust shares shall not exceed sixty-five percent of the then book value of the fund.

(b) No investment of the fund in common or preferred stock, or both, of any single corporation shall be of an amount which exceeds five percent of the then book value of the fund, nor shall the fund acquire more than twelve percent of the outstanding stock or bonds of any single corporation.

(c) (I) Each investment firm offering for sale to the board corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, shall disclose, in any research or other disclosure documents provided in support of the securities being offered, to the board whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the board and because of such agreement the investment firm:

(A) Had received compensation for investment banking services within the most recent twelve months; or

(B) May receive compensation for investment banking services within the next three consecutive months.

(II) For the purposes of this paragraph (c), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

24-51-207. Standard of conduct. (1) The trustees of the board shall be held to the standard of conduct of a fiduciary specified in subsection (2) of this section in the discharge of their functions. Their functions shall include any duty, obligation, power, authority, responsibility, right, privilege, activity, or program specified in this article in connection with the association.

(2) (a) As fiduciaries, such trustees shall carry out their functions solely in the interest of the members and benefit recipients and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in performing such duties as required by law. The trustees shall act in accordance with the provisions of this article and with

the care, skill, prudence, and diligence in light of the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the association so as to minimize the risk of large losses, unless in light of such circumstances it is clearly prudent not to do so.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), the mere settlement or compromise of any dispute by the board pursuant to the authority granted under section 24-51-205 (3.5) is not per se a violation of the fiduciary duties of any trustee.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (2), the consolidation or merger of a plan created under part 2 of article 64 of title 22, C.R.S., prior to its repeal in 2010, into the association and the board's administration of that division following the effective date of the merger shall not be considered a breach of the board's duties or standards of conduct. No claims shall lie against the board, association, or the trustees arising from the consolidation or merger or the specific terms imposed by law.

(3) The trustees of the board shall not engage in any activities which might result in a conflict of interest with their functions as fiduciaries for the association.

(4) The trustees of the board, the executive director, the deputy executive directors, and any employee of the association who is in a fiduciary position shall be subject to and shall make financial disclosures pursuant to the provisions of section 24-6-202.

(5) Any person who is in a fiduciary position with the association and who is adjudicated of violating any provisions of this article shall be personally liable to pay to the association an amount equal to any losses resulting from such violation and shall be subject to such equitable or remedial relief as the court deems appropriate. The court may enjoin any act or practice which violates any provision of this article.

24-51-208. Allocation of moneys. (1) The moneys of the association shall be divided into several trust funds, including, but not limited to:

(a) The state division trust fund, which consists of contributions, payments, and interest paid by members and employers of the state division, in addition to a proportional share of investment income earned thereon;

(a.5) The school division trust fund, which consists of contributions, payments, and interest paid by members and employers of the school division, in addition to a proportional share of investment income earned thereon;

(b) (Deleted by amendment, L. 97, p. 772, § 7, effective July 1, 1997.)

(c) The local government division trust fund, which consists of contributions, payments, and interest paid by members and employers of the local government division,

in addition to a proportional share of investment income earned thereon;

(d) The judicial division trust fund, which consists of contributions, payments, and interest paid by members and employers of the judicial division, in addition to a proportional share of investment income earned thereon;

(d.5) The Denver public schools division trust fund, which consists of contributions, payments, and interest paid by members, DPS members, and employers of the Denver public schools division, in addition to the proportional share of investment income earned thereon and the assets of the DPS plan trust funds as of January 1, 2010;

(e) Repealed.

(f) The health care trust fund, created pursuant to the provisions of section 24-51-1201 (1), which consists of a portion of the employer contributions equal to one and two one-hundredths percent of member salaries; a portion of the amount paid by members to purchase service credit relating to noncovered employment as determined pursuant to section 24-51-505 (7); thirty percent of the amount of any reduction in the employer contribution rates as determined in section 24-51-408.5 (5) to amortize any overfunding in each division's trust fund; deductions of premium amounts from monthly benefits of participating benefit recipients; premiums paid directly to the trust fund by participating benefit recipients, members, and dependents; monthly payments made by employers on behalf of participating benefit recipients, members, and dependents; and interest; in addition to a proportional share of investment income earned thereon;

(f.5) The Denver public schools division health care trust fund, created pursuant to the provisions of section 24-51-1201 (2), which consists of a portion of the employer contributions equal to one and two one-hundredths percent of member salaries; a portion of the amount paid by members to purchase service credit relating to noncovered employment as determined pursuant to section 24-51-505 (7); deductions of premium amounts from monthly benefits of participating benefit recipients; premiums paid directly to the trust fund by participating benefit recipients, members, and dependents; monthly payments made by employers on behalf of participating benefit recipients, members, and dependents; and interest; in addition to a proportional share of investment income earned thereon;

(g) The voluntary investment program trust fund, which consists of voluntary contributions made pursuant to 26 U.S.C. sec. 401 (k), as amended, and part 14 of this article and any investment income earned thereon;

(h) The common operating fund, which consists of proportional allocations of money from the division trust funds and allocations from the other trust funds to meet the budget set by the board and any investment income earned thereon;

(i) The association's defined contribution plan trust fund pursuant to part 15 of this article and any investment income earned thereon;

(j) The deferred compensation plan trust fund, which shall hold assets of the plan established under 26 U.S.C. sec. 457 (b), as amended, and part 16 of this article and any

investment income earned thereon.

(2) Within each of the state division, school division, local government division, judicial division, and Denver public schools division trust funds, the following reserves shall exist:

(a) Member contribution reserve;

(b) Employer contribution reserve;

(c) Retirement benefits reserve; and

(d) (Deleted by amendment, L. 2006, p. 1176, § 3, effective May 25, 2006.)

(e) Survivor benefits reserve.

(f) (Deleted by amendment, L. 2006, p. 1176, § 3, effective May 25, 2006.)

(2.5) Within each of the state division, school division, local government division, and judicial division trust funds, an annual increase reserve shall exist on and after January 1, 2007, and within the Denver public schools division trust fund, an annual increase reserve shall exist on and after January 1, 2010.

(3) Within the member contribution reserve, there shall exist individual member contribution accounts.

(4) At the time a benefit is paid, the association shall transfer to the retirement benefits reserve or survivor benefits reserve of the division from which the benefit is paid, whichever is applicable, one hundred percent of the present value of the actuarially determined liability of such benefit. Each division in which the account has contributions shall fund its proportionate share of the benefit liability based on the percentage of the member contribution account balance from that division as it relates to the total member contribution account balance.

24-51-209. Disbursements. Disbursements from the trust funds authorized in section 24-51-208 shall be subject to the approval of the board and shall be made only for the benefits, health care subsidies, investments, refunds, single payments, payments of remaining member contributions pursuant to the provisions of section 24-51-801, payments pursuant to the provisions of part 17 of this article, and expenses of the association.

24-51-210. Allocation of assets and liabilities. (1) The assets and liabilities of the association shall be divided equitably on an historical accumulative basis among the several trust funds specified in section 24-51-208 (1).

(2) Repealed.

24-51-211. Amortization of liabilities. (1) An amortization period for each of

the state division, school division, local government division, judicial division, and Denver public schools division trust funds shall be calculated separately. A maximum amortization period of thirty years shall be deemed actuarially sound. Upon recommendation of the board, and with the advice of the actuary, the employer or member contribution rates for the plan may be adjusted by the general assembly when indicated by actuarial experience.

(2) On or before November 1, 2009, the board shall submit specific, comprehensive recommendations to the general assembly regarding possible methods to respond to the decrease in the value of the association's assets, including real estate, private equity, and other investments, to decrease the amortization period of each division of the association, and to ensure that each division of the association will become and remain fully funded.

24-51-211.5. Notice of possible change in benefits - actuarial necessity. The association shall provide written notice to each member, DPS member, and inactive member of the association that the possibility of an actuarial necessity could occur in the future, and the general assembly may modify by bill the benefits allowed to members of the defined benefit plan.

24-51-212. Funds not subject to legal process. (1) Except for federal tax liens on distributions payable by the association, for Colorado tax distraints and liens pursuant to section 39-21-114, C.R.S., on distributions payable by the association, for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments from the association in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to section 24-51-207 where the offender or a related party received direct financial gain, none of the moneys, trust funds, reserves, accounts, contributions pursuant to parts 4, 5, 14, 15, 16, and 17 of this article, or benefits referred to in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, bankruptcy proceedings, or other legal process. Member contributions are subject to garnishment resulting from a judgment taken for arrearages for child support or for child support debt, for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public

property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to section 24-51-207 where the offender or a related party received direct financial gain, only if the membership has terminated and the member is not vested.

(2) Notwithstanding the provisions of this section, upon service to the association of orders, injunctions, or warrants issued pursuant to sections 18-17-105 and 18-17-106 or section 16-3-301, C.R.S., applicable to a member contribution account based upon allegations of theft, embezzlement, misappropriation, or wrongful conversion of public property, a member who terminates membership is prohibited from receiving a refund of the member's contribution account and matching employer contributions pursuant to section 24-51-405 or a refund of member contributions pursuant to part 17 of this article, until a court order or the issuing authority releases the member contribution account from said orders, injunctions, or warrants.

24-51-213. Confidentiality. (1) All information contained in records of members, former members, inactive members, DPS members, DPS retirees, benefit recipients and their dependents, including those from the Denver public schools division, participants in the voluntary investment program established pursuant to part 14 of this article, participants in the defined contribution plan established pursuant to part 15 of this article, and participants in the deferred compensation plan established pursuant to part 16 of this article shall be kept confidential by the association.

(2) (Deleted by amendment, L. 2003, p. 2607, § 2, effective June 5, 2003.)

(3) Information regarding real estate, private equity, private debt, timber, and mortgage investments by the association may be kept confidential until the transaction is completed if it is determined by the board that disclosure of such information would jeopardize the value of the investment.

24-51-214. Benefits not offset by workers' compensation benefits. Benefits paid under this article shall be in addition to any benefits paid to the benefit recipients pursuant to the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S.

24-51-215. Insurance and banking laws not applicable. None of the laws of this state regulating insurance, insurance companies, or banking institutions shall apply to the association or any of its trust funds.

24-51-216. Legal adviser. The attorney general shall be the legal adviser to the

board upon request of the board, and the board shall have the authority to select and retain legal counsel in the board's discretion.

24-51-217. Termination. If the association is terminated or partially terminated for any reason, the rights of all members and former members affected thereby to benefits accrued and funded to the date of termination shall become nonforfeitable. Any distribution of assets shall be conducted in accordance with requirements of the federal "Internal Revenue Code of 1986", as amended.

24-51-218. Unclaimed moneys. Notwithstanding any other provision of this article to the contrary, any moneys that are presumed to be abandoned pursuant to the provisions of section 38-13-108.5, C.R.S., shall be subject to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S.

24-51-219. Merger of school district retirement system. (Repealed)

24-51-220. Report to general assembly. The association shall provide a report to the general assembly on January 1, 2016, and every five years thereafter, regarding the economic impact of the 2010 legislative changes to the annual increase provisions on the retirees and benefit recipients as compared to the actual rate of inflation and the progress made toward eliminating the unfunded liabilities of each division of the association.

PART 3

MEMBERSHIP

24-51-301. Required membership. All employees who hold positions subject to membership and whose salaries are paid by an employer shall become members as a condition of employment, except as specified in this article.

24-51-302. Optional membership. (Repealed)

24-51-303. Members of the general assembly.
(1) Repealed.

(2) A member of the general assembly who served as a legislator prior to July 1, 1967, shall be granted service credit for such prior service upon becoming a member of the association if such legislator had not elected to be exempt from membership during any period of legislative service prior to establishment of membership.

(3) and (4) Repealed.

24-51-304. Employees of the general assembly. (Repealed)

24-51-305. District attorneys. (1) District attorneys who have not made an election to participate in the association's defined contribution plan pursuant to section 24-51-1502 (1) shall become members of the association's defined benefit plan. Up to five years of service credit shall be granted for public service as a district attorney prior to January 11, 1977, if the district attorney did not elect exemption from membership upon first becoming eligible for membership.

(2) On behalf of a district attorney, the state of Colorado shall contribute eighty percent of the employer contributions and the county shall contribute twenty percent of the employer contributions based on the rate for the state division set forth in section 24-51-401 (1.7). One hundred percent of member contributions shall be paid from the salary of such district attorney.

24-51-305.5. Employees of district attorneys. (1) (a) The boards of county commissioners of the counties within a judicial district, in consultation with the district attorney for the judicial district, may authorize any assistant district attorney, chief deputy district attorney, or deputy district attorney in the judicial district to make a one-time irrevocable written election to become a member of the association's defined benefit plan or the association's defined contribution plan. Any such authority shall be granted on or before January 1, 2004, unless the boards of county commissioners make a finding that it was not fiscally appropriate to make the election prior to such date. No election shall be made pursuant to this subsection (1) unless authorized by the boards of county commissioners pursuant to this paragraph (a).

(b) An assistant district attorney, chief deputy district attorney, or deputy district attorney hired prior to the date upon which the boards of county commissioners authorize an election pursuant to paragraph (a) of this subsection (1) shall have sixty days from such date to make an election. In the absence of such election, such person shall continue to participate in his or her existing retirement system.

(c) An assistant district attorney, chief deputy district attorney, or deputy district attorney hired on or after the date upon which the boards of county commissioners

authorize an election pursuant to paragraph (a) of this subsection (1) shall have sixty days from the date of commencing employment to make an election. In the absence of such election, such person shall be a member of the association's defined benefit plan.

(2) (a) The boards of county commissioners of the counties within a judicial district, in consultation with the district attorney for the judicial district, may elect to have the employees of the district attorney become members of the association's defined benefit plan or the association's defined contribution plan. The election shall be approved by not less than sixty-five percent of the employees of the district attorney. An election pursuant to this paragraph (a) shall be made prior to January 1, 2004, unless the boards of county commissioners make a finding that it was not fiscally appropriate to make the election prior to such date.

(b) If an election is made pursuant to paragraph (a) of this subsection (2), the boards of county commissioners, in consultation with the district attorney, shall further determine whether to have the employees either become members of the association's defined benefit plan or the association's defined contribution plan. The determination shall be approved by not less than sixty-five percent of the employees of the district attorney.

(c) If either the election specified in paragraph (a) of this subsection (2) or the determination specified in paragraph (b) of this subsection (2) is not approved as provided in said paragraphs, then the employees of the district attorney shall not become members of the association's defined benefit plan or the association's defined contribution plan. No more than one election may be made in a judicial district in any calendar year. If the boards of county commissioners determine that the employees shall become members of the defined benefit plan, then no employee of the district attorney shall participate in the defined contribution plan. If the boards determine that the employees shall participate in the defined contribution plan, then no employee shall become a member of the defined benefit plan.

(d) An employee of a district attorney hired prior to the date upon which the employees of the district attorney approve the determination of the boards of county commissioners pursuant to paragraph (b) of this subsection (2) shall have sixty days from such date to make a one-time irrevocable election to become a member of the association's defined benefit plan or the association's defined contribution plan in accordance with the determination. In the absence of such election, such person shall continue to participate in his or her existing retirement plan.

(e) An employee of a district attorney hired on or after the date upon which the employees of the district attorney approve the determination of the boards of county commissioners pursuant to paragraph (b) of this subsection (2) shall become a member of the association's defined benefit plan or the association's defined contribution plan in accordance with the determination.

(f) The boards of county commissioners of the counties within a judicial district,

in consultation with the district attorney for the judicial district, may make application to the board to terminate affiliation with the association. Said application shall be made by submitting a resolution adopted by the boards of county commissioners that has been approved by at least sixty-five percent of the employees of the district attorney who are members or who participate in the plan. Applications to the board shall be made in accordance with the provisions of section 24-51-313.

(g) For purposes of this subsection (2), the term "employee of a district attorney" shall not include an assistant district attorney, chief deputy district attorney, or deputy district attorney.

(3) An assistant district attorney, chief deputy district attorney, deputy district attorney, or other employee of a district attorney who becomes a member of the association shall be a member of the state division. The judicial district employing such member shall be designated as a state employer that has affiliated with the association pursuant to section 24-51-309.

24-51-306. Elected state officials. (Repealed)

24-51-307. Elected municipal officials. (1) (a) Any elected official of a municipality which is affiliated with the association shall, within sixty days after taking office, make a one-time, irrevocable written election to become a member or to be exempted from membership. In the absence of a written election to be exempted from membership, an elected municipal official shall be a member.

(b) Notwithstanding any other provision of the law to the contrary, any elected official of a municipality which is affiliated with the association may, on or before August 1, 1992, elect to be retroactively exempted from membership during all or any portion of the time period beginning on July 1, 1991, and continuing until such day of election of exemption from membership.

(2) Repealed.

24-51-308. City managers and key management staff. Any municipality affiliated with the association may authorize the city manager and key management staff who report directly to the city council or city manager to make a one-time, irrevocable election to be exempted from membership. If so authorized, the city manager and key management staff shall make a written election to become a member or to be exempted from membership within sixty days after becoming employed in the position. In the absence of a written election, such person shall be a member.

24-51-309. Affiliation by public entities. Except as otherwise provided in section 24-51-320, any political subdivision within the state of Colorado or any public agency created by the state or any of its political subdivisions may make application to the board to affiliate with the association. Any such entity specified in this section that previously exempted its employees from membership in the association may, by ordinance or resolution, apply to the board to be affiliated with the association. All applications shall be subject to approval by the board, and upon approval the benefits, duties, and responsibilities of employers and members shall begin from the date of affiliation with the association. The Denver public schools division shall include charter schools that participate in the DPS plan prior to January 1, 2010, and any future charter schools that are approved by the Denver public schools board of education and that enter into a charter contract with the Denver public schools board of education on or after January 1, 2010. The board shall not allow affiliation into the Denver public schools division of any employer not approved by the Denver public schools board of education.

24-51-310. Persons not eligible for membership. (1) Persons not eligible for membership in the association include:

(a) (I) Students enrolled in an undergraduate or graduate program at and employed by a state college or university or by a public employer affiliated with a college or university, including the Auraria higher education center, when such employment is predicated on student status, whether or not required by federal law to be covered by a public employee retirement system or social security;

(II) Students enrolled and regularly attending classes in a school district and who have not graduated from high school whose employment by such district is predicated on student status;

(III) (A) Any other employees not described in subparagraph (I) or (II) of this paragraph (a) who are not required by federal law to be covered by a public employee retirement system or social security; except that a member of the military employed pursuant to section 28-3-904, C.R.S., for more than thirty consecutive days may elect to become a member of the association if the election is made within sixty days after the member first becomes eligible.

(B) Notwithstanding the provision of sub-subparagraph (A) of this subparagraph (III), retirees for whom coverage is not required by federal law shall resume membership if such retirees return to work in a position subject to membership, or in a position described in section 24-51-308, and if such retirees voluntarily suspend their benefits.

(b) Participants in a university of Colorado retirement plan to the extent required pursuant to section 23-20-139, C.R.S.;

(c) (Deleted by amendment, L. 91, p. 875, § 8, effective July 1, 1991.)

(d) Certain Colorado state university faculty and other employees of the extension

service who are employed in a cooperative work program with the United States department of agriculture, whose participation in the federal civil service retirement system is a prerequisite to such employment;

(e) (Deleted by amendment, L. 91, p. 1978, § 8, effective July 1, 1991.)

(f) Policemen and firefighters covered by an existing retirement system pursuant to the laws of this state;

(g) Repealed.

(h) Independent contractors and consultants to employers;

(i) Employees of a nonprofit public hospital, long-term care facility, or health care facility which was previously affiliated with the association if such employees were hired subsequent to the sale, lease, or transfer of the hospital or state nursing home;

(j) Employees of employers assigned to the local government division of the association whose positions were covered only under social security for such employment as of November 5, 1990, and employees in similar positions created later by such employers;

(k) Participants in an optional retirement plan organized pursuant to article 54.5 of this title to the extent required by section 24-54.5-106; except that persons who do not participate in such optional retirement plan shall remain members of the association.

(l) Repealed.

24-51-311. Continuation of membership. Notwithstanding the provisions of section 24-51-310, employees of a public hospital which is sold, leased, or otherwise transferred to a nonprofit corporation organized pursuant to the laws of this state for the purpose of conducting a hospital, or employees of an association-affiliated employer that has transferred title pursuant to section 26-12-112 (5) (a), C.R.S., to an entity organized pursuant to the laws of the state for the purpose of conducting a long-term care facility or health care facility, may continue membership in the association if the board determines, in its sole discretion, that continued membership will not adversely affect its qualified governmental plan status and if the transfer agreement provides for continuance of membership and the new employer agrees to submit to the association the appropriate amount of employer and member contributions and disbursements pursuant to part 4 of this article.

24-51-312. Payment of contributions. (1) Nothing in this article shall be construed as modifying or abridging the responsibilities of any person or employer for any social security payments which may be required pursuant to federal law.

(2) Member or employer contributions paid to the association shall not be considered an increase in the salary of such member.

(3) Service credit shall only be earned from the date membership begins and with the payment of contributions thereto.

24-51-313. Termination of affiliation - employer assigned to local government division - requirements. (1) Any political subdivision within the state of Colorado or any public agency created by such a political subdivision that is an employer affiliated with the association pursuant to the provisions of section 24-51-309 and that is assigned to the local government division may make application to the board to terminate the affiliation of the employer with the association. The application shall be made by submitting to the board an ordinance or resolution that has been adopted by the governing body of the employer and that has been approved by at least sixty-five percent of the employees of the employer who are members. Such employee members of the employer shall be notified in writing of the provisions of section 24-51-321 prior to a vote on an ordinance or resolution to terminate the affiliation of the employer with the association.

(2) All applications for termination of affiliation shall comply with the requirements set forth in this section, and, except as otherwise provided in this part 3, all applications meeting such requirements shall be approved by the board. Applications which do not meet the requirements of this section shall not be approved by the board. Upon approval of such application, the effective date of termination of affiliation shall not occur earlier than sixty days or later than ninety days after the date upon which such application is submitted to the board.

24-51-314. Termination of affiliation - rights of benefit recipients and inactive members. The rights of benefit recipients and the vested rights of inactive members shall not be impaired or reduced in any manner as a result of the termination of affiliation of an employer with the association as provided in section 24-51-313.

24-51-315. Termination of affiliation - reserves requirement. (1) The board shall determine the amount of reserves required as of the effective date of termination of affiliation to maintain current benefits payable by the association to benefit recipients and to preserve the vested rights of inactive members. The amount of reserves shall be determined by the board utilizing certified actuarial reports prepared by the actuary. The actuarial report shall also certify that the termination of affiliation shall not have an adverse financial impact on the actuarial soundness of the local government division trust fund. If the actuary determines, in accordance with accepted actuarial principles, that the termination of affiliation shall have an adverse financial impact on the actuarial soundness of the local government division trust fund, the applicant shall not be permitted

to terminate affiliation.

(2) On the effective date of termination of affiliation, the actuarial reports prepared pursuant to the provisions of subsection (1) of this section shall be updated to finalize the amount of reserves required for the purposes specified in subsection (1) of this section. The employer making the application and the employees of such employer who are members shall not be required to make any contributions to the association subsequent to the effective date of termination.

(3) The expenses incurred by the board for the actuarial reports prepared as a result of an application for termination of affiliation shall be paid by the employer making such application.

(4) The board shall provide any information contained in such actuarial reports upon request of the employer making the application for termination of affiliation.

24-51-316. Inadequate reserves - excess reserves - nonpayment. (1) In the event that the amount of the reserves required pursuant to the provisions of section 24-51-315 exceeds the amount of the employer's share of the employer contribution reserve in the local government division trust fund as calculated by the actuary, then the employer shall make an additional payment as of the effective date of termination of affiliation in an amount equal to the difference between the amount of reserves required and the amount of reserves on deposit.

(2) In the event that the amount of the reserves on deposit in the local government division trust fund as calculated by the actuary for the employer requesting termination of affiliation exceeds the amount of reserves required pursuant to the provisions of section 24-51-315, such excess amount and the amount required for the transfer of member contributions as provided in section 24-51-317 shall be transferred by a direct trustee-to-trustee transfer to the alternate pension plan or system required by section 24-51-319 as of the effective date of termination of affiliation.

(3) If any payment required pursuant to the provisions of subsection (1) or (2) of this section is not made, interest shall be assessed on the amount due at the rate specified for employers in section 24-51-101 (28) until such amount is paid in full.

24-51-317. Termination of affiliation - member contributions. (1) Members who have less than five years of service credit and are employees of an employer which has terminated its affiliation with the association shall have their member contributions credited to the alternative pension plan or system required by section 24-51-319.

(2) Members who have five or more years of service credit and are employees of an employer which has terminated its affiliation with the association may elect that their accounts remain with the association by giving written notice to the association prior to

the effective date of termination of affiliation. Members who make such an election shall become inactive members entitled to vested benefits as of the effective date of termination of affiliation. Members who do not make such an election shall have their member contributions credited to the alternative pension plan or system required by section 24-51-319.

24-51-318. Purchase of forfeited service credit. The provisions of section 24-51-503 which relate to the purchase of service credit forfeited by the refund of member contributions shall not apply to the members who are employees of an employer which has terminated its affiliation with the association. Such service credit forfeited by such termination of affiliation may be purchased pursuant to the provisions of section 24-51-505.

24-51-319. Retirement plan - creation and use. An employer which terminates its affiliation with the association shall utilize an existing, or shall establish an alternative, pension plan or system established pursuant to the provisions of article 54 of this title.

24-51-320. Reaffiliation of a public entity. (1) Any employer which terminates its affiliation with the association pursuant to the provisions of section 24-51-313 shall be eligible to apply for reaffiliation with the association as provided in section 24-51-309 no earlier than one year after the effective date of termination of affiliation.

(2) Such application for reaffiliation shall not be submitted to the association unless approved by sixty-five percent of the employees of the public entity who are eligible to become members of the association.

(3) The board shall not approve any application for reaffiliation with the association if such reaffiliation will have an adverse financial impact on the actuarial soundness of the local government division trust fund.

24-51-321. No state liability - political subdivision pension plans. The state shall not be held liable for any deficit that occurs in any defined benefit or defined contribution plan or system of any political subdivision within the state of Colorado or any public agency created by such a political subdivision which is an employer which has terminated affiliation with the association.

PART 4

CONTRIBUTIONS

24-51-401. Employer and member contributions.

(1) and (1.5) Repealed.

(1.6) For the purposes of sections 24-51-401 to 24-51-404 and sections 24-51-405.5, 24-51-409, and 24-51-411, the term "member" shall include DPS members and the term "retiree" shall include DPS retirees.

(1.7) (a) Employers shall deliver a contribution report and the full amount of employer contributions, member contributions, and working retiree contributions to the association within five days after the date members and retirees are paid. Except as provided in paragraph (f) of this subsection (1.7), subsection (7) of this section, and section 24-51-408.5, such contributions shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

TABLE A
CONTRIBUTION RATES

Division	**Membership**	**Employer Rate**	**Member Rate**
State	All Members Except State Troopers	10.15%	8.0%
		12.85%	10.0%
School	All Members	10.15%	8.0%
Local Government	All Members	10.0%	8.0%
Judicial	All Members	13.66%	8.0%
DPS	All Members	13.75%	8.0%

(b) Contributions shall be calculated using the contribution rates that were in effect on the last day of the payroll period.

(c) Contributions for salary payments made to a member for unintentional nonrecurring adjustments or corrections that are paid separate from one of the employer's regular payroll cycles may be reported and paid to the association with the employer's next regular payroll cycle.

(d) If an employer makes payment to the association through an automated clearing house debit transaction, payment will be considered received on time if valid and

executable automated clearing house instructions are received by the association by the date specified in paragraph (a) of this subsection (1.7).

(e) In recognition of the effort to equalize the funded status of the Denver public schools division and the association's school division as more fully provided in section 24-51-412, beginning January 1, 2015, and every fifth year thereafter, the association shall calculate a true-up to confirm the equalization status of the Denver public schools division and the association's school division, and, if necessary, the board shall recommend that the general assembly adjust the Denver public schools total employer rate to assure the equalization of the Denver public schools division's ratio of unfunded actuarial accrued liability over payroll to the association's school division's ratio of unfunded actuarial accrued liability over payroll at the end of the thirty-year period. The true-up shall be based on audited results of the association's school division's and the Denver public schools division's actual unfunded actuarial accrued liability and payroll experience at every point of true-up. If the ratios of unfunded actuarial accrued liability over payroll based on actual experience are not projected to equalize over the thirty-year period, the board shall recommend that the Denver public schools division total employer rate be adjusted by the general assembly.

(f) (I) For the 2010-11 and 2011-12 state fiscal years, except as provided in subsection (7) of this section and section 24-51-408.5, the amount of employer and member contributions for employers and members in the state and judicial divisions of the association shall be based upon the rates for the appropriate division as set forth in the following table multiplied by the salary, as defined in section 24-51-101 (42), paid to members and retirees for the payroll period:

TABLE A.5
CONTRIBUTION RATES

Division	Membership	Employer Rate	Member Rate
State	All Members Except	7.65%	10.5%
	State Troopers	10.35%	12.5%
Judicial	All Members	11.16%	10.5%

(II) For the 2010-11 and 2011-12 state fiscal years, the employer and member contribution rates for employers and members in the school, local government, and Denver public schools divisions of the association shall be calculated pursuant to paragraph (a) of this subsection (1.7).

(1.8) (Deleted by amendment, L. 2006, p. 1177, § 6, effective May 25, 2006.)

(2) Along with such contributions, the employer shall deliver to the association by

the date established in subsection (1.7) of this section a contribution report containing any member information required by the board to properly credit money to the employer contribution reserve and the member contribution accounts in the member contribution reserve.

(3) The employer shall be assessed by the association, pursuant to rules adopted by the board, interest on the contributions, including working retiree contributions, if either contributions or member information is not submitted by the date established in subsection (1.7) of this section.

(4) and (5) (Deleted by amendment, L. 91, p. 876, § 9, effective, July 1, 1991.)

(6) For all members, contributions will be subject to any maximum limits imposed under federal income tax law including the limitations set forth in section 401 (a) (17) of the federal "Internal Revenue Code of 1986", as amended, and any other limit on the members' total gross salary that may be taken into account for purposes of determining member contributions.

(7) If a final judicial determination provides that an employer is obligated to pay damages to the association for unpaid contributions and the damages awarded are greater than the amounts provided pursuant to section 24-51-402, then the association shall reduce the employer contribution rate for the employer to a level that will offset the additional damages paid. If possible, the association shall set a rate of employer contributions that is sufficient to offset the additional damages over a twelve-month period. If the employer does not owe sufficient employer contributions to offset the additional damages over a twelve-month period, then the association shall eliminate the employer contributions for the employer until the excess damages are fully offset.

24-51-402. Unpaid contributions for any member - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The litigation of disputes regarding the payment of contributions by employers to the public employees' retirement association represents an inappropriate allocation of public moneys. Courts already suffer from overcrowded dockets, and the use of judicial resources to resolve such disputes means that taxpayers foot the bill for plaintiffs, defendants, and judges alike. Once all appropriate benefits have been accorded to members or inactive members of the association, any dispute then remaining is solely between governmental entities. The general assembly finds that the litigation of these disputes is an inappropriate use of the limited resources of the association, public employers, and the courts because it is possible to establish reasonable and fair rules for the resolution of such disputes without any need for judicial involvement. The general assembly therefore intends to resolve any current disputes and to clearly delineate the responsibilities of governmental entities so that future disputes do not require any litigation or unnecessary expenditure of state moneys.

(b) Fairness requires that the general assembly prescribe uniform results in every circumstance, a goal that is not obtainable when varying results arise from litigation of contributions disputes in the courts;

(c) Under the provisions of this section, members and inactive members will receive the full benefits promised by law and, therefore, there is no question regarding the equal treatment of any individual;

(d) In order to minimize the risk of future litigation between the public employees' retirement association and other governmental entities, it is appropriate to clarify under sections 24-51-205 (3.5) and 24-51-207 (2) that the board of trustees of the association may reasonably settle or compromise disputes without violating any principle of fiduciary responsibility;

(e) Should any judicial determination regarding an employer's liability for contributions be contrary to the results provided under this section, the association will be required under section 24-51-401 (7) to accept a reduced employer contribution level to offset all excess damages above the level of contributions the general assembly has established. The general assembly further finds that the establishment of a proper rate of contributions is clearly a legislative function and that it is appropriate for the general assembly to modify the level of employer contributions when necessary to offset the results of judicial awards that are contrary to the amounts established by the general assembly. The general assembly declares that it is its express intent to overrule any judicial decision entered prior to May 22, 1995, that is contrary to the provisions of this section.

(2) The provisions of this section and sections 13-80-103.5 (1) (d) and 13-80-108 (13), C.R.S., apply to the following:

(a) Any cause of action accruing on or after May 22, 1995;

(b) Any unresolved cause of action accruing prior to May 22, 1995; and

(c) (I) Any cause of action resolved on or after July 1, 1994, but prior to May 22, 1995. The following shall govern the application of this section to the causes of action specified in this paragraph (c):

(A) This section shall affect only the total amount of the payments in any cause of action specified by this paragraph (c). Such total amount of payments shall not exceed the amount specified under subsection (3) (a) or (3) (b) (I) of this section, whichever is applicable. The association shall refund, or shall not collect, any difference between the amount paid, agreed to be paid, or awarded in any such cause of action and the amount specified under subsection (3) (a) or (3) (b) (I) of this section. Subsection (3) (b) (II) of this section shall not affect the allocation of payments pursuant to an agreement, settlement agreement, or judgment resolving a cause of action specified by this paragraph (c).

(B) This section shall not require any member or inactive member to make any payment of unpaid contributions with respect to any cause of action specified by this

paragraph (c) if such member or inactive member is not required to make such payment under the agreement, settlement agreement, or judgment resolving the cause of action.

(C) This section shall not affect any benefits provided to individuals as the result of the payment of unpaid contributions with respect to any cause of action specified by this paragraph (c).

(II) For the purposes of this paragraph (c), a cause of action is resolved if there is an agreement to make payment under the cause of action, whether or not the full payment has been made, if there is a settlement agreement in a lawsuit between the parties, whether or not the full payment under the settlement agreement has been made, or if there is a final judgment entered, whether or not the judgment has been fully paid or collected.

(3) If an employer fails to provide membership in the association to an individual so entitled pursuant to the provisions of this article or fails to provide the required level of employer contributions for an individual pursuant to the provisions of this article, the following payment shall be made to the association:

(a) If the individual is not a member or inactive member at the time the association first notifies the employer of its claim for unpaid contributions, the employer shall pay the unpaid employer contributions on behalf of the individual for the period contributions should have been made at the contribution rate applicable during such period, plus the amortization equalization disbursement in effect pursuant to section 24-51-411 for the period contributions should have been made, plus interest on such employer contributions and the amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid. If an employer pays contributions pursuant to this paragraph (a) on behalf of an individual who was not a member or inactive member when the association first notifies the employer and such individual subsequently becomes a member and completes one year of earned service credit, the member may purchase service credit for the appropriate period by paying the unpaid member contributions for the period for which contributions should have been made at the contribution rate applicable during such period, plus interest on such member contributions at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid.

(b) (I) If the individual is a member or inactive member at the time the association first notifies the employer of its claim for unpaid contributions, the payment equals the lesser of the following amounts:

(A) For a member, the cost to purchase the appropriate amount of service credit at the rate established pursuant to section 24-51-505, plus the amortization equalization disbursement in effect pursuant to section 24-51-411 for the period contributions should have been made; and, for an inactive member, the cost to purchase the appropriate amount of service credit at the rate established pursuant to section 24-51-505, based upon the salary at the date of last employment, plus the amortization equalization disbursement

that should have been made, plus interest at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, from the date of last employment until the date contributions are paid; or

(B) The unpaid employer and member contributions and amortization equalization disbursement for the period contributions should have been made, plus interest on such employer and member contributions and the amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid.

(II) The amounts paid to the association shall be allocated and collected in the following order until the full amount that is owed under subparagraph (I) of this paragraph (b) is reached:

(A) The employer shall first pay the unpaid employer contributions and amortization equalization disbursement on behalf of the member or inactive member for the period contributions should have been made, plus interest on such employer contributions and amortization equalization disbursement at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid;

(B) The member or inactive member shall next pay the unpaid employee contributions for the period contributions should have been made, without interest; and

(C) The employer shall next pay interest on the unpaid employee contributions for the period contributions should have been made at the applicable actuarial investment assumption rate, as such interest rate is from time to time adjusted, until such contributions are paid; except that the employer is only required to pay interest on the amount of employee contributions owed by the member or inactive member under sub-subparagraph (B) of this subparagraph (II) that the member or inactive member actually pays.

(III) If the full amount owed pursuant to the provisions of this paragraph (b) is not paid because the member or inactive member pays less than the full amount of employee contributions, then:

(A) If the member or inactive member was not provided membership during the applicable time period, the association shall provide partial service credit to the member or inactive member in the same proportion to the total amount of service credit that would have been earned if contributions had been made as the amount actually paid to the association bears to the amount that was owed to the association; and

(B) If the member or inactive member was provided membership during the applicable time period, the association shall provide a partial increase in the highest average salary of the member or inactive member in the same proportion to the increase in highest average salary that would have been earned if contributions had been paid as the amount actually paid to the association bears to the amount that was owed to the association.

(4) Within ninety days after the time the association first notifies an employer of its claim for unpaid contributions, the association shall attempt to notify all members and inactive members regarding their rights to pay unpaid employee contributions pursuant to subsection (3) (b) (II) (B) of this section. Any member or inactive member who elects to pay all or any portion of unpaid employee contributions shall notify the association of such election within one year after the date the employer pays the unpaid employer contributions pursuant to subsection (3) (b) (II) (A) of this section. If a member or inactive member fails to notify the association of the member's or inactive member's intent to pay as allowed under this subsection (4), the association may elect to treat the member or inactive member as having forfeited the right to make such contributions. Any member or inactive member who elects to pay all or any portion of unpaid employee contributions may pay employee contributions in installment payments over a period not to exceed sixty months or over a period equal to the amount of service credit that would have been earned if contributions had been made, whichever period is shorter.

(5) If an individual for whom contributions are being claimed is not a member of the association at the time the association first notifies an employer of its claim for unpaid contributions, an action to collect unpaid contributions is subject to the limitations provided in section 13-80-103.5 (1) (d), C.R.S. If an individual for whom contributions are being claimed is a member or inactive member at the time the association first notifies an employer of its claim for unpaid contributions, an action to collect unpaid contributions is not subject to any limitation under article 80 of title 13, C.R.S.

24-51-403. Contributions assumed and paid by the employer. For purposes of deferring federal income tax imposed on salary, the member contributions and the working retiree contributions assumed and paid for by the employer shall be in lieu of paying such amounts as salary and shall be treated as employer contributions pursuant to the provisions of 26 U.S.C. sec. 414 (h) (2), as amended. For all other purposes of this article, member contributions assumed and paid for by the employer shall be considered member contributions.

24-51-404. Combining member contributions. Any member whose previous member contribution account has not been refunded shall be credited with such member contributions in said account upon a resumption of membership. Notwithstanding the provisions of this section, members exercising portability between the Denver public schools division and the other association divisions shall be governed by the provisions of section 24-51-1747.

24-51-405. Refund of the member contribution account. (1) Subject to portability, any member who terminates membership for any reason other than retirement or death may request a refund of all moneys credited to the member contribution account and payment of matching employer contributions if said member has not resumed membership. Upon request, a refund shall be made by the association within ninety days after the date of termination of employment covered by membership or the date the association received the refund request, whichever is later.

(2) A member contribution account shall not be refunded and matching employer contributions shall not be paid to such member for any reason other than termination of membership.

(3) Repealed.

(4) All rights of membership and any future benefits associated with a member contribution account and matching employer contributions are forfeited when a refund is made.

(5) Employer contributions made to the association are nonrefundable to an employer.

(6) Partial refunds are prohibited.

(7) The amount of matching employer contributions shall be determined pursuant to the provisions of section 24-51-408.

(8) An individual who refunded his or her member contribution account pursuant to this section and again commences membership on or after July 1, 2005, but before January 1, 2007, whether or not the individual purchases all or part of the period associated with the refunded member contribution account, shall have no rights associated with membership prior to July 1, 2005, except as mandated by federal law, and such individual shall not be considered to have been a member, inactive member, or retiree on June 30, 2005.

(9) An individual who refunded his or her member contribution account pursuant to this section and again commences membership on or after January 1, 2007, whether or not the individual purchases all or part of the period associated with the refunded member contribution account, shall not have any rights associated with membership prior to January 1, 2007, except as mandated by federal law, and such individual shall not be considered to have been a member, inactive member, or retiree on December 31, 2006.

(10) Subject to portability, the amount available to DPS members in the event of a refund shall be governed by section 24-51-1711.

24-51-405.5. Direct rollovers. Notwithstanding any other provision of this article, effective January 1, 1993, a terminated member, a surviving spouse, or a named beneficiary may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover in accordance with section 401 (a) (31)

of the federal "Internal Revenue Code of 1986", as amended.

24-51-406. Payments from the judicial division. Any member of the judicial division who was a member of that division on or before July 1, 1973, and who retires from the judicial division with more than sixteen years of service credit may elect prior to retirement to receive, within ninety days following the effective date of retirement, a payment of the member contributions and interest together with matching employer contributions, calculated pursuant to the provisions of section 24-51-408 (1), that are associated with the service credit earned during the seventeenth through the twentieth years. This payment shall negate the service credit earned during those years.

24-51-407. Interest. (1) Member contributions shall earn interest beginning with the date of the first contribution, and, on succeeding balances, from the date of the first contribution through either the date the member contribution account is refunded and matching employer contributions are paid, the date a single payment is paid to the beneficiary, the date survivor benefits become payable, or the date of retirement, whichever occurs first.

(2) Member contributions made prior to July 1, 1995, shall earn interest at the rate of six and eight-tenths percent per year, compounded annually, in lieu of the former rate, if a member contribution account exists for the person on July 1, 1995.

(3) From July 1, 1995, to June 30, 2004, member contributions shall earn interest at a rate equal to eighty percent of the actuarial investment assumption rate, compounded annually, that was in effect at the time interest was earned.

(4) On and after July 1, 2004, member contributions shall earn interest at a rate specified by the board, compounded annually, that is in effect at the time interest is earned. In no event shall the board specify a rate pursuant to this subsection (4) that exceeds five percent.

(5) Notwithstanding the provisions of this section, DPS member accounts existing as of December 31, 2009, shall be credited regular interest in accordance with section 24-51-1702 (31) through and including December 31, 2009. Thereafter, Denver public schools division member accounts shall earn interest in accordance with subsection (4) of this section.

24-51-408. Matching employer contributions. (1) For members who receive a benefit or who receive a refund payable after meeting the age and service requirements for a service or reduced service retirement benefit, or for payments made to survivors or beneficiaries of members who die before retirement, matching employer contributions

shall be an amount equal to the member contribution account less:

(a) Any amounts paid for the purchase of service credit;

(b) Any payments in lieu of member contributions; and

(c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (1).

(2) For members who have five or more years of earned service credit and receive a refund prior to sixty-five years of age and prior to meeting the age and service requirements for a service or reduced service retirement benefit, the amount of matching employer contributions paid shall be one-half of an amount equal to the member contribution account less:

(a) Any amounts paid for the purchase of service credit;

(b) Any payments in lieu of member contributions; and

(c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (2).

(2.5) Notwithstanding subsection (2) of this section, for a member who has less than five years of earned service credit as of the date of refund and who receives a refund prior to sixty-five years of age and prior to meeting the age and service requirements for a service or reduced service retirement benefit, the amount of matching employer contributions paid shall be one-half of an amount equal to the member contribution account accumulated prior to January 1, 2011, less:

(a) Any amounts paid for the purchase of service credit;

(b) Any payments in lieu of member contributions; and

(c) Any interest accrued on the amounts specified in paragraphs (a) and (b) of this subsection (2.5).

(3) Notwithstanding subsections (1) and (2) of this section, for members of the local government division and for payments made to survivors or beneficiaries of such members who die before retirement, the amount of matching employer contributions shall be eighty percent of the amount that would be paid to members, survivors, or beneficiaries in divisions of the association other than the local government division if the local government division members had the same contribution history and age as the members of the other divisions. Notwithstanding any other provision of this subsection (3) to the contrary, the amount of matching employer contributions for members of the local government division shall be as provided in subsections (1) and (2) of this section effective on July 1 of any year in which the most recent determination of the association's actuary specifies that such contributions for the local government division will not cause the amortization period in such division to exceed thirty years.

(4) The provisions of this section shall not apply to DPS member contribution accounts that exist on December 31, 2009, with regard to past contributions or future contributions. Member contribution accounts in the Denver public schools division created on or after January 1, 2010, shall be governed by this section.

24-51-408.5. Matching employer contribution on voluntary contributions made by members to tax-deferred retirement programs. (1) For any member who makes a voluntary contribution to any eligible tax-deferred retirement program, the employer shall make a matching contribution on such voluntary contribution to the eligible tax-deferred retirement program subject to the provisions of this section. A member of the defined contribution plan pursuant to part 15 of this article shall not be eligible for matching contributions under this section on voluntary contributions made from salary earned as a member of the defined contribution plan.

(2) The tax-deferred retirement programs that are eligible to receive matching employer contributions in accordance with subsection (1) of this section shall include any tax-deferred retirement program in which the member participates:

(a) That is available to members and is either established in accordance with state law or sponsored by the employer; and

(b) (I) That is authorized under section 401 (k), 403 (b), or 457 of the federal "Internal Revenue Code of 1986", as amended; or

(II) That is authorized as a defined contribution plan under section 401 (a) of the federal "Internal Revenue Code of 1986", as amended.

(3) The level of the matching employer contribution on voluntary contributions by members to eligible tax-deferred retirement programs shall be set by the board annually not later than September 1 of each year. The level set by the board shall apply for the following calendar year. The level shall be set separately for each division of the association and shall be based on the percentage of salary for each division available for matching contributions according to subsection (4) of this section. When setting the level of the matching employer contribution on voluntary contributions to eligible tax-deferred retirement programs, the board shall specify the percentage of a member's voluntary contribution to be matched by the employer and the maximum voluntary contribution by any member subject to the matching employer contribution.

(4) The matching employer contribution on voluntary contributions to eligible tax-deferred retirement programs shall terminate for payroll periods that end after the last day of the calendar month following April 2004 and thereafter shall resume only when the actuary determines that the actuarial value of assets exceeds one hundred ten percent of actuarial accrued liabilities. One-half of the amount of a reduction in the employer contribution rates as determined in subsection (5) of this section to amortize any overfunding in the respective division's trust fund shall be available for matching employer contributions.

(5) If the actuarial value of assets exceeds one hundred ten percent of the actuarial accrued liabilities in any division, as determined by the association's actuary, the division shall be considered overfunded by the amount of the difference. If a division is overfunded, the association's actuary shall determine not later than September 1 of each

year the reduction in the employer contribution rates specified in section 24-51-401(1.7) necessary to amortize the overfunding in excess of one hundred ten percent up to one hundred fifteen percent of actuarial accrued liabilities over a period of thirty years. The amount of any overfunding in excess of one hundred fifteen percent of actuarial accrued liabilities shall be amortized over a period of twenty years. The calculation of the amount for any fiscal year of any decrease in the employer contribution rates due to overfunding shall be determined using the actuary's calculation from the preceding September 1.

(6) (a) If a division's trust fund is determined to be overfunded pursuant to subsection (5) of this section, then commencing with the fiscal year that begins following the actuary's calculation from the preceding September 1, the employer contribution rate specified in section 24-51-401 (1.7) for state division employers, for school division employers, local government division employers, and judicial division employers shall be reduced to amortize any overfunding in the respective division's trust fund by twenty percent of the amount of any reduction in the employer contribution rates as determined in accordance with subsection (5) of this section. The calculation of the amount of any reduction in the employer contribution rates due to overfunding shall be determined using the actuary's calculation from the preceding September 1.

(a.5) (Deleted by amendment, L. 2004, pp. 698, 1945, §§ 5, 19, effective July 1, 2004, and January 1, 2006.)

(b) Each employer shall subtract from their regular contribution to the association an amount equal to the amount that the employer paid as matching contributions on members' voluntary contributions to eligible tax-deferred retirement programs pursuant to this section.

(c) In no event shall the total reduction in any division's employer contribution rate pursuant to this subsection (6) cause the employer contribution rate to be inadequate to pay contributions required for the health care trust fund as specified in section 24-51-208 (1) (f).

(7) Employers shall pay a matching contribution on a member's voluntary contribution directly to the eligible tax-deferred retirement program or programs to which the member contributes. Employers shall submit a report to the association concerning payments made pursuant to this subsection (7). The report shall include the amount of the voluntary contributions and matching employer contributions and the programs to which the contributions were paid.

(8) The provisions of this section shall not apply to employers affiliated with the Denver public schools division or DPS members.

24-51-409. Refund of erroneous member contribution. (1) It is the intent of the general assembly that the association consider the payment of interest on any erroneous contribution made to a member contribution account and later refunded to the member. It

is the further intent of the general assembly that, if the member was intentionally and actively involved in an erroneous contribution with an intent to increase a retirement benefit by including contributions to the member contribution account that were not based on salary, then interest may be withheld by the association as provided in this section.

(2) The association shall refund to an employer, for payment to a member, any erroneous contribution, as defined in section 24-51-101 (21.5), that was made by the employer to a member contribution account. The association shall refund to the employer for payment to such member, in addition to the amount of the erroneous contribution, interest in the amount specified in section 24-51-101 (28) (c) for the period beginning on the date of the contribution and ending on the date of the refund; except that, if the member was intentionally and actively involved in the erroneous contribution made to his or her member contribution account, the refund of interest on that amount may be withheld by the association.

24-51-410. Anticipation of forfeitures in determining plan cost. Any benefits forfeited upon a termination of membership in the association shall be anticipated in determining the cost of the plan.

24-51-411. Amortization equalization disbursement. (1) Beginning January 1, 2006, each employer shall deliver to the association an amortization equalization disbursement and, beginning January 1, 2008, a supplemental amortization equalization disbursement pursuant to the same procedures specified for employer contributions in section 24-51-401 (1.7).

(2) For the calendar year beginning January 1, 2006, the amortization equalization disbursement shall be one-half of one percent of the employer's total payroll. The amortization equalization payment shall increase by one-half of one percent of total payroll on January 1, 2007, and, subject to subsection (4) of this section, shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years following 2007 through 2012. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2). Beginning January 1, 2010, employers of the Denver public schools division shall pay the then-applicable accumulated rate of amortization equalization disbursement and the escalating rate in accordance with the provisions of this section.

(3) For the calendar year beginning January 1, 2013, for employers in the school

and Denver public schools divisions, the amortization equalization disbursement payment shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years through 2015. For the calendar year 2016, for employers in the school and Denver public schools divisions, the amortization equalization disbursement payment shall increase by three-tenths of one percent of total payroll at the start of the 2016 calendar year. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2).

(3.5) For the calendar year beginning January 1, 2013, for employers in the state division, the amortization equalization disbursement payment shall increase by four-tenths of one percent of total payroll at the start of each of the calendar years through 2017. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2).

(4) For employers in the local government division and the judicial division, the amortization equalization disbursement shall not exceed the 2010 calendar year rates unless the rates are required to increase in accordance with subsection (9) of this section.

(5) For the calendar year beginning January 1, 2008, the supplemental amortization equalization disbursement shall be one-half of one percent of the employer's total payroll. The supplemental amortization equalization disbursement, subject to subsection (7) of this section, shall increase by one-half of one percent of total payroll on January 1 of each year following 2008 through 2013. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2). Beginning on January 1, 2010, employers of the Denver public schools division shall pay the then-applicable accumulated rate of supplemental amortization equalization disbursement and the escalating rate in accordance with the provisions of this section.

(6) For the calendar year beginning January 1, 2014, for employers in the school and Denver public schools divisions, the supplemental amortization equalization disbursement payment shall increase by one-half of one percent of total payroll at the start of each of the calendar years through 2018. For purposes of this section, the employer's

total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2).

(6.5) For the calendar year beginning January 1, 2014, for employers in the state division, the supplemental amortization equalization disbursement payment shall increase by one-half of one percent of total payroll at the start of each of the calendar years through 2017. For purposes of this section, the employer's total payroll shall be calculated by applying the definition of salary, pursuant to section 24-51-101 (42), to the payroll for all employees working for the employer who are members of the association, or who were eligible to elect to become members of the association on or after January 1, 2006, including any amounts paid in connection with the employment of a retiree by an employer pursuant to section 24-51-1101 (2).

(7) For employers in the local government division and the judicial division, the supplemental amortization equalization disbursement shall not exceed the 2010 calendar year rates unless the rates are required to increase in accordance with subsection (9) of this section.

(8) The amortization equalization disbursement and the supplemental amortization equalization disbursement payments by employers in the state, school, and Denver public schools divisions shall continue at the rate specified in subsections (3), (3.5), (6), and (6.5) of this section until adjusted pursuant to this subsection (8). When the actuarial funded ratio of the state, school, or Denver public schools division of the association, based on the actuarial value of assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the amount of the amortization equalization disbursement and supplemental amortization equalization disbursement shall be reduced, in equal parts, for that particular division by one-half of one percent each. If the actuarial funded ratio of the division based on the actuarial value of assets reaches one hundred three percent and subsequently the actuarial funded ratio of the division is below ninety percent, the amortization equalization disbursement and supplemental amortization equalization disbursement shall be increased by one-half of one percent each; except that, at no time shall the amortization equalization disbursement for the school and Denver public schools divisions exceed four and one-half percent or for the state division exceed five percent nor shall the supplemental amortization equalization disbursement for the school and Denver public schools divisions exceed five and one-half percent each or for the state division exceed five percent.

(9) The amortization equalization disbursement and the supplemental amortization equalization disbursement payments by employers in the local government division and judicial division shall continue at the rate specified in subsections (4) and (7) of this section until adjusted pursuant to this subsection (9). When the actuarial funded ratio of

the local government division or judicial division of the association, based on the actuarial value of the assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the amount of the amortization equalization disbursement and supplemental amortization equalization disbursement shall be reduced for employers in that particular division by one-half of one percent each. If the actuarial funded ratio of the division based on the actuarial value of the assets reaches ninety percent and subsequently the actuarial funded ratio of the division is below ninety percent, the amortization equalization disbursement and supplemental amortization equalization disbursement shall be increased by one-half of one percent each; except that, at no time shall the amortization equalization disbursement or the supplemental amortization equalization disbursement exceed five percent each.

(10) For state employers in the state division, for the 2007-08 state fiscal year and for each fiscal year through the 2016-17 state fiscal year, from the amount of changes to state employees' salaries and any adjustments to the annual general appropriation act pursuant to section 24-50-104, an amount equal to one-half of one percent of total salary shall be deducted and such amount shall be utilized by the employer to fund the supplemental amortization equalization disbursement. For the school, local government, judicial, and Denver public schools divisions, and the remaining employers in the state division who are not state employers, the supplemental amortization equalization disbursement shall, to the extent permitted by law, be funded by allocation of funds otherwise available for use as employee compensation increases prior to award as salary or other compensation to employees.

(11) Moneys made available due to any reduction in the supplemental amortization equalization disbursement pursuant to subsection (8) or (9) of this section, whichever is applicable, shall, to the extent permitted by law, be allocated to employee compensation increases to the extent such source was originally used by an employer to fund the supplemental amortization equalization disbursement.

24-51-412. Denver public schools district - contributions and disbursements - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The Denver public schools has ongoing payment obligations related to certain pension certificates of participation that were issued in 1997 and 2008, referred to in this section as "PCOPS";

(b) Proceeds of the PCOPS were contributed to the Denver public schools retirement system trust fund, resulting in a funded ratio of the Denver public schools retirement system that exceeds the funded ratio of the school division of the association;

(c) As specified in section 24-51-401, "Table A - Contribution Rates", the employers in the Denver public schools division are scheduled to pay a contribution rate three and six-tenths percent higher than employers in the school division of the

association;

(d) In recognition of the fact that Denver public schools retirement system's funded ratio exceeds that of the school division of the association as a result of the contributions from the PCOPS, the payments the Denver public schools makes in respect to the PCOPS provides a basis for the use of an offset in calculating the total of its employer contribution and the amortization equalization disbursement and supplemental amortization equalization disbursement.

(2) Due to the circumstances specified in subsection (1) of this section, contributions required to be made by employers in the Denver public schools division pursuant to section 24-51-401 (1.7) (a) and disbursements required to be made pursuant to section 24-51-411 shall be reduced by an amount in each year equal to the obligations of the Denver public schools with respect to outstanding PCOPS, or any obligations incurred to refinance the PCOPS, at a fixed effective annual interest rate of eight and one-half percent and with principal maturities as they exist on January 1, 2010, or on the date of issuance of any obligations to refinance the PCOPS, recognizing that it is not the intention to increase substantially the offset by accelerating principal maturities through refinancing. The annual offset may be applied by the Denver public schools in installments as it determines so long as there are sufficient monthly contributions to fund the DPS health care trust fund and the annual increase reserve required pursuant to section 24-51-1009, taking into account the true-up provisions in section 24-51-401, and the calculation of the offset shall be included in the contribution reports required by section 24-51-401 (1.7) (a). Since, as stated in paragraph (b) of subsection (1) of this section, the funded ratio of the Denver public schools retirement system trust fund presently exceeds that of the school division of the association, the anticipated equalization of the funded ratios over a thirty-year period of the two divisions provided in section 24-51-401 (2) may necessarily result in a decline in the funded ratio of the Denver public schools division trust fund. Denver public schools shall annually submit to the association audited financial statements showing the actual debt service experience related to the PCOPS.

(3) Pursuant to section 24-51-1701, the board of the association presently intends to present recommendations to the general assembly concerning the association's defined benefit plans, including the school division and the Denver public schools division, to attempt to assure security and sustainability of the plans. Nothing contained in these findings and declarations or elsewhere in this article is intended to restrict the powers of the general assembly to fix and adjust the level of contributions or disbursements required of employers hereafter.

(4) (a) Under no circumstance shall any debt obligations of the Denver public schools become obligations of the association, any other employer affiliated with the association, or the state. In addition, under no circumstance shall any obligations of the association under a debt instrument issued by the association become obligations of the

Denver public schools.

(b) Nothing in this subsection (4) shall limit the application of any of the following provisions to Denver public schools, any charter school that is chartered by Denver public schools, or any charter school that serves students of Denver public schools: Section 22-41-110, C.R.S., relating to timely payment of school district obligations; section 22-30.5-406, C.R.S., relating to direct payment of charter school bonds; section 22-30.5-408, C.R.S., relating to the replenishment of charter school debt service reserve funds; or any other program that is available to school districts or charter schools that meet the conditions set forth in state law.

PART 5

SERVICE CREDIT

24-51-501. Earned service credit. (1) Service credit is earned for periods of employment with an employer during which salary is received by such employee and contributions are made to the association pursuant to the provisions of section 24-51-401 (1.7). No service credit shall be earned in connection with the payment of working retiree contributions.

(2) One year of service credit is earned for twelve calendar months of employment, for which contributions to the association are made, in which a member in each month earns salary greater than or equal to eighty times the federal minimum wage hourly rate in effect at the time of service. A member who is employed in a position in which the employment pattern covers a period of at least eight months but less than twelve months per year shall earn one year of service credit if at least eight months of service credit are earned during the months in which the member is employed during the year.

(3) Earned service credit for periods of employment which do not meet the requirements described in subsection (2) of this section shall be determined by the ratio of actual salary received to eighty times the federal minimum wage hourly rate in effect at the time of service and the ratio of the number of months for which contributions are remitted to the number of months required for one year of service credit.

(4) Earned service credit shall be recorded on an annual basis.

(5) Earned service credit shall not extend beyond the date of death of a member.

(6) Service credit of DPS members prior to or on December 31, 2009, shall be governed by section 24-51-1710. Beginning January 1, 2010, DPS members shall earn service credit pursuant to this section and shall purchase service credit relating to a refunded member contribution account and noncovered employment pursuant to this part 5; except that purchases by DPS members that are ongoing as of January 1, 2010, shall be governed by section 24-51-1705.

24-51-502. Purchased service credit. (1) A member may qualify earlier for service retirement, reduced service retirement, or increased benefits through the purchase of additional service credit.

(2) Service credit purchases are limited to those specified in this part 5.

(3) Service credit purchased pursuant to this part 5 by members who were members, inactive members, or retirees on December 31, 2006, shall be subject to the benefit provisions in effect for the existing member contribution account. Service credit purchased pursuant to this part 5 by members who were not members, inactive members, or retirees on December 31, 2006, shall be subject to the benefit provisions in effect for such member at the time of the initiation of payment of the purchase.

24-51-503. Purchase of service credit relating to a refunded member contribution account. (1) Except as otherwise provided in section 24-51-318, the service credit forfeited with a refund pursuant to the provisions of section 24-51-405 may be purchased upon the former member's resumption of membership and after completion of one year of earned service credit by such member.

(2) For members who were members, inactive members, or retirees on December 31, 2006, and for DPS members, the cost to purchase the forfeited service credit shall be the amount refunded plus interest accrued from the date of refund to completion of purchase.

(3) Repealed.

(4) For members who were not members, inactive members, or retirees on December 31, 2006, the cost to purchase the forfeited service credit shall be the amount refunded, plus interest accrued from the date of refund to completion of purchase, plus an amount equal to one percent of the member's highest average salary for each month or partial month of service credit to be purchased. The highest average salary shall be calculated either based on the salary currently reflected in the member account or by assuming the member's account has been credited with the service credit and salary associated with the forfeited service credit which is the subject of the purchase, whichever is higher. The one percent of highest average salary for each month or partial month of service credit purchased shall be allocated to the annual increase reserve pursuant to part 10 of this article. This subsection (4) shall not apply to DPS members.

24-51-504. Purchase of service credit relating to a paid sabbatical leave. (1) The portion of service credit not earned during a paid sabbatical leave granted after July 1, 1966, may be purchased if the member makes member contributions on the difference between the partial salary paid and the salary which would have been paid if

the paid sabbatical leave had not been taken.

(2) Such member contributions made pursuant to the provisions of subsection (1) of this section may be made concurrently with member contributions on the partial salary paid for such sabbatical leave or after the sabbatical leave has ended at the current rate of member contributions plus interest from the date the sabbatical leave began until such purchase is complete.

24-51-505. Purchase of service credit relating to noncovered employment. (1) Service credit may be purchased for any period of previous employment with any public or private employer in the United States, its territories, or any foreign country subject to the following conditions:

(a) If the service credit to be purchased is for noncovered employment with an employer affiliated with the association, the member must have one year of earned service credit with the association at the time of the purchase. If the service credit to be purchased is for previous employment with a nonaffiliated employer, the member must have one year of earned service credit with the association at the time of the purchase; except that, if the previous employment for which the service credit is to be purchased is nonqualified service, as defined in section 415 (n) (3) (C) of the federal "Internal Revenue Code of 1986", as amended, and the member first became a member of the association on or after January 1, 1999, the member must have five years of earned service credit with the association at the time of the purchase.

(b) The member must provide documentation of the dates of employment and a record of salary received.

(c) The member must provide certification from any retirement program covering such employment that the service credit to be purchased has not vested with that program, except to the extent otherwise required by federal law.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection (2), one year of service credit may be purchased for each year of noncovered employment determined pursuant to the provisions of section 24-51-501 (2) to (4) applicable to earned service credit.

(b) Members who first became members on or after January 1, 1999, may purchase no more than five years of service credit for noncovered employment that is nonqualified service, as defined in section 415 (n) (3) (C) of the federal "Internal Revenue Code of 1986", as amended.

(c) Members who initiate a purchase on or after November 1, 2003, may not purchase service credit that would cause the total years of noncovered service purchased during their membership to exceed ten years. This limit shall not apply to members who provide all required documentation of previous service to the association by October 31, 2003, together with application to purchase the service if the purchase is successfully

completed pursuant to the service credit purchase agreement resulting from said application.

(d) Members employed by a public entity affiliated with the association pursuant to section 24-51-309 may purchase service credit for years employed by the entity without limit, if the purchase is completed before the member terminates employment with the entity, and any such purchase for years employed by the entity in excess of ten years is completed or installment payments initiated within three years after the date the employer affiliates with the association or November 1, 2006, whichever is later.

(3) The cost to purchase service credit for noncovered employment shall be determined by the board and shall be sufficient to pay the actuarial liability associated with the purchase.

(4) (Deleted by amendment, L. 95, p. 263, § 5, effective July 1, 1995.)

(5) Repealed.

(6) Service credit purchased pursuant to the provisions of this section for periods of nonmembership shall not be credited toward the earned service credit requirement for disability retirement benefits as provided for in part 7 of this article or the earned service credit requirement for survivor benefit coverage as provided for in part 9 of this article.

(7) A portion of the amount paid by a member to purchase service credit related to noncovered employment shall be transferred to the health care trust fund on the effective date of the member's retirement or, in case of death prior to retirement, on the effective date of the survivor benefit. The amount transferred shall be one and two one-hundredths percent of the member's highest average salary at the time of the purchase, with interest at the rate specified in section 24-51-101 (28) (a).

24-51-506. Payments for purchased service credit. (1) Service credit purchases may be made by a lump-sum payment, by installment payments, by a trustee-to-trustee transfer or a direct rollover of an eligible rollover distribution from a plan described in section 402 (c) (8) (B) (iii) to (vi) of the federal "Internal Revenue Code of 1986", as amended, including but not limited to the voluntary investment program established pursuant to part 14 of this article and the deferred compensation plan established pursuant to part 16 of this article, or by a rollover of a distribution from an individual retirement account or annuity described in section 408 (a) or 408 (b) of such code that is eligible to be rolled over and would otherwise be included in gross income. Service credit purchases shall be initiated and payment received in full during membership.

(2) Installment payments for service credit purchases are subject to the following provisions:

(a) Repealed.

(b) The first installment payment shall be paid to the association on the date required by the service credit purchase agreement, and all subsequent payments are due

on the tenth calendar day of each month thereafter. Failure to make timely installment payments shall cause the service credit purchase agreement to be cancelled, and all payments received will be returned to the member.

(c) Purchased service credit shall be credited to the member upon completion of all installment payments due.

(3) Installment payments and interest shall be credited to the member contribution account. After installment payments are completed, they may not be withdrawn except with a refund pursuant to the provisions of section 24-51-405.

(4) Upon the death of a member prior to completion of the service credit purchase, any installment payments made up to the date of death shall be refunded to the person eligible to receive survivor benefits, or a single payment shall be made to such person.

(5) Any moneys a member pays for the purchase of service credit shall qualify for income tax deferral to the extent allowed by federal law.

24-51-507. Uniformed service credit. (1) A member shall be granted additional service credit for uniformed service, as defined for reemployment right purposes under federal law, if:

(a) Such member had membership in the association at the time the uniformed service began;

(b) Such member was discharged from uniformed service and returned from the leave of absence for uniformed service to membership;

(c) The period of uniformed service is verified and is not already covered by association service credit upon return from uniformed service to membership; and

(d) All service credit forfeited by a refund pursuant to the provisions of section 24-51-405 is purchased.

(2) Uniformed service credit shall be limited to a maximum of five years.

(3) Death or any disability arising from uniformed service shall be excluded as a basis for disability retirement benefits or survivor benefits pursuant to the plan.

(4) The provisions of this section shall not apply to DPS members.

24-51-508. Leave of absence for uniformed service. An employee who is on a leave of absence for uniformed service at the time his or her employer becomes affiliated with the association shall be entitled to service credit as provided for in section 24-51-507 upon becoming a member after returning to such employment.

24-51-509. Combining service credit. Service credit earned by a member during the most recent period of membership shall be combined with the service credit

associated with the existing member contribution account of such member. Notwithstanding the provisions of this section, members exercising portability between the Denver public schools division and other association divisions are governed by the provisions of section 24-51-1747, retirees suspending retirement or reduced service retirement benefits are governed by section 24-51-1103 (1), and DPS retirees suspending retirement benefits are governed by section 24-51-1726.5.

PART 6

SERVICE RETIREMENT

24-51-601. Retirement benefit reserve. A retirement benefit reserve is hereby created to provide retirement benefits to retirees and cobeneficiaries.

24-51-601.5. Legislative declaration. (Repealed)

24-51-602. Service retirement eligibility. (1) (a) Members, except state troopers, who have five years of service credit as of January 1, 2011, and who have met the age and service credit requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) (a), (2), and (3):

TABLE B
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
50	30
60	20
65	5

(a.5) Notwithstanding paragraph (a) of this subsection (1), any person except a state trooper who had five years of service credit as of January 1, 2011, and who was not a member, inactive member, or retiree on June 30, 2005, but was a member, inactive member, or retiree on December 31, 2006, shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) (a), (2), and (3) if the member has met the age and service credit

requirements stated in the following table:

TABLE B.05
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
Any age	35
55	30
60	20
65	5

(a.7) Notwithstanding paragraphs (a) and (a.5) of this subsection (1), any person except a state trooper who was not a member, inactive member, or retiree on December 31, 2006, or who was a member, inactive member, or retiree on December 31, 2006, but as of January 1, 2011, did not have five years of service credit, or who is a DPS member with less than five years of service credit as of January 1, 2011, shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) (a), (2), and (3), if the member has met the age and service credit requirements stated in the following table:

TABLE B.07
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
Any age	35
55	30
60	25
65	5

(b) State troopers who have met the age and service credit requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603 (1) and (3):

TABLE B.1

SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
Any Age	30
50	25
55	20
65	5

(c) Members who were members, inactive members, or retirees on December 31, 2006, who had five years of service credit as of January 1, 2011, and who are fifty-five years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty years or more.

(d) Members who were not members, inactive members, or retirees on December 31, 2006, but who were members, inactive members, or retirees on December 31, 2010, or members who were members, inactive members, or retirees on December 31, 2006, but as of January 1, 2011, did not have five years of service credit, or DPS members with less than five years of service credit as of January 1, 2011, and who are fifty-five years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-five years or more.

(1.5) (a) Members, except state troopers, who were not members, inactive members, or retirees on December 31, 2010, but who were members, inactive members, or retirees on December 31, 2016, and who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603:

TABLE B.2
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)

Any Age	35
58	30
65	5

(b) Members who are eligible for a benefit pursuant to this subsection (1.5) and who are fifty-eight years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-eight years or more.

(1.7) (a) Members who were not members, inactive members, or retirees on December 31, 2016, who have met the age and service requirements stated in the following table and who are not eligible for service retirement benefits pursuant to subsection (1.8) of this section shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603:

TABLE B.3
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
60	30
65	5

(b) Members who are eligible for a benefit pursuant to this subsection (1.7) and who are sixty years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals ninety years or more.

(1.8) (a) Members of the school division or Denver public schools division who were not members, inactive members, or retirees on December 31, 2016, who have met the age and service requirements stated in the following table shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603; except that at least the most recent ten years of service credit used in meeting the requirements of the table below must be earned in the school or Denver public schools divisions in order for the member to be eligible

pursuant to this paragraph (a):

TABLE B.4
SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)	Service Credit Requirement (years)
Any Age	35
58	30
65	5

(b) Members who are eligible for a benefit pursuant to this subsection (1.8) and who are fifty-eight years of age or older shall, upon written application and approval of the board, receive service retirement benefits pursuant to the benefit formula set forth in section 24-51-603, without reduction pursuant to section 24-51-604, if they have at least five years of service credit and if the number of years of their age plus the number of years of their service credit equals eighty-eight years or more.

(2) Members with less than five years of service credit shall be eligible for service retirement benefits pursuant to the provisions of section 24-51-605.5 upon reaching sixty-five years of age if contributions were made for sixty months.

(2.5) Members with less than five years of service credit who have not made contributions for sixty months shall be eligible for money purchase retirement benefits calculated pursuant to section 24-51-605.5 (2), upon reaching sixty-five years of age.

(3) Repealed.

(4) (Deleted by amendment, L. 2009, (SB 09-282), ch. 288, p. 1345, § 30, effective January 1, 2010.)

(5) (Deleted by amendment, L. 2010, (SB 10-001), ch. 2, p. 11, § 12, effective January 1, 2011.)

24-51-603. Benefit formula for service retirement. (1) (a) Except as otherwise provided in subsection (2) of this section, effective July 1, 1997, the option 1 benefit or option A benefit, whichever is applicable, for service retirement for members shall be calculated by multiplying the highest average salary by two and one-half percent times each year and fraction of a year of service credit. The following formula shall be used for this calculation:

Highest Average Salary x (.025 x Years and Fraction of a Year).

(b) (Deleted by amendment, L. 92, p. 1134, § 4, effective July 1, 1992.)

(2) (a) (Deleted by amendment, L. 97, p. 773, § 11, effective July 1, 1997.)

(b) Except as otherwise provided in paragraph (c) of this subsection (2), on and after July 1, 1999, members of the judicial division who were members of that division on or before July 1, 1973, shall be eligible to receive an option 1 benefit upon retiring, which shall be calculated by multiplying the highest average salary by four percent times each year and fraction of a year for the first ten years of service credit, and by one and two-thirds percent times each year and fraction of a year in excess of ten years up to sixteen years of service credit, and by one and one-half percent times each year and fraction of a year in excess of sixteen years up to twenty years of service credit, and by two and one-half percent times each year and fraction of a year in excess of twenty years of service credit. The following formula shall be used for this calculation:

Highest Average Salary x [(.04 x Years and Fraction of a Year through 10 Years) + (.0166 x Years and Fraction of a Year over 10 and up to 16 Years) + (.015 x Years and Fraction of a Year over 16 and up to 20 Years) + (.025 x Years and a Fraction of a Year over 20 Years)].

(c) For any member of the judicial division who retires on or after July 1, 1999, and who is eligible to receive a benefit under this subsection (2), the association shall calculate the member's option 1 benefit under either subsection (1) of this section or this subsection (2), whichever results in the greater benefit.

(d) On July 1, 1999, for any member of the judicial division whose benefit became effective prior to July 1, 1999, and who is eligible to receive a benefit under this subsection (2), the association shall calculate the member's option 1 base benefit prospectively for benefit payments payable on or after July 1, 1999, under either subsection (1) of this section or this subsection (2), whichever results in the greater benefit. The association shall provide benefits to all such benefit recipients based upon such recalculated base benefits effective July 1, 1999.

(3) (a) Regardless of total years of service credit, the option 1 benefit or option A benefit, whichever is applicable, calculated pursuant to the provisions of this part 6 shall not exceed an amount equal to one hundred percent of the highest average salary, nor shall the option 1 benefit or option A benefit, whichever is applicable, exceed the maximum permitted under federal income tax law.

(b) (Deleted by amendment, L. 97, p. 773, § 11, effective July 1, 1997.)

(c) Except as provided in subsection (2) of this section, on July 1, 1997, for benefit recipients whose benefits became effective prior to July 1, 1997, the association shall recalculate each recipient's option 1 base benefit as set forth in subsection (1) of this section, prospectively for benefit payments payable on or after July 1, 1997. The association shall provide benefits to all such benefit recipients based upon such

recalculated base benefits effective July 1, 1997.

24-51-604. Reduced service retirement eligibility. DPS members with less than five years of service credit as of January 1, 2011, and members who have met the age and service credit requirements stated in the following table and who do not meet the requirements of section 24-51-602 shall, upon written application and approval of the board, receive reduced service retirement benefits pursuant to the benefit formula set forth in section 24-51-605:

TABLE C
REDUCED SERVICE RETIREMENT ELIGIBILITY

Age Requirement (years)		Service Credit Requirement (years)
50		25
50	State Troopers only	20
55		20
60		5

24-51-605. Benefit formula for reduced service retirement. (1) (a) For a member who is a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching fifty years of age or older but before reaching sixty years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by three percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1).

(b) For a member who is not a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching fifty-five years of age or older but before reaching sixty years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by:

(I) Three percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have reached sixty years of age, or the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1), if earlier than sixty

years of age; and

(II) Four percent for each year and a proportional percentage for each fraction of a year from the date the member reaches sixty years of age to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1), if on such date the member would have been older than sixty years of age.

(c) For a member who is not a state trooper, who is eligible to retire on and after July 1, 1998, but on or before January 1, 2011, and who retires upon reaching sixty years of age or older but before reaching sixty-five years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by four percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1).

(2) Repealed.

(3) Notwithstanding the provisions of subsection (1) of this section, on and after July 1, 1993, for a member who is not a state trooper, who is eligible for a reduced service retirement benefit as of January 1, 2011, and who retires upon reaching fifty years of age or older but before reaching fifty-five years of age, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by:

(a) Six percent for each year and a proportional percentage for each fraction of a year from the effective date of reduced service retirement to the date the member would have reached fifty-five years of age, or the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1) if earlier than fifty-five years of age; and

(b) Three percent for each year and a proportional percentage for each fraction of a year from the date the member reaches fifty-five years of age to the date the member would have become eligible for a service retirement pursuant to the provisions of section 24-51-602 (1), if on such date the member would have been older than fifty-five years of age.

(4) For a member, DPS member, or inactive member who is not eligible for a retirement benefit as of January 1, 2011, the following provisions shall apply:

(a) For a member or inactive member who retires prior to reaching eligibility for a full service retirement benefit pursuant to section 24-51-602, a reduced service retirement benefit shall be the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603, reduced by an actuarially determined percentage to ensure that, as of the effective date of retirement, the benefit is the actuarial equivalent of the service retirement benefit.

(b) For a DPS member who retires prior to reaching eligibility for retirement pursuant to section 24-51-1713 or 24-51-602, whichever is applicable, a retirement with

an actuarial reduction shall be the option A benefit as calculated according to the formula set forth in section 24-51-1715 (1) (a) (I) or 24-51-603, whichever is applicable, reduced by an actuarially determined percentage to ensure that the benefit, as of the effective date of retirement, is the actuarial equivalent of the retirement benefit without an actuarial reduction.

24-51-605.5. Benefit calculation for money purchase retirement benefit. (1) Members and vested inactive members who have met the age and service credit requirements for eligibility for a service retirement benefit or a reduced service retirement benefit shall, upon written application and approval of the board, receive the greater of:

(a) The retirement benefit calculated pursuant to section 24-51-603 or 24-51-605 for which the member is eligible; or

(b) The money purchase retirement benefit.

(2) The money purchase retirement benefit referred to in paragraph (b) of subsection (1) of this section shall be actuarially determined and shall be based upon the value on the effective date of retirement of the member contribution account and matching employer contributions. The benefit shall be considered a service retirement benefit for all purposes of this article.

24-51-606. Vested inactive member rights. (1) Any member who was a member, inactive member, or retiree on December 31, 2006, who has earned at least five years of service credit and who terminates membership and does not elect to receive a refund pursuant to the provisions of section 24-51-405 shall be eligible for a benefit to become effective upon reaching the age specified in table B in section 24-51-602 for a service retirement or in table C in section 24-51-604 for a reduced service retirement.

(1.5) Any member who was not a member, inactive member, or retiree on December 31, 2006, who has earned at least five years of service credit and who terminates membership and does not elect to receive a refund pursuant to the provisions of section 24-51-405 shall be eligible for a benefit to become effective upon written application and approval by the board and upon reaching the age specified in table B.05, B.07, or B.1 of section 24-51-602, as applicable, for a service retirement or in table C of section 24-51-604 for a reduced service retirement. Notwithstanding the provisions of this subsection (1.5), for such a member who applies for retirement within ninety days after the member attains age and service eligibility, the effective date of retirement shall be the date the member attains such age and service eligibility.

(2) (a) A vested inactive member may make direct payments to the association in lieu of member contributions in order to acquire eligibility for retirement pursuant to the

provisions of section 24-51-602 or 24-51-604. Said payments do not purchase service credit for benefit calculation purposes pursuant to the provisions of section 24-51-603 or 24-51-605.

(b) Direct payments in lieu of member contributions are calculated at the current member contribution rates multiplied by the most recent full-time monthly salary paid for the position previously held by the vested inactive member.

(c) Direct payments may be made by a lump-sum payment or by monthly installments. Lump-sum payments shall not cause the benefit to become payable earlier than the first eligible date for reduced service retirement.

(d) Retroactive lump-sum payments shall include interest assessed from the date of termination of membership until the date on which direct payments begin.

(e) Installment payments, if made, shall be made from the date of termination of membership until the first date of eligibility for service retirement or reduced service retirement, as elected by the vested inactive member.

(f) Installment payments shall become due without notice on the tenth calendar day of each month. Failure to make timely installment payments shall cause all such payments to be refunded to the vested inactive member, and eligibility for retirement which was to be acquired by such payments shall be negated.

(g) Upon the death of a vested inactive member prior to the conclusion of direct payments in lieu of member contributions as authorized pursuant to the provisions of this section and prior to retirement, payments made up to the date of death shall be refunded to the person eligible to receive survivor benefits.

(h) Eligibility to make direct payments in lieu of member contributions shall be limited to vested inactive members who terminate membership before July 1, 2003, and make payments as specified in this section.

24-51-606.5. Indexation of benefits for vested inactive members. A vested inactive member who was a member or inactive member on December 31, 2006, who has reached the age and service requirements for a service or reduced service retirement benefit on or before January 1, 2011, and who has at least twenty-five years of service credit prior to terminating membership shall be eligible, upon retirement, for a benefit, as calculated pursuant to the provisions of section 24-51-603 or 24-51-605, which has been increased by the annual increase specified in sections 24-51-1001 to 24-51-1003, from the date of termination of membership or July 1, 1993, whichever is later, to the effective date of retirement.

24-51-607. Benefit formula for service retirement or reduced service retirement involving direct payments. A benefit for service retirement or reduced service retirement involving direct payments made by a vested inactive member shall be

the option 1 benefit for service retirement, as calculated according to the formula set forth in section 24-51-603 or 24-51-605; except that the amount of the benefit shall then be multiplied by the ratio of service credit to the service credit required for eligibility as set forth in table B in section 24-51-602 or table C in section 24-51-604, whichever is applicable.

24-51-608. Retirement from the judicial division. (Repealed)

24-51-609. Service credit exceeding twenty years. (1) Service credit in excess of twenty years accrued on or before July 1, 1969, shall be included in the computation of the option 1 initial benefit for service retirement pursuant to the provisions of section 24-51-603 or 24-51-605, whichever is applicable.

(2) On or before July 1, 1993, the association shall recalculate the initial benefit for all benefit recipients whose benefits became effective prior to July 1, 1992, pursuant to the benefit formula specified by the provisions of section 24-51-603 or 24-51-605, whichever is applicable. The association shall provide benefits to all such benefit recipients based upon such recalculated initial benefits effective from July 1, 1992.

24-51-610. Division from which a member retires. The division in which the retiree had membership immediately preceding the date of retirement shall be the division from which the member retires.

24-51-611. Maximum limit under federal law. Notwithstanding any other provision of this article, no benefit paid to any benefit recipient shall exceed the maximum permitted for qualified retirement plans pursuant to section 401 (a) (17) or section 415 of the federal "Internal Revenue Code of 1986", as amended, including but not limited to all cost-of-living adjustments permitted by such code. Any changes in the maximum compensation limit under said section 401 (a) (17) shall be applied prospectively. No contribution made pursuant to part 5 of this article or to section 24-51-606 (2) shall cause the limits in section 415 (n) of such code to be exceeded.

24-51-612. Required benefit commencement date. (1) Payment of retirement benefits, for vested inactive members and deferred DPS members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of section 24-51-602, shall commence no later than April 1 of the calendar year following

the calendar year in which the vested inactive member or deferred DPS member attains seventy and one-half years of age.

(2) Payment of retirement benefits, for members and DPS members who are eligible to receive retirement benefits and who have not applied for such pursuant to the provisions of section 24-51-602, and who continue membership after attaining seventy and one-half years of age, shall commence on the effective date of retirement.

24-51-613. Transfer mechanism between PERA and the Denver public schools employees' pension and benefit association. (Repealed)

24-51-614. Employee retirement benefit study. (1) The state auditor shall conduct a comprehensive study of defined benefit and defined contribution retirement plan designs for state employees and for other employees who are members of the association or eligible to be members. The study shall include a comparison of the benefits, cost, and portability of association benefits with the benefits, cost, and portability of benefits provided by other defined benefit and defined contribution retirement plans for public and private sector employees in Colorado and other states, including social security, and a review of the effectiveness of retirement plan designs for attracting and retaining qualified state and school employees. The study shall also include any topics recommended by the board or by the legislative audit committee for the study.

(2) The state auditor shall contract with a professional actuarial or pension consulting firm of national standing to perform duties in connection with the study. The expenses of the firm, as approved by the state auditor, shall be paid by the association.

(3) Repealed.

24-51-615. Distribution of benefits. Distribution of benefits from each division trust fund shall be made in accordance with section 401 (a) (9) of the federal "Internal Revenue Code of 1986", as amended, including the incidental death benefit requirement in section 401 (a) (9) (G), and the applicable treasury regulations and internal revenue service rulings and other interpretations issued thereunder, including treasury regulations sections 1.401 (a) (9)-2 to 1.401 (a) (9)-9. The provisions of this section shall override any distribution options that are inconsistent with section 401 (a) (9) of the federal "Internal Revenue Code of 1986", as amended, to the extent that those distribution options are not grandfathered under treasury regulations section 1.401 (a) (9)-6.

PART 7

24-51-701. Eligibility to apply for short-term disability program payments and disability retirement. (1) Except as otherwise provided for in this section, any member shall be eligible to apply for disability retirement benefits or short-term disability program payments if:

(a) Application is received by the association within ninety days after the date of termination of employment;

(b) The member contribution account has not been refunded;

(c) The member has at least five years of earned service credit, of which at least six months have been earned during the most recent period of membership;

(d) The member is not eligible for service retirement pursuant to the provisions of section 24-51-602.

(2) State troopers shall be eligible to apply for disability retirement or short-term disability program payments immediately upon becoming state troopers if the disability resulted from injuries sustained during the performance of duties as a state trooper.

(3) Members of the judicial division shall be eligible to apply for disability retirement or short-term disability program payments without regard to the amount of earned service credit or to eligibility for service retirement.

(4) Applications for disability for DPS members filed on or before December 31, 2009, shall be governed by the disability provisions of section 24-51-1734, and on or after January 1, 2010, disability shall be governed by the provisions of this part 7. Persons receiving disability benefits under the DPS plan as of December 31, 2009, shall continue to receive such benefits in accordance with the DPS plan.

24-51-702. Disability programs. (1) The association shall provide for two types of disability programs for disabilities incurred on or before termination of employment:

(a) **Short-term disability.** A member who is found by the disability program administrator to be mentally or physically incapacitated from performance of the essential functions of the member's job with reasonable accommodation as required by federal law, but who is not totally and permanently incapacitated from regular and substantial gainful employment, shall be provided with reasonable income replacement, or rehabilitation or retraining services, or a combination thereof, under a program provided by the disability program administrator for a period specified in the rules adopted by the board. The cost of the program shall be funded by the association.

(b) **Disability retirement.** A member who is found by the disability program administrator to be totally and permanently mentally or physically incapacitated from regular and substantial gainful employment as of the date of termination of employment shall be placed on disability retirement, and the association shall provide to such person a

benefit as calculated in section 24-51-704. The benefit shall be paid directly by the association. A member of the judicial division shall also be eligible for disability retirement upon the entry of an order of retirement pursuant to section 23 of article VI of the state constitution for a disability interfering with the performance of the member's duties that is, or is likely to become, of a permanent nature.

24-51-703. Disability program design and administration. The association shall contract with a disability program administrator to determine disability, to provide short-term disability insurance coverage, and to administer the short-term disability program. A contract shall conform to rules adopted by the board, which rules shall include but not be limited to standards relating to the determination of disability; the independent review, by a qualified panel, of determinations made by the disability program administrator and challenged by the applicant; requirements for medical or psychological examinations; the adjustment or termination of payments based on the mental or physical condition of the program participant; the change of status of a program participant from short-term disability to disability retirement or from disability retirement to short-term disability based on the mental or physical condition, education, training, and experience of the program participant; and the monitoring of the disability program administrator's performance by the association.

24-51-704. Calculation of disability retirement benefit. Except as otherwise provided in this section, the disability retirement benefit shall be equal to the amount of the benefit payable pursuant to the provisions of section 24-51-603 which would have been payable upon reaching sixty-five years of age. Such calculation shall include earned and purchased service credit accumulated up to the date of disability plus projected service credit up to sixty-five years of age but not to exceed a total of twenty years of service credit. In no case shall the amount of any disability retirement benefit exceed fifty percent of the highest average salary of said member unless the member has earned and purchased service credit in excess of twenty years which entitles the member to receive the benefit provided pursuant to the provisions of section 24-51-603, based on the actual service credit of said member.

24-51-705. Ineligibility. If any disability is the direct result of any intentionally self-inflicted injury, the member shall not be eligible for short-term program participation or disability retirement benefits.

24-51-706. Disability determination for members of the judicial division. The earned service credit of a member of the judicial division who retires due to disability shall include such service credit as would have been earned had membership continued to the end of the term of office which the member was serving at the time of termination of employment.

24-51-707. Continuation of disability retirement benefits - reduction based on earned income - applications made prior to January 1, 1999. (1) For any disability retiree whose disability retirement date is on or after July 1, 1988, and whose application for disability retirement was received by the association prior to January 1, 1999, the amount of the annual disability benefit shall be reduced by one-third of the amount by which the income earned by such retiree in the preceding calendar year plus the amount of the initial benefit multiplied by twelve exceeds the highest average salary of such retiree multiplied by twelve. The following formula shall be used to determine said reduction:

[Earned Income + (Initial Benefit x 12) - (Highest Average Salary x 12)] x 1/3

(2) The provisions of this section shall apply from the date of disability retirement or January 1, 1989, whichever is later, to the date the retiree meets the requirements for service retirement set forth in section 24-51-602 (1). Unless such disability benefit has been terminated, the provisions of this section shall apply regardless of whether the retiree is disabled or has recovered from such disability.

24-51-708. Division from which a disabled member retires. The division in which the retiree had membership immediately preceding the date of retirement shall be the division from which the member retires.

PART 8

BENEFIT OPTIONS

24-51-801. Benefit options. (1) Any member applying for service retirement or disability retirement may elect to receive a monthly retirement benefit paid in accordance with any one of the following options:

(a) **Option 1.** A single life benefit payable for the life of the retiree and, upon the death of the retiree, the benefit ends. If, upon the death of the retiree, the total amount of benefits that have been paid to the retiree does not exceed the amount of moneys credited

to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the retiree.

(b) **Option 2.** A joint life benefit payable for the life of the retiree and, upon the death of the retiree, one-half of the benefit becomes payable to the cobeneficiary of said retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits that have been paid to them does not exceed the amount of moneys credited to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.

(c) **Option 3.** A joint life benefit payable for the life of the retiree and, upon the death of the retiree, the same benefit becomes payable to the cobeneficiary of the retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits that have been paid to them does not exceed the amount of moneys credited to the member contribution account, an amount equal to twice the amount of any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.

(d) Repealed.

(2) Options 2 and 3 shall be the actuarial equivalent of option 1.

(3) If an option is not elected by a member prior to the effective date of retirement, the member shall be deemed to have elected option 1.

(4) Benefits calculated pursuant to part 17 of this article shall be subject to the benefit payment options provided in sections 24-51-1716 to 24-51-1725.

24-51-802. Change in option or cobeneficiary. (1) Except as otherwise provided in this part 8, the election of an option and the designation of a cobeneficiary for options 2 and 3 shall not be changed after sixty days have elapsed from issuance of the initial benefit payment.

(2) The election of an option or the designation of a cobeneficiary may be changed if the retiree returns to membership and thereafter earns one year of service credit; however, a member whose retirement or reduced service retirement benefits are in separate benefit segments pursuant to section 24-51-1103 (1.5) shall elect the same option and designate the same cobeneficiary for all of his or her separate benefit segments.

(3) A retiree who was not married on the effective date of retirement may elect option 2 or 3 upon marriage and designate the spouse as cobeneficiary. If a retiree is

married on the effective date of retirement and the spouse on said date subsequently dies, the retiree may elect option 2 or 3 upon remarriage and designate the spouse as cobeneficiary.

(3.5) In any dissolution of marriage action in any district court of the state, the court shall have the jurisdiction to order or allow a retiree who is a petitioner or respondent in such action to change the cobeneficiary that was named by such retiree at retirement.

(3.8) In any dissolution of marriage action in any district court of the state that becomes final on or after July 1, 2003, in which the retiree retired on or after July 1, 1988, and elected to receive an option 2 or 3 benefit and designated his or her spouse as cobeneficiary, the court shall have the jurisdiction to order or allow a retiree who is a petitioner or respondent in such action to remove the spouse that was named cobeneficiary by the retiree at retirement, in which case an option 1 benefit shall become payable. The retiree may elect option 2 or 3 upon remarriage and designate the spouse as cobeneficiary.

(4) Designation by a member of a cobeneficiary to receive an option 3 benefit pursuant to the provisions of part 9 of this article may be changed or omitted by said member at any time prior to the date of death.

24-51-803. Determination of option 2 or 3 benefits. (1) For service retirement, the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date the retiree attained the age and service requirements for service retirement regardless of the effective date of such retirement.

(2) For reduced service retirement and disability retirement, the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the effective date of retirement.

(3) When a retiree designates a spouse as a cobeneficiary subsequent to retirement pursuant to the provisions of section 24-51-802 (3), the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date of designation.

(4) When a retiree designates a cobeneficiary subsequent to retirement pursuant to the provisions of section 24-51-802 (3.5), the calculation of benefits payable pursuant to option 2 or 3, as set forth in section 24-51-801, shall be actuarially determined as of the date of designation.

PART 9

SURVIVOR BENEFITS

24-51-901. Survivor benefits reserve. A survivor benefits reserve is hereby created to provide monthly survivor benefits to eligible survivors of certain deceased members and certain deceased inactive members.

24-51-902. Modification of named beneficiaries. A named beneficiary may be added, deleted, or changed by a member or inactive member, including members from the Denver public schools division, upon written notice to the association.

24-51-903. Distribution to named beneficiaries. All named beneficiaries, if more than one, who survive the deceased member or deceased inactive member, including members from the Denver public schools division, shall share equally in a single payment.

24-51-904. Survivor benefits - eligibility - "member" defined. (1) (a) Survivor benefits may become payable if the deceased person was:

(I) A member who had earned at least one year of service credit; except that such one-year service requirement shall be waived if the death of the member was job-incurred; or

(II) An inactive member who had earned at least one year but less than five years of service credit with at least six months of the service credit earned within three years immediately preceding death and the board finds that the inactive member died from the same illness or injury which caused the termination of employment for such inactive member; or

(III) An inactive member who had earned at least five years of service credit.

(b) For the purposes of this part 9, unless the context otherwise requires, "member" means a deceased member or a deceased inactive member who meets the eligibility requirements for survivor benefits on the date of death of such member.

(2) In the event the member did not meet the service credit requirements specified in subsection (1) of this section, no survivor benefits shall be payable; however, a single payment shall be made to the named beneficiary of such member or, if no named beneficiary exists, to the estate of the member.

(3) Notwithstanding any other provisions of this part 9, unless otherwise indicated, survivor payments of DPS members shall be governed by sections 24-51-1735 to 24-51-1746. Pursuant to the portability provisions of part 17 of this article, any frozen accounts shall be treated as inactive and governed by the survivor provisions applicable to the frozen account.

24-51-905. Deceased member who was not eligible for service or reduced service retirement. (1) In accordance with the provisions of this part 9, if a member met the service credit requirements specified in section 24-51-904 (1) (a) (I) or (1) (a) (II) but did not meet the age and service credit requirements for service retirement as of the date of death, pursuant to the provisions of section 24-51-602 or 24-51-604, survivor benefits or a single payment shall be payable in the following order:

(a) To qualified children who are under twenty-three years of age;

(b) To the surviving spouse of the member if no qualified children specified in paragraph (a) of this subsection (1) exist;

(c) To qualified children who are twenty-three years of age or older if none of the persons specified in paragraphs (a) and (b) of this subsection (1) exist;

(d) To dependent parents if none of the persons specified in paragraphs (a) to (c) of this subsection (1) exist;

(e) To the named beneficiary if none of the persons specified in paragraphs (a) to (d) of this subsection (1) exist;

(f) To the estate of the deceased member if none of the persons specified in paragraphs (a) to (e) of this subsection (1) exist.

(2) If an inactive member who had earned at least five years of service credit dies, survivor benefits or a single payment shall be payable in the following order:

(a) To the surviving spouse;

(b) To the named beneficiary if no surviving spouse exists;

(c) To the estate of the deceased member if neither of the persons specified in paragraphs (a) and (b) of this subsection (2) exists.

24-51-906. Deceased member who was eligible for service or reduced service retirement. (1) In accordance with the provisions of this part 9, if a member met the age and service credit requirements for service retirement as of the date of death, pursuant to the provisions of section 24-51-602 or 24-51-604, survivor benefits or a single payment shall be payable in the following order:

(a) To the cobeneficiary;

(b) To the surviving spouse of the member if no cobeneficiary specified in paragraph (a) of this subsection (1) exists;

(c) To qualified children if none of the persons specified in paragraphs (a) and (b) of this subsection (1) exist;

(d) To dependent parents if none of the persons specified in paragraphs (a) to (c) of this subsection (1) exist;

(e) To the named beneficiary if none of the persons specified in paragraphs (a) to (d) of this subsection (1) exist;

(f) To the estate of the deceased member if none of the persons specified in

paragraphs (a) to (e) of this subsection (1) exist.

24-51-907. Form of survivor benefits and single payments. (1) Survivor benefits shall be payable if received by persons specified in section 24-51-905 (1) (a) or (1) (c) or 24-51-906 (1) (a) or (1) (c).

(2) A single payment shall be payable if received by persons specified in section 24-51-905 (1) (e), (1) (f), (2) (b), or (2) (c) or 24-51-906 (1) (e) or (1) (f).

(3) Surviving spouses or dependent parents specified in section 24-51-905 (1) (b), (1) (d), and (2) (a) and in section 24-51-906 (1) (b) and (1) (d) shall be paid survivor benefits unless they also qualify as a named beneficiary specified in section 24-51-905 (1) (e) or (2) (b) or 24-51-906 (1) (e), in which case they may elect to receive a single payment or survivor benefits.

24-51-908. Survivor benefits. (1) Survivor benefits paid to a cobeneficiary pursuant to the provisions of section 24-51-906 (1) (a) shall be calculated in the same manner as option 3 benefits pursuant to the provisions of section 24-51-910. Survivor benefits paid to a surviving spouse pursuant to the provisions of section 24-51-905 (2) (a) shall be calculated in the same manner as option 3 benefits pursuant to the provisions of section 24-51-910, and if the deceased vested inactive member had at least twenty-five years of service credit and was eligible for a retirement benefit on or before January 1, 2011, such benefits shall be increased by the annual increase specified in sections 24-51-1001 to 24-51-1003, from the date of termination of membership or July 1, 1993, whichever is later, to the date benefits commence.

(2) Survivor benefits paid to spouses pursuant to the provisions of section 24-51-906 (1) (b) shall be calculated in the same manner as either option 3 benefits, pursuant to the provisions of section 24-51-910, or as surviving spouse's benefits pursuant to the provisions of section 24-51-909, upon the irrevocable election of such spouse.

(3) Survivor benefits paid to spouses pursuant to the provisions of section 24-51-905 (1) (b) shall be calculated in the same manner as:

(a) Surviving spouse's benefits, pursuant to the provisions of section 24-51-909, or option 3 benefits if the deceased member had ten years of service credit or the death of the member was job-related; or

(b) Surviving spouse's benefits, pursuant to the provisions of section 24-51-909, if the deceased member did not have ten years of service credit and the death of the member was not job-related.

(4) Survivor benefits paid to qualified children pursuant to the provisions of section 24-51-905 (1) (a) or (1) (c) or 24-51-906 (1) (c) shall be forty percent of the highest average salary of the deceased member if paid to one child or fifty percent of the

highest average salary of the deceased member, divided equally, if paid to two or more children. The minimum survivor benefit paid to such children shall be one hundred dollars each if one or two children qualify or two hundred fifty dollars, divided equally, if three or more children qualify, regardless of the highest average salary of the deceased member.

(5) Survivor benefits paid to dependent parents pursuant to the provisions of section 24-51-905 (1) (d) or 24-51-906 (1) (d) shall be equal to twenty-five percent of the highest average salary of the deceased member if one parent qualifies or forty percent of the highest average salary of the deceased member, divided equally, if two parents qualify. The minimum survivor benefit paid to such parents shall be one hundred dollars to each dependent parent, regardless of the highest average salary of the deceased member.

24-51-909. Surviving spouse's benefits. A surviving spouse's benefit shall be equal to twenty-five percent of the highest average salary of the deceased member.

24-51-910. Option 3 benefits. The option 3 benefits provided for in this part 9 shall be the same as those benefits specified in section 24-51-801 (1) (c) and calculated pursuant to the provisions of section 24-51-603 or 24-51-605.5 (2), whichever provides the greater benefit, as if the deceased member had retired on the day of death; but in no case shall the option 3 benefits be less than twenty-five percent of the deceased member's highest average salary if the deceased member had at least ten years of service credit.

24-51-911. Commencement of survivor benefits or single payment. (1) When a single payment is payable pursuant to the provisions of this part 9, said payment shall be made when the full amount of moneys credited to the member contribution account of the member, the full amount of matching employer contributions, and the person to receive the benefit have been determined.

(2) Survivor benefits shall become payable to qualified children either at the time of the death of the member or within six months after the death of the member if the children attain eligibility by enrolling in school full time.

(3) Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-51-906 (1) (b) shall become payable immediately upon the death of the member. Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-51-905 (2) (a) shall become payable when the deceased inactive member would have become eligible for reduced service retirement.

(4) Survivor benefits pursuant to option 3 paid to a spouse specified in section 24-

51-905 (1) (b) shall become payable immediately if the death of the member occurred on or after July 1, 1979. If the death of the member occurred prior to July 1, 1979, the option 3 benefits shall become payable on and after July 1, 1985, upon satisfaction of the following conditions:

(a) If surviving spouse's benefits are not being received pursuant to the provisions of section 24-51-909 and the spouse has not elected to receive a single payment, such spouse may elect to receive an option 3 benefit, defined in section 24-51-910, immediately upon such election or when benefits for the children cease, whichever is later. Such election shall be irrevocable.

(b) If surviving spouse's benefits are not being paid pursuant to the provisions of section 24-51-909 and the spouse elected to receive a single payment, such spouse may elect to receive an option 3 benefit, defined in section 24-51-910, which shall become payable upon payment to the association of an amount equal to the single payment plus interest. Such payment may be made in a lump sum or through temporary waiver of survivor benefits. Benefits so waived pursuant to this paragraph (b) shall be used for monthly installment payments until the total payment is completed, and the temporary benefit waiver shall terminate upon completion of said payment.

(5) Except as otherwise provided in subsection (6) of this section, surviving spouse's benefits paid pursuant to the provisions of section 24-51-909 shall become payable upon reaching sixty years of age, or on December 31 of the calendar year in which the deceased member would have reached seventy and one-half years of age, whichever occurs earlier.

(6) Surviving spouse's benefits defined in section 24-51-909 which are payable to a spouse found by the board to be mentally or physically incapacitated from gainful employment shall become payable on the day of the death of the deceased member without regard to the age of such spouse.

(7) Survivor benefits shall become payable to dependent parents immediately upon the death of the member.

24-51-912. Termination of survivor benefits. (1) Survivor benefits payable pursuant to the provisions of section 24-51-908 shall terminate when the benefit recipient dies or is no longer qualified to receive such benefits.

(2) Qualified children's survivor benefits shall terminate when the children marry or the board finds that such children are no longer mentally or physically incapacitated.

(3) When children's survivor benefits paid pursuant to section 24-51-905 (1) (a) are no longer payable, the surviving spouse may elect to receive:

(a) An option 3 benefit pursuant to the provisions of section 24-51-910;

(b) A surviving spouse's benefit pursuant to the provisions of section 24-51-909; or

(c) A single payment of any moneys remaining from the total of the amount credited to the member contribution account of the member and matching employer contributions.

(4) In the event that a surviving spouse remarries prior to July 1, 1997, survivor benefits paid as surviving spouse's benefits pursuant to the provisions of section 24-51-909 shall terminate upon the remarriage of such spouse.

(5) Survivor benefits paid to a dependent parent of a member pursuant to the provisions of section 24-51-908 (5) shall terminate upon the remarriage of said parent.

24-51-913. Payment upon termination of survivor benefits. (1) Upon termination of survivor benefits as specified in section 24-51-912 prior to the association's having paid survivor benefits equal to the total of the amount of moneys credited to the member contribution account of the member and matching employer contributions, any remaining moneys shall be paid in the following order:

(a) To the named beneficiaries;

(b) To the estate of the member if no named beneficiaries specified in paragraph (a) of this subsection (1) exist.

24-51-914. Reciprocal survivor benefits agreement. (Repealed)

PART 10

INCREASES IN BENEFITS

24-51-1001. Types of benefit increases. (1) For benefit recipients whose benefits are based on the account of a member who was a member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, annual increases in retirement benefits and survivor benefits shall be effective with the July benefit. Such increases in benefits shall be calculated in accordance with the provisions of sections 24-51-1002 and 24-51-1003 and shall be paid from the retirement benefits reserve or the survivor benefits reserve, as appropriate, so long as the following requirements are satisfied:

(a) For benefit recipients whose benefit is based on a retiree or DPS retiree whose effective date of retirement is prior to January 1, 2011, or whose survivor benefits are based on a date of death that occurred prior to January 1, 2011, the benefits have been paid to the benefit recipient for at least seven months preceding July 1.

(b) For benefit recipients whose benefit is based on a retiree or DPS retiree whose effective date of retirement is on or after January 1, 2011, or whose survivor benefits are

based on a date of death that is on or after January 1, 2011, the benefits have been paid to the benefit recipient for the twelve months prior to July 1, and for benefit recipients whose benefit is based upon a retiree or DPS retiree who was not eligible to retire as of January 1, 2011, the retiree met the following requirements:

(I) For DPS members with five or more years of service credit as of January 1, 2011, and for members who began membership prior to July 1, 2005, and have five or more years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602 or 24-51-1713, whichever is applicable, or retired with a reduced service retirement benefit pursuant to section 24-51-604 or 24-51-1714, whichever is applicable, but has, as of January 1, attained the age and service credit years that when combined total at least eighty years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;

(II) For members who began membership on or after July 1, 2005, but prior to January 1, 2007, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty; or

(III) For DPS members with less than five years of service credit as of January 1, 2011, and for members whose membership began prior to January 1, 2007, with less than five years of service credit as of January 1, 2011, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty.

(c) No minimum age or service credit requirement shall apply to disability retirees or survivor benefit recipients.

(1.5) and (2) (Deleted by amendment, L. 93, p. 478, § 6, effective March 1, 1994.)

(3) For benefit recipients whose benefits are based on the account of a member who was not a member, inactive member, or retiree on December 31, 2006, annual increases in retirement benefits and survivor benefits, if any, shall be effective with the July benefit in accordance with the provisions of section 24-51-1009 and shall be paid from the retirement benefits reserve or the survivor benefits reserve, as appropriate, so long as the following requirements are satisfied:

(a) The benefits have been paid to the benefit recipient for the full preceding calendar year; and

(b) (I) For members whose membership began on or after January 1, 2007, but prior to January 1, 2011, the retiree retired with a service retirement benefit pursuant to

section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-five years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;

(II) For members whose membership began on or after January 1, 2011, but prior to January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least eighty-eight years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty;

(III) Subject to the provisions of subparagraph (IV) of this paragraph (b), for members whose membership began on or after January 1, 2017, the retiree retired with a service retirement benefit pursuant to section 24-51-602, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age and service credit years that when combined total at least ninety years, or retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty; or

(IV) For members whose membership began on or after January 1, 2017, the retiree retired from the school or Denver public schools divisions with a reduced service retirement benefit pursuant to section 24-51-604 and the retiree's most recent ten years of service credit was earned in the school or Denver public schools divisions, but, as of January 1, the retiree's age and total service credit total at least eighty-eight years, or the retiree retired with a reduced service retirement benefit pursuant to section 24-51-604 but has, as of January 1, attained the age of sixty.

(c) No minimum age or service credit requirement shall apply to disability retirees or survivor benefit recipients.

(4) Benefits that are calculated pursuant to part 17 of this article shall be governed by the benefit increase provisions of such part 17.

24-51-1002. Annual percentages to be used. (1) For benefit recipients whose benefits are based on the account of a member who was a member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, the increase applied to benefits for the year 2010 shall be the lesser of two percent or the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers for each of the months in the 2009 calendar year.

(2) Beginning in the year 2011, subject to the provisions of section 24-51-1009.5, for benefit recipients whose benefits are based on the account of a member who was a

member, inactive member, or retiree on December 31, 2006, or for benefit recipients whose benefits are based on the account of a DPS member or DPS retiree, the increase applied to benefits paid shall be the lesser of two percent or the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers during the calendar year preceding the increase in the benefit. Notwithstanding the provisions of this subsection (2), the increase shall be the maximum permitted under this subsection (2) and section 24-51-1009.5 unless the association's annual audited return on investments is negative for the preceding calendar year, at which point the annual increase for the subsequent three years shall be the lesser of two percent or the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers during the calendar year preceding the increase in the benefit. The increase applied to such benefits shall be recalculated annually as of July 1 and shall be the compounded annual percentage of the annual increases applied to such benefits. In the first year that the benefit recipient is eligible to receive an annual increase pursuant to section 24-51-1001, the annual increase shall be prorated.

(3) Benefits for vested inactive members with at least twenty-five years of service credit and benefits for survivors of deceased vested inactive members who had at least twenty-five years of service credit shall be increased by the annual increase specified in this section and sections 24-51-1001 and 24-51-1003 under prior law from the date of termination of membership or July 1, 1993, whichever is later, to March 1, 2009, or the date benefits commence, whichever is earlier. This subsection (3) shall only apply to members and inactive members who are eligible to receive a retirement benefit as of January 1, 2011.

(4) Notwithstanding the provisions of subsection (1) of this section, the increase, if any, applied to the benefits of persons whose benefits are based on the account of a member who was not a member, inactive member, or retiree on December 31, 2006, will be calculated and paid in accordance with section 24-51-1009.

24-51-1003. Annual increases in the base benefit. The percentage recalculated pursuant to the provisions of section 24-51-1002 shall be multiplied by the base benefit or retirement allowance as defined in section 24-51-1702 (34), whichever is applicable, to determine the increased benefit. In no case shall the benefit paid be less than the base benefit or retirement allowance, whichever is applicable.

24-51-1004. Annual increases for benefits effective prior to May 1, 1969.

(Repealed)

24-51-1005. Cost of living stabilization fund. (Repealed)

24-51-1006. Cost of living increases. (Repealed)

24-51-1007. Service credit exceeding twenty years. (Repealed)

24-51-1008. Purchased service credit excluded. (Repealed)

24-51-1009. Annual increase reserve - creation. (1) Each year prior to the effective date of an annual increase, the board shall determine the amount of the annual increase to be paid, if any. In no event shall the board award an annual increase to any division that exceeds the amount provided for in this section.

(2) The maximum annual increase that may be awarded by the board pursuant to section 24-51-1001 (3) shall be determined based on annual actuarial valuations of the annual increase reserve of each division. Each year after the board determines the annual increase amount, and prior to its effective date, a sum equal to the net present value of the total actuarial cost of paying the annual increase to all eligible recipients shall be reallocated from the annual increase reserves of each division to the retirement benefits reserve or the survivor benefits reserve, as appropriate. All annual increase payments shall be made from the reserves used for monthly benefit payments, and no annual increase payments shall be made from the annual increase reserve.

(3) The annual increase reserve of each division shall contain the allocations specified in this subsection (3). Such amounts shall be retained in the annual increase reserve of each division until removed from that reserve pursuant to this section. The allocations shall be as follows:

(a) A portion of the employer contribution specified in section 24-51-401 (1.7) equal to one percent of the salaries of members who were not members, inactive members, or retirees on December 31, 2006;

(b) A sum received in connection with purchased service credit pursuant to section 24-51-503 (3), specified as annual increase allocation; and

(c) A proportional share of the investment income earned on the amounts specified in paragraphs (a) and (b) of this subsection (3).

(4) An actuarial valuation shall be conducted each year for the annual increase

reserve of each division for the purposes of this section. The actuarial valuation shall include a determination of the total market value of the assets in the reserve and a calculation of the net present value of the actuarial liabilities associated with providing each of the annual increases described in paragraphs (a), (b), and (c) of this subsection (4). Subject to section 24-51-1009.5, the maximum annual increase awarded by the board shall be the lesser of the following calculations:

(a) A permanent increase equal to two percent of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3);

(b) Subject to the provisions of subsection (4.5) of this section, a permanent increase of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3) that is equal to the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers during the calendar year preceding the increase in the benefit for the year associated with the actuarial valuation of the annual increase reserve; or

(c) A permanent increase of current benefits payable to benefit recipients then eligible for an annual increase in accordance with section 24-51-1001 (3) that will exhaust ten percent of the year-end balance at market value of the annual increase reserve.

(4.5) For the year 2010, the association shall use the average of the annual increases determined for each month, to the nearest one-tenth of a percent, as calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers for each of the months in the 2009 calendar year.

(5) No calculation made pursuant to this section shall cause a reduction in current benefits of eligible benefit recipients.

24-51-1009.5. Annual increase amount changes. When the actuarial funded ratio of the association, based on the actuarial value of assets, is at or above one hundred three percent as determined in the annual actuarial study of the association, the upper limit of the annual increase shall be increased by one-quarter of one percent. If the actuarial funded ratio of the association, based on the actuarial value of assets, reaches one hundred three percent and subsequently any annual actuarial study reflects the actuarial funded ratio of the association, based on the actuarial value of assets, is below ninety percent, the upper limit of the annual increase shall be decreased by one-quarter of one percent. At no time shall the upper limit of the annual increase fall below two percent.

24-51-1010. Increase in benefits - actuarial assessment required. (1) Before increasing benefits provided by the association, the general assembly shall cause to be conducted pursuant to subsection (2) of this section an actuarial assessment to ensure that the increases in benefits would not cause the actuarial value of assets of the association to decline below ninety percent of the actuarial accrued liabilities of the association.

(2) Upon direction from the president of the senate and the speaker of the house of representatives, the director of research of the legislative council shall contract with a private person to conduct an actuarial assessment of the association. The assessment shall be conducted to determine whether and to what extent an increase in the benefits provided by the association would cause the actuarial value of the assets of the association to decline below ninety percent of the actuarial accrued liabilities of the association. The assessment shall be completed and a final report of its findings and conclusions shall be submitted to the general assembly as soon as practicable. The person conducting the actuarial assessment of the association and such person's employees shall, during the term of the contract, have access to any necessary documents and information in the custody of the association.

PART 11

EMPLOYMENT AFTER RETIREMENT

24-51-1101. Employment after service retirement. (1) Except as otherwise provided in subsection (1.8) of this section or part 17 of this article, a service retiree from any division may be employed by an employer, whether or not in a position subject to membership, and receive a salary without reduction in benefits if the service retiree has not worked for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement, and if:

(a) Employment of more than four hours per day does not exceed one hundred ten days in the calendar year;

(b) Employment of four hours or less per day does not exceed seven hundred twenty hours in the calendar year;

(c) Employment consisting of a combination of daily and hourly employment does not exceed one hundred ten days per calendar year;

(d) The service retiree is a member of the general assembly; or

(e) The service retiree is working in a position that has been temporarily vacated by an employee who has been called into active duty in the armed forces of the United States.

(1.5) and (1.7) Repealed.

(1.8) (a) A service retiree who is hired by a state college or university or by an employer in the school or Denver public schools division of the association pursuant to

paragraph (b) of this subsection (1.8) may receive salary without reduction in benefits if employment of more than four hours per day does not exceed one hundred forty days in the calendar year, if employment of four hours or less per day does not exceed nine hundred sixteen hours in the calendar year, or if employment consisting of a combination of daily and hourly employment does not exceed one hundred forty days per calendar year, and if the service retiree has not worked for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement. A service retiree described in this paragraph (a) who works for any employer, as defined in section 24-51-101 (20), during the month of the effective date of retirement shall be subject to a reduction in benefits as provided in section 24-51-1102 (2).

(b) A state college or university or an employer in the school or Denver public schools division may hire up to ten service retirees in areas where the employer determines that there is a critical shortage of qualified candidates and that the service retiree has unique experience, skill, or qualifications that would benefit the employer. The employer shall notify the association upon hiring a service retiree pursuant to this subsection (1.8). A list of any and all service retirees employed by the employer shall be provided to the association at the start of each calendar year and shall be updated prior to any additional hirings during the same calendar year.

(c) A state college or university or an employer in the school or Denver public schools division shall provide full payment of all employer contributions and all disbursements in accordance with part 4 of this article, and all working retiree contributions in accordance with part 11 of this article, on the salary paid to the service retiree described in paragraph (a) of this subsection (1.8).

(d) A service retiree who is employed pursuant to this subsection (1.8) shall not be required to resume membership. Upon termination of such retiree's employment, there shall be no benefit calculation reflecting additional service credit or any increase in the highest average salary of such person.

(e) (I) For purposes of this subsection (1.8), "state college or university" means a postsecondary educational institution established and existing pursuant to section 5 of article VIII of the state constitution and title 23, C.R.S., and, for a postsecondary educational institution with more than one principal campus as specified in subparagraph (II) of this paragraph (e), the system administration of the postsecondary educational institution and each principal campus of the postsecondary educational institution.

(II) As used in this paragraph (e), "principal campus" means:

(A) Each campus of the university of Colorado as described in section 23-20-101, C.R.S.;

(B) Each institution of the Colorado state university system established in sections 23-31-101 and 23-31.5-101, C.R.S., but not including the on-line university established in section 23-31.3-101, C.R.S.; and

(C) Each college included in the state system of community and technical colleges

as listed in section 23-60-205, C.R.S.

(2) Salary from the employment, engagement, retention, or other use of a service retiree or DPS retiree in an individual capacity or of any entity owned or operated by a service retiree or affiliated party by an employer to perform any service as an employee, contract employee, consultant, independent contractor, or through any other arrangement, shall be subject to employer contributions but shall not be subject to member contributions. Effective January 1, 2011, such salary shall also be subject to working retiree contributions. Salary from employment by a retiree who is serving in a state elected official's position shall not be subject to employer contributions or working retiree contributions. Salary from employment of a retiree who is participating in an educational employees' optional retirement plan pursuant to article 54.5 of this title shall not be subject to working retiree contributions.

(2.5) Repealed.

(3) Any service retiree employed pursuant to this section shall not be eligible for disability retirement and survivor benefits during the employment period in which member contributions are not being made pursuant to the provisions of this section.

(4) The provisions of this part 11 shall govern employment after service retirement except to the extent that specific provisions regarding portability and the effect of portability are provided in part 17 of this article.

24-51-1102. Reduction of a service retirement benefit - disclosure of service agreements by employers - definitions. (1) Except as otherwise provided in part 17 of this article, employment of a retiree by an employer, whether or not in a position subject to membership, that exceeds the daily or hourly calendar year limits stated in section 24-51-1101 (1) shall result in a reduction of the benefit of such retiree by five percent per day for any part of a day that exceeds said limits. Any reduction of benefits pursuant to the provisions of this subsection (1) that exceeds one hundred percent of the benefit shall be carried forward to reduce future months' benefits.

(2) Employment of a retiree by an employer, whether or not in a position subject to membership, that occurs during the month of the effective date of retirement shall result in a reduction of the benefit of such retiree by five percent per day for any part of a day that the retiree works during such month. Any reduction of benefits pursuant to the provisions of this subsection (2) that exceeds one hundred percent of the benefit shall be carried forward to reduce future months' benefits.

(3) Each employer shall provide a copy to the association of any tax-related information on its employees or other individuals or firms whereby the employer receives services in any form, pursuant to rules promulgated by the association. In addition, each employer shall provide a copy to the association of any agreement, contract, letter of understanding, or other arrangement whereby the employer will receive services in any

form, upon request by the association.

(4) For purposes of subsections (1) and (2) of this section, "employment" shall be determined by the association consistent with the internal revenue service's guidance in revenue ruling 87-41, 1987 - 1 C.B. 296, as revised from time to time.

24-51-1103. Contributions for a retiree who returns to membership - benefit calculation upon subsequent retirement - survivor benefit rights - disability retirement benefits. (1) Except as otherwise provided in section 24-51-1747, a retiree who returns to work in a position that is subject to membership may voluntarily suspend the service retirement benefits or the reduced service retirement benefits and resume membership. Upon such suspension, employer and member contributions are required to be made pursuant to the provisions of part 4 of this article.

(1.5) A retiree who, on or after January 1, 2011, suspends his or her service retirement or reduced service retirement benefits shall not add any service credit to the benefit segment from which the retiree suspends his or her retirement. Subject to the election set forth below, any additional service credit accumulated will be reflected in separate benefit segments upon subsequent termination of membership, but only after one year of service credit has been earned during a period of suspension. The service retirement or reduced service retirement benefits for each qualifying separate benefit segment will be calculated pursuant to the benefit structure under which the retiree originally retired. The benefit for each separate benefit segment resulting from suspension shall be determined using the member's salary and service credit acquired during the period of suspension. The member's age and total service credit with the association upon retirement after each suspension shall govern whether the member shall receive a service retirement calculation or a reduced service retirement calculation pursuant to section 24-51-605 for that segment. Previous separate benefit segments shall be subject to recalculation only to reflect a change in the selected option or a designated cobeneficiary, if applicable, and no benefit increases pursuant to section 24-51-1001 will be applicable to any separate benefit segment during any period of suspension. Upon reinstatement of the retirement benefit allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1. Upon resumption of retirement after suspension, the association shall refund all moneys credited to the member contribution account during the period of suspension pursuant to section 24-51-405 unless, within a time period set by the association, the retiree makes written election to establish a separate benefit segment calculated as set forth above. The refund shall be an amount equal to all moneys credited to the member contribution account during the period of suspension and payment of matching employer contributions pursuant to section 24-51-408. The requirement to have at least five years of service credit to be eligible for the matching employer contributions provided in section 24-51-

408 shall not apply in the event of returning to retirement after suspension. No refund may be issued for any benefit segment from which a benefit has been drawn. Such refund shall be required for any separate benefit segment during which less than one year of service credit has been earned.

(2) Survivor benefit rights provided for in part 9 of this article shall be available to a retiree who voluntarily suspends the benefits and returns to membership as if such retiree had not retired.

(3) (Deleted by amendment, L. 2010, (SB 10-001), ch. 2, p. 23, § 25, effective January 1, 2011.)

24-51-1103.5. Contributions for a retiree employed by a school district during critical shortage - no benefit calculation upon subsequent termination - repeal. (Repealed)

24-51-1104. Employment after disability retirement. A disability retiree from any division whose disability application was received by the association prior to January 1, 1999, may be employed by an employer, whether or not in a position subject to membership, without any reduction in benefits pursuant to the terms and conditions specified in sections 24-51-1101 to 24-51-1103 and in section 24-51-707. However, if the disabling condition returns, the disability benefit may begin again upon the application of such member and approval of such application by the board.

24-51-1105. Retirees from the judicial division. (1) (a) Retirees from the judicial division may return to temporary judicial duties pursuant to the provisions of section 5 (3) of article VI of the Colorado state constitution and section 13-4-104.5, C.R.S., while receiving service retirement benefits.

(b) Notwithstanding the provisions of section 24-51-1101, upon written agreement with the chief justice of the Colorado supreme court prior to retirement, a member of the judicial division may perform, during retirement, assigned judicial duties without pay for not less than sixty or more than ninety days each year and shall receive a benefit increase equal to not less than twenty percent or more than thirty percent of the current monthly salary of judges serving in the same position as that held by the retiree at the time of retirement. Such agreement shall be for a period of not more than three years. A retiree may enter into subsequent agreements. The aggregate of these agreements shall not exceed twelve years, except at the discretion of the Colorado supreme court.

(2) Within five years after retirement, a retiree from the judicial division who did not enter into an agreement as provided for in subsection (1) of this section prior to

retirement may enter into such a written agreement within thirty days prior to each anniversary date of retirement. Upon entering into such agreement, the retirement benefit shall include such benefit increase as provided for in subsection (1) of this section.

(2.5) A retiree from the judicial division, who has entered into an agreement pursuant to subsection (1) of this section, may take a leave of absence from temporary judicial duties to be performed under such agreement, with a cessation of the increase specified in subsection (1) of this section. Within thirty days prior to each anniversary date of retirement, and upon written request to and approval by the chief justice, a retiree, who has taken a leave of absence, may reenter into such agreement to perform assigned temporary judicial duties. Upon reentering into such agreement, the retirement benefit shall include the benefit increase specified in subsection (1) of this section.

(3) If a written agreement is entered into pursuant to the provisions of this section, and notice is received from the chief justice of the refusal of the retiree to accept a temporary assignment without just cause, the retirement benefit shall be recalculated to reduce the benefit to the amount payable without the increase specified in subsection (1) of this section. The reduction shall be effective on the first day of the month following such refusal.

(4) Increases in the retirement benefit pursuant to the provisions of this section shall be reimbursed to the judicial division trust fund by an annual appropriation by the general assembly to the judicial department for payment into the judicial division trust fund.

(5) Nothing in this section shall be construed to require a retiree from the judicial division to enter into an agreement to perform temporary judicial duties.

(6) Retirees from the judicial division include justices and judges who have retired from the supreme court, the court of appeals, district courts, county courts, probate courts, and juvenile courts.

PART 12

HEALTH CARE PROGRAM

24-51-1201. Health care trust fund. (1) There is hereby created a health care trust fund to provide, for the state, school, local government, and judicial divisions, a premium subsidy for health care to benefit recipients choosing to enroll in the health care program and for a proportionate portion of the expenses of the program.

(2) There is hereby created a health care trust fund to provide, for the Denver public schools division, a premium subsidy for health care to benefit recipients choosing to enroll in the health care program and for a proportionate portion of the expenses of the program. The board of education of the Denver public schools shall by trustee-to-trustee transfer place within the health care trust fund for the Denver public schools division the

balance of the Denver public schools retiree health benefit trust held by the board of education on January 1, 2010.

24-51-1202. Health care program - design. (1) (a) The board shall design a group health care program for retirees, members, DPS members, DPS retirees, and their dependents, with or without full medicare coverage provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended. This program shall provide health care benefits and a level of reimbursement for health care expenses which are consistent with prevailing community practices and other governmental health care systems, protection from catastrophic financial loss, and current and long-term fiscal soundness of the trust fund as determined by the board.

(b) Any group health care plan offered by the board that provides pharmacy benefits through the services of a pharmacy benefits manager shall require such manager to allow participation by any nonmail order retail pharmacy provider licensed in the state of Colorado if such pharmacy provider agrees to accept the fee schedule, terms, and conditions of participation established by the plan's pharmacy benefits manager.

(1.5) Any employer, as defined by section 24-51-101 (20), may elect to provide health care coverage through the health care program for its employees who are members. Participation in the health care program by an employer shall be voluntary and in the employer's sole discretion and shall not be mandatory for the employer.

(2) The board shall establish procedures for enrollment and determine the methods of claims administration for the health care program.

(3) (a) The board shall ensure that the premium amount for the health care program is paid by those individuals enrolled in said program.

(b) The premium amount for a benefit recipient shall be deducted from monthly benefits. If the premium amount exceeds the monthly benefits, the excess amount shall be collected from the benefit recipient directly. The premium amount for a member shall be collected directly from the member's employer.

(c) Surviving spouses and divorced spouses enrolled in the health care program pursuant to the provisions of section 24-51-1204 (1) (b) and (1) (c) shall directly pay the premium amount.

(d) If an individual who is directly paying for enrollment in the health care program fails to pay the premium amount within a reasonable period of time, as determined by the board, the association shall notify the individual that enrollment may be cancelled within thirty days if payment is not received.

(4) The board may change the design and costs of the health care program at any time. Individuals enrolled in the health care program shall be notified thirty days prior to any change.

(5) DPS retirees may enroll in the association's health care program subject to the

provisions of this part 12.

24-51-1203. Authority to contract and to self-insure. The board shall have the authority to contract, self-insure, and make disbursements necessary to carry out the purposes of the health care program. Said authority shall include, but is not limited to, contracting with insurance carriers, health maintenance organizations, preferred provider organizations, and any other company or association as deemed necessary and proper by the board.

24-51-1204. Health care program - eligibility. (1) The following persons are eligible to enroll in the health care program:

(a) All benefit recipients, including those from the Denver public schools division, and their dependents, including any dependent as defined in section 10-16-102 (17), C.R.S.; any unmarried children who are not natural or adopted children of the benefit recipient but who reside full time with the benefit recipient, are dependents of the benefit recipient for federal income tax purposes, and meet the age requirements of section 10-16-102 (17), C.R.S.; and any qualified children as defined in the rules adopted by the board;

(b) A surviving spouse of a retiree who elected option 1 or a DPS retiree who elected a single life annuity pursuant to part 17 of this article, if such spouse was covered by the health care program at the time of the death of the retiree;

(c) A divorced spouse of a retiree or of a DPS retiree if such spouse was enrolled in the health care program at the time of the divorce from the retiree;

(d) The guardian of a child receiving survivor benefits while the child is enrolled in the health care program;

(e) A member or a DPS member while receiving short-term disability program payments pursuant to part 7 of this article; and

(f) A member or a DPS member whose employer has elected to provide coverage through the health care program and such member's dependents.

24-51-1205. Enrollment. (1) Except as otherwise provided in this section, enrollment of eligible persons in the health care program may only take place within thirty days following either the effective date of retirement or the date of application for retirement, whichever is later, or at such enrollment times and pursuant to such conditions as are established by the board.

(2) Any benefit recipient, including those from the Denver public schools division, a member, or a DPS member enrolled in the health care program who has a

change in dependents may, within thirty days after such change, add the dependents to be enrolled in the health care program.

(3) Repealed.

24-51-1206. Premium subsidy. (1) The provisions of this section shall apply to the health care trust fund for the school, state, local government, and judicial divisions. After July 1, 1987, the general assembly shall consider the recommendation of the board and shall approve the premium subsidy that shall be paid monthly from the health care fund for benefit recipients enrolled in the health care program. The premium subsidy shall be set without regard to the division from which the retiree retired. No premium subsidy shall be paid for persons enrolled in the health care program who are not benefit recipients.

(2) Except as otherwise provided in this section, and unless otherwise determined by the board through rule-making pursuant to section 24-51-204 (5), on and after July 1, 2000, the premium subsidy shall be:

(a) Two hundred thirty dollars per month for benefit recipients who are under sixty-five years of age and who are not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended.

(b) One hundred fifteen dollars per month for benefit recipients who are sixty-five years of age or older or who are under sixty-five years of age and entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended.

(3) For benefit recipients whose benefits are based upon less than twenty years of service credit, the premium subsidy shall be reduced by five percent for each year of service credit less than twenty years. The service credit used in said calculation of the amount of the premium subsidy for disability retirees or their cobeneficiaries shall be the same service credit used in the calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704. Any portion of a year equal to or exceeding six months shall be considered a full year for purposes of the calculations specified in this subsection (3).

(4) The premium subsidy for a benefit recipient who is sixty-five years of age or older and who is not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended, shall be an amount which shall ensure that the premium paid by such benefit recipient is the same amount as the premium paid by a benefit recipient who is sixty-five years of age or older with the same number of years of service credit, who is entitled to medicare hospital insurance benefits, and who has selected the same plan and type of coverage under the health care program.

(5) If the amount of the premium for the health care of a benefit recipient is less than the amount of the premium subsidy as determined pursuant to the provisions of this section, the board shall pay the amount of the health care premium.

(6) Any member or DPS member who does not have a member contribution account on December 31, 2009, must earn ten years of service credit with an affiliated employer other than an employer within the Denver public schools division in order to qualify, or for any benefit recipient whose benefits are based upon such members to qualify, for the premium subsidy specified in subsection (4) of this section. The service credit used in said calculation of the amount of the premium subsidy specified in subsection (4) of this section for disability retirees or their cobeneficiaries shall be the same service credit used in said calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704.

24-51-1206.5. Health care trust fund subsidy funding. (1) The amount of the premium subsidy funded by each health care trust fund established in section 24-51-1201 shall be based on the percentage of the member contribution account balance from each division as it relates to the total member contribution account balance from which the benefit is paid.

(2) A person who receives multiple benefits shall only receive one premium subsidy.

24-51-1206.7. Denver public schools division premium subsidy. (1) The provisions of this section apply to the DPS health care trust fund. After January 1, 2010, the general assembly shall consider the recommendation of the board and shall approve by resolution the premium subsidy to be paid monthly from the Denver public schools health care trust fund for subsidy recipients of the Denver public schools division enrolled in the health care program. No premium subsidy shall be paid for persons enrolled in the health care program who are not benefit recipients. It is the intent of this section not to cause an increase or decrease in health care subsidies by DPS.

(2) Except as otherwise provided in this section, and unless otherwise determined by the board through rule-making pursuant to section 24-51-204 (5), on and after January 1, 2010, the premium subsidy for benefit recipients of the Denver public schools division shall be:

(a) Two hundred thirty dollars per month for subsidy recipients who are not entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the Aged Act", 42 U.S.C. sec. 1395, as amended; and

(b) One hundred fifteen dollars per month for subsidy recipients who are entitled to medicare hospital insurance benefits provided by the federal "Health Insurance for the

Aged Act", 42 U.S.C. sec. 1395, as amended.

(3) For subsidy recipients whose benefits are based upon less than twenty years of service credit, the premium subsidy shall be reduced by five percent for each year of service credit less than twenty years. The service credit used in said calculation of the amount of the premium subsidy for disability retirees shall be the same service credit used in the calculation of the disability retirement benefit pursuant to the provisions of section 24-51-704. Any portion of a year equal to or exceeding six months shall be considered a full year for purposes of the calculations specified in this subsection (3).

(4) If the amount of the premium for the health care of a subsidy recipient is less than the amount of the premium subsidy as determined pursuant to the provisions of this section, the board shall pay the amount of the health care premium.

(5) (a) Service credit accrued by DPS members and members of the Denver public schools division on and after January 1, 2010, shall apply toward the calculation of the premium subsidy as provided in subsection (3) of this section. Service credit accrued under the DPS plan by DPS members prior to January 1, 2010, shall apply toward the calculation of the premium subsidy as provided in subsection (3) of this section only if the service credit was accrued while employed by a Denver public schools and if at least one of the following applies:

(I) The DPS member was participating in the Denver public schools retiree health benefit trust as of December 31, 2009; or

(II) The DPS member was a deferred DPS member as of December 31, 2009.

(b) Subject to the provisions of paragraph (a) of this subsection (5), service credit shall be granted for an approved leave of absence any time during a member's employment with Denver public schools prior to December 31, 2009, to serve at a charter school, as defined in section 24-51-1702 (10), for no longer than a three-year period, if written certification of eligibility under this paragraph (b) is provided to the association by Denver public schools. Service credit provided for in this paragraph (b) shall apply only to the calculation of a subsidy payable from the DPS division health care trust fund.

24-51-1207. Cancellation of enrollment. (1) Upon thirty days' written notice to the association, any person enrolled in the health care program may cancel enrollment for himself, and any retiree may cancel enrollment in the health care program for his dependents.

(2) Enrollment may be cancelled by the association upon thirty days' written notice to any person enrolled in the health care program whose premium amount has not been received by the first day of the month for which coverage was being purchased.

24-51-1208. Long-term care insurance. The board is authorized to identify and

designate one or more insurance providers to offer long-term care insurance to members, DPS members, retirees, DPS retirees, or all. Long-term care insurance offered pursuant to this section shall be funded solely through premium payments by members or retirees electing to contract for such insurance.

PART 13

LIFE INSURANCE

24-51-1301. Plan sponsored group life insurance. The board may offer group life insurance coverage through any life insurance company qualified to do business in Colorado or may self-fund such coverage. Life insurance coverage shall be available to members and DPS members who voluntarily subscribe. Notwithstanding the provisions of section 10-7-201, C.R.S., the board shall determine the terms and conditions of coverage and may negotiate or discontinue said coverage at any time the board determines such action to be in the best interest of the members. Members or DPS members who have elected group life insurance coverage shall be notified sixty days prior to any change in coverage or discontinuance.

24-51-1302. Premiums for group life insurance. (1) Premiums for life insurance must be received by the association in order for an individual to be covered.

(2) Continuation of life insurance coverage after retirement is available to any retiree from any division who, prior to retirement, authorizes life insurance premiums to be deducted from monthly benefit payments.

(2.5) Life insurance coverage after termination of membership may continue for any inactive member who continues to pay life insurance premiums and does not receive a refund pursuant to the provisions of section 24-51-405 or part 17 of this article.

(3) Life insurance provided pursuant to the provisions of this part 13 may be assigned by members, inactive members, or retirees, including those of the Denver public schools division.

(4) The association shall pay no premium subsidy for life insurance.

24-51-1303. Life insurance beneficiary. Unless a member, DPS member, inactive member, deferred DPS member, retiree, DPS retiree, or a court decree names a different beneficiary for life insurance purposes, the named beneficiary shall be the beneficiary of such life insurance.

24-51-1304. Life insurance for certain retired state employees. (1) Any retiree

who had life insurance coverage pursuant to the provisions of part 2 of article 8 of title 10, C.R.S., on June 30, 1986, shall continue to have such coverage unless the retiree refuses it. Any retiree who refuses such coverage may not resume coverage later.

(2) The board may offer group life insurance coverage through any life insurance company qualified to do business in Colorado or may self-fund such coverage for eligible retirees under this section. The monthly premium shall be deducted from the benefits of each participating retiree and the association shall not pay any premium subsidy.

PART 14

VOLUNTARY INVESTMENT PROGRAM

24-51-1401. Voluntary investment program established and fund created. (1) The board is hereby authorized to establish and administer a voluntary investment program and to create a separate trust fund to hold the assets of said investment program.

(2) The voluntary investment program shall be available to all members, DPS members, retirees, and DPS retirees, and shall be in addition to any other retirement or tax-deferred compensation system established by the state or its political subdivisions.

(3) The board is hereby authorized to offer participation in the voluntary investment program to all employees of employers that are affiliated with the association, regardless of whether those employees are members or retirees.

(4) For purposes of this part 14, members and retirees shall include DPS members and DPS retirees.

24-51-1402. Contributions to the voluntary investment program. (1) An eligible employee pursuant to section 24-51-1401 may participate in the voluntary investment program authorized in section 24-51-1401 by authorizing his or her employer, as defined in section 24-51-101 (20), to contribute an amount by payroll deduction in lieu of receiving such amount as salary or pay. The amount of such contribution by a participant shall be subject to any limitations established by federal law. These voluntary contributions, in addition to investment earnings, shall be exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, member, former member, or beneficiary.

(2) The board may, at its discretion, allow participants in the voluntary investment program to elect to make after-tax voluntary contributions to the voluntary investment program by payroll deduction. Investment earnings on such contributions are exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, member, former member, or beneficiary.

(3) All voluntary contributions by a participating member shall be included in the salary of such member for the purpose of calculating member and employer contributions pursuant to the provisions of section 24-51-401. The member contribution provisions of section 24-51-401 and the matching employer contribution provisions of section 24-51-408.5 shall not apply to any voluntary contribution made by a retiree.

(4) The employer shall deliver all voluntary contributions to the service provider designated by the association within five days after the date that the participants are paid and consistent with the provisions of section 24-51-401 (1.7) (c) and (1.7) (d).

(5) (a) Effective July 1, 2009, all assets of the state defined contribution match plan established pursuant to section 24-52-104, as said section existed prior to its repeal in 2009, shall be transferred via trustee-to-trustee transfer to the association's voluntary investment program trust fund created in section 24-51-208 (1) (g), and such defined contribution match plan shall be merged into the association's voluntary investment program. An individual's account in the state defined contribution match plan shall become part of the individual's existing 401(k) plan account if one exists. If the individual does not have an existing 401(k) plan account, a separate account shall be created for the individual within the trust fund and administered in accordance with the terms of the voluntary investment program. The administration of such asset transfer shall be determined by the board.

(b) For purposes of this subsection (5), "existing 401(k) plan account" means a voluntary investment account authorized under 26 U.S.C. sec. 401(k), as amended.

24-51-1403. Expenses of the voluntary investment program. The expenses of administering the voluntary investment program authorized in section 24-51-1401 shall be paid from the investment earnings of such voluntary investment program.

24-51-1404. Investments of the voluntary investment program. Participants in the voluntary investment program shall designate that their voluntary contributions be invested in one or more types of investments made available by the board. These investments may include, but are not limited to, equity investments, fixed-income investments, life insurance company products, and any investments permitted pursuant to the provisions of section 24-51-206.

PART 15

DEFINED CONTRIBUTION RETIREMENT PLANS

24-51-1501. Defined contribution plan - establishment - creation of fund - definitions. (1) The board is hereby authorized to establish and administer a defined contribution plan for eligible state employees as provided in this part 15. The board shall establish the terms and conditions of the association's defined contribution plan offered to eligible state employees. The assets of the plan shall be held in a separate trust fund of the association created for such purpose.

(2) (a) Effective July 1, 2009:

(I) The state defined contribution plan established pursuant to part 2 of article 52 of this title, as said part 2 existed prior to its repeal in 2009, shall be merged into the association's defined contribution plan for eligible state employees established under this part 15, and all the assets of the state defined contribution plan and the trust fund shall be transferred via trustee-to-trustee transfer to the defined contribution plan trust fund established pursuant to section 24-51-208 (1) (i);

(II) Participants of the state defined contribution plan shall, subject to sections 24-51-1505 (4), 24-51-1506 (1), and 24-51-1506.5, become members of the association's defined contribution plan; and

(III) The individual participant accounts in the state defined contribution plan shall become individual participant accounts within the association's defined contribution plan.

(b) The administration of the asset transfer pursuant to paragraph (a) of this subsection (2) shall be determined by the board.

(3) The department of personnel created in section 24-1-128 shall provide for the orderly transfer of all records pertaining to the state defined contribution plan and shall take any other action as necessary for the board to assume its duties under this part 15.

(4) For purposes of this part 15, "employer" means the state, the general assembly, the office of a district attorney in a judicial district, any state department that employs an eligible employee, and any community college governed by the state board for community colleges and occupational education. "Employer" shall not include any state college or university as defined in section 24-54.5-102 (7), any institution under the control of the board of regents of the university of Colorado, or an institution governed pursuant to part 5 of article 21 of title 23, C.R.S.

24-51-1502. New state employees - election - definitions. (1) Any eligible employee pursuant to paragraph (a) of subsection (2) of this section shall elect, within sixty days of commencing employment, either to become a member of the association's defined benefit plan or the association's defined contribution plan. If an employee does not make such election within the sixty-day period, the employee shall become a member of the association's defined benefit plan. The employer is solely responsible for ensuring that an eligible employee pursuant to this section is given the opportunity to elect to

become either a member of the defined benefit plan or the defined contribution plan.

(2) (a) For purposes of this part 15, "eligible employee" means, effective July 1, 2009, any employee who commences employment with an employer and who, if not commencing employment in a state elected official's position, has not been a member of the association's defined benefit plan or the association's defined contribution plan or an active participant of the state defined contribution plan established pursuant to part 2 of article 52 of this title, as said part existed prior to its repeal in 2009, during the twelve months prior to the date that he or she commenced employment. "Eligible employee" includes a retiree of the association who is serving in a state elected official's position but does not include any other retiree of the association or a retiree of the association who has suspended benefits.

(b) An employee who is covered by a defined contribution plan pursuant to article 54.6 of this title or who is an employee of any state college or university as defined in section 24-54.5-102 (7), any institution under the control of the board of regents of the university of Colorado, or an institution governed pursuant to part 5 of article 21 of title 23, C.R.S., shall not be eligible to make the election pursuant to subsection (1) of this section.

(3) An eligible employee hired by an employer on or after May 2, 2009, is eligible for the election pursuant to subsection (1) of this section.

24-51-1502.5. New community college employees - election. (Repealed)

24-51-1503. Defined contribution plan option. (1) An eligible employee shall be covered by the association's defined benefit plan with contributions and benefits as specified in parts 4 to 12 of this article, unless the member elects to participate in the association's defined contribution plan in accordance with this part 15 in lieu of the defined benefit plan within sixty days of commencing employment.

(2) An employee hired by an employer who has been a member of the association's defined benefit plan or the association's defined contribution plan during the twelve months prior to the date that the employee commences employment shall automatically continue to be a member of such plan upon commencing employment. The employee shall be considered an eligible employee for purposes of section 24-51-1506.

(3) An employee of an employer who is hired on or after July 1, 2009, and who has been an active participant of the state defined contribution plan established pursuant to part 2 of article 52 of this title, as said part existed prior to its repeal in 2009, during the twelve months prior to the date that the employee commences employment, shall be a member of the association's defined contribution plan upon commencing employment, and the employee shall not be considered an eligible employee for purposes of section 24-

51-1506 (1) and (2).

(4) (a) An eligible employee who is a member, inactive member, or retiree of the association's defined benefit plan on December 31, 2006, and elects to participate in or is automatically enrolled in the association's defined benefit plan, or who makes an election pursuant to section 24-51-1506 (1) to become a member of the association's defined benefit plan, shall be subject to the benefit provisions in effect for the existing member contribution account.

(b) An eligible employee who elects to participate in the association's defined contribution plan and is not a member, inactive member, or retiree of the association's defined benefit plan on December 31, 2005, and subsequently becomes a member of the association's defined benefit plan shall be subject to the benefit provisions in effect at the time the employee becomes a member of the defined benefit plan. Any service credit purchased for the period of employment covered by the defined contribution plan shall be subject to the benefit provisions in effect for such member at the time of the commencement of the purchase.

(5) Notwithstanding any other provision of this part 15, participation in the association's defined contribution plan by a district attorney, an assistant district attorney, a chief deputy district attorney, a deputy district attorney, or other employee of a district attorney shall be governed by the provisions of sections 24-51-305 and 24-51-305.5.

24-51-1504. Investments. (1) The plan shall allow a member of the defined contribution plan to exercise control of the investment of the member's account under the plan, subject to the following provisions:

(a) The board shall select at least five investment alternatives that allow a member a meaningful choice between risk and return in the investment of the member's account.

(b) The plan shall allow the member to change investments regularly.

(c) The plan shall provide the member with the information describing the investment alternatives, including information on the nature, investment performance, fees, and expenses of the investment alternatives.

(2) The association and employers shall not have the responsibility to pay for any financial losses experienced by members of the defined contribution plan.

24-51-1505. Contributions - vesting. (1) Contribution rates to the association's defined contribution plan by the employer and by members of the defined contribution plan established pursuant to this part 15 shall be the same as the rates that would be payable by the employer and the member pursuant to section 24-51-401.

(2) Consistent with the provisions of section 24-51-401 (1.7) (b), (1.7) (c), and (1.7) (d), the employer shall deliver all contributions to the defined contribution plan trust

fund via the service provider designated by the association within five days after the date members are paid.

(3) Except as otherwise provided in subsection (4) of this section, members of the association's defined contribution plan shall be immediately and fully vested in their own contributions to the plan, together with accumulated investment gains or losses. Members shall be immediately vested in fifty percent of the employer's contribution to the plan, together with accumulated investment gains or losses on that vested portion. For each full year of membership in the defined contribution plan, the vesting percentage shall increase by ten percent. The vesting percentage in the employer's contribution, with accumulated earnings or losses, shall be one hundred percent for all members with five or more years of membership in the defined contribution plan. If an individual becomes a member of the defined contribution plan without an existing account balance or after a twelve-month break in service, the individual shall begin a new vesting schedule with regard to future employer contributions in accordance with this subsection (3).

(4) A member of the association's defined contribution plan with an accrued balance in the plan who became a member of the plan pursuant to section 24-51-1501 (2) or 24-51-1503 (3), shall be fully vested in one hundred percent of the state's past and future contributions to the plan, together with accumulated investment gains or losses on that vested portion. If an individual becomes a member of the association's defined contribution plan without an existing account balance or after a twelve-month break in service, the individual shall begin a new vesting schedule with regard to vesting of future employer contributions in accordance with subsection (3) of this section.

24-51-1506. Additional choices within first five years. (1) An eligible employee who is a member of the association's defined contribution plan, except for individuals who became members of the association's defined contribution plan pursuant to section 24-51-1501 (2) or 24-51-1503 (3), may elect, at any time during the second to fifth year of membership in the plan, to terminate membership in the plan and to become a member of the association's defined benefit plan with benefits and contribution rates specified in parts 4 to 12 of this article. Such election shall be irrevocable.

(2) A member who elects to join the defined benefit plan pursuant to subsection (1) of this section may, upon meeting the requirements of section 24-51-505, purchase service credit for the period of employment covered by the defined contribution plan. The cost to purchase such service shall be the same as the cost determined by the board for the purchase of noncovered employment. The member may elect to have any portion of the member's account paid from the defined contribution plan to the defined benefit plan to facilitate the purchase of service credit through a direct rollover in accordance with section 401 (a) (31) of the federal "Internal Revenue Code of 1986", as amended. The member may not be vested in the defined contribution plan upon purchasing service credit

for employment that was covered by the defined contribution plan.

(3) The board, in its sole discretion, may provide optional coverage for disability, survivor, and retiree health care benefits to members of the association's defined contribution plan.

(4) An eligible employee who is a member of the association's defined benefit plan may elect, at any time during the second to fifth year of membership in the plan, to terminate membership in the plan and to become a member of the association's defined contribution plan created pursuant to this part 15. Such election shall be irrevocable.

24-51-1506.5. Additional choices for employees who were eligible employees before January 1, 2006. (1) Effective July 1, 2009, any employee who became eligible to participate in the state defined contribution plan before January 1, 2006, who was a member or inactive member of the association may, as long as the employee is employed in a position with an employer for which the association's defined contribution plan is available, make a written election during the annual open enrollment period for the state employees group benefit plan of any year to participate in the association's defined contribution plan. The written election shall be effective the first day of the annual state employees group benefit plan year established pursuant to section 24-50-604 (1) (m). In the absence of such written election, the employee shall be a member of the association's defined benefit plan.

(2) Any employee who was eligible to participate in the state defined contribution plan before January 1, 2006, and who elects to participate in the association's defined contribution plan pursuant to subsection (1) of this section shall specify one of the following options:

(a) To terminate future defined benefit contributions beginning on the date of election while maintaining rights as provided by the laws applicable to the association relative to any contributions or benefits accrued prior to such election; or

(b) To terminate membership in the association's defined benefit plan and require payment by the association of all member contributions, accrued interest on such contributions, and matching employer contributions, as provided by the laws applicable to the association, to the association's defined contribution plan. Such election shall constitute a waiver of all rights and benefits provided by the association. Within ninety days after receipt of notice of an election to terminate membership pursuant to this paragraph (b), the association shall pay to the association's defined contribution plan an amount equal to the employee's member contributions plus accrued interest calculated pursuant to section 24-51-407 and matching employer contributions paid pursuant to section 24-51-408.

(3) (a) Effective July 1, 2009, any employee who became eligible to participate in the state defined contribution plan before January 1, 2006, and who participated in the

state defined contribution plan before July 1, 2009, and became a member of the association's defined contribution plan pursuant to section 24-51-1501 (2) or 24-51-1503 (3) may terminate future contributions to the association's defined contribution plan and instead participate in the association's defined benefit plan by making a written election during the annual open enrollment period for the state employee group benefit plan of any year. The written election shall be effective on the first day of the annual state employee group benefit plan year, established pursuant to section 24-50-604 (1) (m). Any such election to participate in the association's defined benefit plan shall be in writing and shall be filed with the association and with such eligible employee's employer. In the absence of such written election, the employee shall be a member of the association's defined contribution plan.

(b) Any employee who terminates participation in the defined contribution plan pursuant to paragraph (a) of this subsection (3) and becomes a member of the association's defined benefit plan may, upon meeting the requirements of section 24-51-505, purchase service credit for the period of employment during which the employee was a participant in the defined contribution plan. The cost to purchase service credit shall be determined in accordance with section 24-51-505 (3). The employee may elect to have any portion of the employee's account paid from the defined contribution plan to the association to facilitate the purchase of service credit through a direct rollover in accordance with section 401 (a) (31) of the federal "Internal Revenue Code of 1986", as amended. The employee may not be vested in the association's defined contribution plan upon purchasing service credit for employment that was covered by the defined contribution plan.

24-51-1507. Transfer or rollover into plan. The defined contribution plan may accept a direct rollover or a member rollover into the member's defined contribution plan account, to the extent permitted by federal law and authorized by the defined contribution plan.

24-51-1508. Distribution options. The defined contribution plan shall include options for the distribution of the defined contribution account, including payment in a lump sum and payment as a lifetime annuity. The state and other employers shall not have liability for any of the payments.

24-51-1509. Rights of defined contribution plan members. (1) A defined contribution plan member shall not be considered a member or a retiree for the purpose of parts 4 to 12 of this article, nor shall his or her survivors or beneficiaries be considered

benefit recipients.

(2) A defined contribution plan member may participate in optional life insurance, long-term care insurance, the voluntary investment program, and the deferred compensation plan as provided in this article.

(3) A member of the defined contribution plan shall be eligible to enroll in the health care program as a benefit recipient pursuant to section 24-51-1204 (1) (a) only if the member elects the lifetime annuity distribution option. Any premium subsidy paid shall be based on the years of service credit in the defined benefit plan.

(4) A member of the defined contribution plan who has reached the age at which a distribution would not be subject to a penalty pursuant to the federal "Internal Revenue Code of 1986", as amended, and who returns to employment shall be subject to the provisions of part 11 of this article concerning employment after retirement.

(5) (Deleted by amendment, L. 2009, (SB 09-66), ch. 73, p. 254, § 12, effective March 31, 2009.)

24-51-1510. Report to members. On a quarterly basis, the board shall report to members who participate in the defined contribution plan. The report shall include a statement of account balances, a review of account transactions, and the amount of administrative fees charged to the members during the quarter.

24-51-1511. Limitation on actions by eligible employees. Administrative actions or civil actions brought by employees to dispute the election for participation or failure to elect participation in the association's defined benefit plan, the association's defined contribution plan, or the defined contribution plan established pursuant to part 2 of article 52 of this title, as said article existed prior to its repeal in 2009, shall commence within one hundred eighty days after the election or within one hundred eighty days of the last day on which the employee may make an election to participate in such plan pursuant to this article and article 52 of this title, whichever is earlier, and not thereafter.

PART 16

DEFERRED COMPENSATION PLAN

24-51-1601. Deferred compensation plan and trust fund. (1) Effective July 1, 2009, the state deferred compensation committee established pursuant to section 24-52-102, as said section existed prior to its repeal in 2009, shall be abolished, and the board shall assume the administration of and fiduciary responsibility for the state deferred

compensation plan previously administered under part 1 of article 52 of title 24, as said part existed prior to its repeal in 2009. The board shall have the authority to set the terms and conditions of the deferred compensation plan.

(2) The board shall establish, as set forth in section 24-51-208 (1) (j), a deferred compensation plan trust fund, referred to in this part 16 as the "trust fund", to hold the assets of the deferred compensation plan.

(3) The trust fund shall be established under section 24-51-208 (1) (j), effective upon transfer of assets of the deferred compensation plan to the trust fund. The board shall be trustee of the trust fund. No part of the assets and income of the trust fund shall be used for or diverted to purposes other than for the exclusive benefit of participants and their beneficiaries prior to the satisfaction of liabilities with respect to participants and their beneficiaries.

(4) The department of personnel created in section 24-1-128 shall provide for the orderly transfer of all records pertaining to the state deferred compensation plan and the state defined contribution match plan and shall take any other action necessary for the board to assume its duties under this part 16.

24-51-1602. Affiliation with the deferred compensation plan. (1) An employee is not eligible to participate in the deferred compensation plan authorized in section 24-51-1601 unless his or her employer is affiliated with such plan.

(2) An employer, as defined in section 24-51-101 (20), may affiliate with the deferred compensation plan by making application to the association. All applications shall be subject to approval by the association. Upon affiliation, employees of the employer are eligible to begin deferring salary to the deferred compensation plan.

(3) All employers that are affiliated with the deferred compensation plan prior to July 1, 2009, including entities that are not affiliated employers of the association, as employer is defined in section 24-51-101 (20), shall remain affiliated and shall not have to apply to the association pursuant to subsection (2) of this section.

(4) Any employee who is employed by an entity that is affiliated with the deferred compensation plan shall be entitled to participate in the plan regardless of whether that individual is a member or retiree of the association.

24-51-1603. Contributions to the deferred compensation plan. (1) An employee of an employer affiliated with the deferred compensation plan pursuant to section 24-51-1602 (2) or (3) may participate in the deferred compensation plan authorized in section 24-51-1601 by electing with his or her employer to defer receipt of salary by specifying an amount contributed by payroll deduction. The amount of such deferral by the employee shall be subject to any limitations established by federal law.

The amount deferred, including investment earnings, shall be exempt from federal and state income taxes until the ultimate distribution of such contributions has been made to the participant, former participant, or beneficiary.

(2) All voluntary deferrals by a participating member shall be included in the salary of such member in accordance with section 24-51-101 (42) for the purpose of calculating member and employer contributions pursuant to the provisions of section 24-51-401. The member contribution provisions of section 24-51-401 shall not apply to any deferral made by a retiree.

(3) Consistent with the provisions of section 24-51-401 (1.7) (c) and (1.7) (d), the employer shall deliver all deferred compensation contributions to the trust fund via the service provider designated by the association, if applicable, within five days after the date the employees are paid.

24-51-1604. Expenses of the deferred compensation plan. The expenses of administering the deferred compensation plan authorized in section 24-51-1601 shall be paid from either the investment earnings or account balances of the deferred compensation plan.

24-51-1605. Investments of the deferred compensation plan. (1) Individuals participating in the deferred compensation plan shall designate that their deferred compensation contributions be invested in one or more types of investments made available by the board. These investments may include, but are not limited to, equity investments, fixed-income investments, life insurance company products, and any investments permitted pursuant to section 24-51-206.

(2) Neither the association nor any employers shall have the responsibility to pay for any financial losses experienced by members of the deferred compensation plan.

PART 17

DENVER PUBLIC SCHOOLS DIVISION

24-51-1701. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the best interests of the people of this state to administer the Denver public schools pension system within the state under the public employees' retirement association.

(b) The combination of the Denver public schools retirement system as a separate

division of the public employees' retirement association will recognize the distinctive characteristics of that system and its funding over sixty-three years, and will also facilitate the general assembly's anticipated assessment of the contribution and benefit structure of the association's defined benefit plans to maintain the perpetual sustainability of such plans based on the recommendations from the board of trustees of the association in 2010.

(c) The state's seventy-seven-year investment in the defined benefit plans for Colorado public servants has served the state invaluably. The association has provided positive investment returns on funds that, when distributed as benefits, remain substantially within Colorado and fosters a professional and effective governmental service system. These features strengthen the provision of government services for all citizens of the state in ways that no other retirement system could, affecting the public safety and general welfare of the state for the better.

(d) The current separation of pension plans and provisions between Denver public schools employees and the employees of all the other school districts in the state creates artificial barriers for employees to relocate between the systems. Therefore, this separation hinders competitive forces for the placement of teachers and other employees at their potential optimum employment location, preventing the maximization of employee value for all school districts and citizens within the state.

(2) The general assembly further finds and declares that the purpose of this part 17 is to combine the two systems with the intent of facilitating the perpetual future maintenance, security, and sustainability of the defined benefit plans within the public employees' retirement association. Given the special services and benefits rendered by Colorado's public servants to the citizens of the state, it is the province, right, and obligation of the state to care for the members and the dependents and survivors of its public servants who are entitled to retirement benefits due to length of service or age or because they have been injured or disabled in service.

24-51-1702. Definitions. As used in this part 17, unless the context otherwise requires:

(1) "Accredited service" shall have the same meaning as set forth in section 24-51-1704.

(2) "Active service", as used in determining eligibility to receive benefits, as contrasted with determination of the amount thereof, means all periods of service that qualify as accredited service. Additionally, for employees appointed or reappointed on or after December 1, 1945, a maximum of ten years of civilian service, of a similar kind, in a tax-supported institution other than the district, referred to in this subsection (2) as "outside service", may count as active service; except that any service purchased together with any such outside service shall not exceed a maximum of ten years in calculating active service. No part of said outside service shall apply if earned while on leave from

the district. Whenever the term "active service" is used with reference to civilian service of a similar kind of a regular or casual employee with any tax-supported institution other than the district, said active service shall be determined in a manner consistent with the definition of active service with the district. Periods of service in a charter school shall count as active service if such service is also counted as accredited service. Effective January 1, 1996, all service performed with the district or with a charter school and that meets the definition of accredited service shall be treated as if it were civilian service in a tax-supported institution other than the district, as provided in this subsection (2), if it is not counted as accredited service.

(3) "Annual compensation" means the established contractual salary rate for a regular employee on an annual basis for regularly assigned services, before any deductions. Special stipends and extra pay for additional assignments not on the basis of the regular established contractual salary rate shall not be deemed a part of annual compensation. For compensation received on and after January 1, 2010, annual compensation shall be governed by section 24-51-101 (42) for purposes of determining benefits under this part 17.

(4) "Annuity" means that portion of the benefit attributable to funds provided by normal or arrearage contributions or both made by a contributing or affiliate member.

(5) "Attained age" means the age attained upon a particular birthday.

(6) "Basic retirement allowance" means total retirement allowance excluding the annual retirement allowance adjustment.

(7) "Board of education" means the board of education of Denver public schools.

(8) "Career average salary" means the average of the applicable regular annual salary rates for the entire time of accredited service for regular employees.

(9) "Casual employee" means any part-time or temporary employee of the district or of a charter school who received or receives payment in the form of wages or salary from the district or charter school. Payment of fees for contracted services to an independent contractor shall not be considered salary or wages. Any employee who is a regular employee shall not at the same time be a casual employee.

(10) "Charter schools" means schools created pursuant to the "Charter Schools Act", part 1 of article 30.5 of title 22, C.R.S., that are a part of the Denver public schools and that are accountable to the board of education as complying with the purposes and requirements of said act.

(11) "Consumer price index" or "CPI" means the index, calculated by the United States department of labor, in the national consumer price index for urban wage earners and clerical workers.

(12) "Contributing service" means that portion of service for which an employee has paid the normal contribution, including any regular interest that would have been credited upon said contribution prior to the payment thereof by the member, together with an amount equal to the pension assessment, if applicable, that would have been payable

during such service.

(13) "Covered employment" means the employment of any regular or casual employee who is compensated by wages or salary paid by the district or by a charter school approved by the district. "Noncovered employment" means employment outside of the district or outside of a charter school approved by the district. Service in the armed forces of the United States is included in "noncovered employment".

(14) "District" means school district no. 1 in the city and county of Denver and state of Colorado and is used synonymously with the term "Denver public schools". Unless explicitly stated otherwise in the text, the term "district" also includes those schools that are part of the Denver public schools and that are accountable to the board of education as charter schools and shall also include the Denver public schools retirement system. For clarity or emphasis, there are references in certain sections to both the district and a charter school. The lack of such a dual reference shall not, however, be interpreted to change the foregoing definition as to any other sections.

(15) "Earned service" means service equal to the greater of a member's active or accredited service on January 1, 2004, calculated in accordance with the applicable provisions of this plan as it existed immediately prior to January 1, 2004. Following December 31, 2003, a member's earned service shall be used in lieu of active or accredited service in determining both the eligibility for and the amount of retirement benefits under the DPS plan. On and after January 1, 2010, earned service shall be governed by section 24-51-501.

(16) "Employee contribution" means any funds, other than the pension assessment, payable and paid hereunder by a contributing or affiliate member. The following additional terms are applicable to the term "employee contribution":

(a) "Accumulated contributions" means the balance in a member's account of normal arrearage or additional contributions and regular interest credits thereon. The pension assessment is not a part of accumulated contributions.

(b) "Arrearage contribution" means any contribution in excess of the normal contribution that is required of and paid by contributing or affiliate members.

(c) "Normal contribution" means the required payment by a contributing or affiliate member of a portion of compensation into the system retirement trust fund.

(17) "Highest average salary" means the average monthly compensation of the thirty-six months of accredited service having the highest rates, multiplied by twelve, or the "career average salary", whichever is greater, and shall be applied to benefits, except for benefits under sections 24-51-1727 to 24-51-1731, attributable to retirement or death on or after July 1, 1994. For benefits under sections 24-51-1727 to 24-51-1731, "highest average salary" applies to cases where termination of service occurs on or after July 1, 1994. This subsection (17) shall apply only to DPS members eligible for a retirement benefit as of January 1, 2011. For DPS members not eligible for a retirement benefit as of January 1, 2011, the definition of "highest average salary" specified in section 24-51-101

(25) (b) (V) shall apply.

(18) "Job sharing" means the occupation of a single staff position by two employees who receive annual compensation on the active payroll of the district, with each assignment being half-time for the entire contractual work year. Job sharing shall also mean the occupation of a less-than-full-time but greater-than-half-time position by one employee who receives annual compensation on the active payroll of the district and who has no other assignment with the district. Job sharing shall not include the occupation of a position by a person who is a casual employee.

(19) "Membership" means the relationship a regular or casual employee has in the DPS plan and shall consist of the following:

(a) "Affiliate member" means any casual employee who, pursuant to the provisions of this plan, has applied for affiliate membership and whose application has been accepted. "Affiliate member" includes any casual employee of a charter school or of the retirement system who applies for affiliate membership and whose application is accepted.

(b) "Annuitant" means a person who is receiving a retirement allowance.

(c) "Beneficiary" means a person who has received, receives, or is designated to receive benefits accruing as a result of an employee's membership.

(d) "Contributing member" means a regular employee of the district on December 1, 1945, and any employee hired as a regular employee on or after said date, except an employee who, pursuant to the plan adopted by the board of education on November 19, 1945, elected associate membership and has not subsequently become a contributing member as permitted under the plan. The term "contributing member" includes a regular employee of a charter school and a regular employee of the system.

(e) "Deferred member" means a former employee of the district who:

(I) Is not an annuitant who, on or before December 31, 2008, terminated employment with the district and who has on file an election and declaration of intent to apply for a deferred retirement allowance; or

(II) On or after January 1, 2009, terminated employment with the district and has not requested a refund of such member's accumulated contributions.

(20) "Money purchase monthly annuity" means the monthly annuity that is the actuarial equivalent of a lump sum amount.

(21) "Monthly compensation" means annual compensation divided by twelve.

(22) "Monthly crediting method" means the way in which earnings on member accounts are calculated and credited at the end of a calendar month based upon the accumulated contributions in the member's account at the beginning of that month pursuant to provisions of the DPS plan.

(23) "Nonqualified service" means any noncovered employment that does not include:

(a) Service as an employee of the United States government, any state or political

subdivision thereof, or any agency or instrumentality of any of the foregoing;

(b) Service as an employee of a public, private, or sectarian elementary or secondary school;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection (23); or

(d) Service in the armed forces of the United States.

(24) "Normal retirement age" means the attainment of age sixty-five.

(25) "Outside service" means civilian service of a similar kind, in a tax-supported institution other than the district. Substantiation of outside service must be initiated as of July 1, 2009, or it cannot be applied to earned service for purposes of meeting regular retirement eligibility, pursuant to the provisions of this part 17 regarding earned service. Substantiation of such service must be completed on or prior to December 31, 2009.

(26) "Pension" means the portion of the benefit attributable to funds provided by the district.

(27) "Permanently incapacitated" means an incapacitating condition that is demonstrably permanent and prevents the employee from performing assigned duties subject to accommodation required in accordance with applicable law or reasonably imposed by the district. This subsection (27) applies only for purposes of determining eligibility for disability benefits for applications filed under the DPS plan prior to January 1, 2010.

(28) "Permitted absence" means any authorized and unpaid absence, other than severance of employment; except that no absence in excess of thirty consecutive calendar days shall be deemed permitted unless the authorization therefor shall be in writing, signed by an appropriate administrative official or by authorization of the district. Regardless of any time factor, no absence continued after written notice to return shall be deemed a permitted absence.

(29) "Primary percentage" shall be the product obtained by multiplying the unit benefit percentage factor by the total number of years and months of accredited service. Months shall be expressed as fraction with the number of months as the numerator and twelve as the denominator. The primary percentage shall be rounded to the nearest one-hundredth of a percent. Multiplying the primary percentage by the highest average salary as defined in subsection (17) of this section or career average salary, whichever is applicable, results in the annual retirement allowance expressed as a single life annuity and known as option A.

(30) "Regular employee" means any employee who receives annual compensation on the active payroll of the district and whose employment by the district represents the employee's principal gainful occupation and requires so substantial a portion of time that it is impractical to follow any other substantially gainful occupation. Absence of a regular employee on a permitted absence shall not change the employee's status as a regular employee. Any employee who is a casual employee shall not at the same time be a

regular employee.

(31) "Regular interest" means, on and after January 1, 2010, the rate set by the association's board as provided in section 24-51-407 (4) and as may be periodically adjusted. On or before December 31, 2009, "regular interest" means the rates specified in the DPS plan document.

(32) "Reserve" means the present value of payments to be made on account of any benefit provided in this plan and computed upon the basis of such mortality tables and interest assumptions as may, from time to time, be approved.

(33) "Reserve for employees to be retired" means the reserve that is part of the system retirement trust fund and identifies the amount of moneys set aside to provide for the basic benefits that are anticipated to be payable to currently active members or to those members who have already elected deferred retirement benefits but who, because of age, are not yet actually receiving such benefits.

(34) "Retirement allowance" or "total retirement allowance" means the initial benefit for a benefit that becomes effective on or after January 1, 2010. For a benefit that became effective before January 1, 2010, "retirement allowance" means the total benefit payable as of June 30, 2010, including the sum of the initial benefit, accumulated annual increases, and cost of living increases.

(35) "Retirement plan" means the retirement and benefit plan contained in this part 17.

(36) "Supplement" or "special supplement" means postretirement increases in total retirement allowance to certain qualified annuitants and beneficiaries.

(37) "Tax-supported institution" means a governmental entity or agency that either has the power to levy taxes or that receives governmental appropriations as such an entity or agency.

(38) "Total temporary disability" means absence from work and temporary inability to perform assigned duties as a result of personal injury incurred in the scope and course of employment as determined by the district.

(39) "Unit benefit percentage factor" means the percentage used as the factor for one year of accredited service. The unit benefit percentage factor shall be one and two-thirds percent from July 1, 1962, to January 1, 1980. The unit benefit percentage factor shall be one and seventy-five one-hundredths percent effective January 1, 1980; one and ninety one-hundredths percent effective January 1, 1981; two percent effective January 1, 1982; two and seven one-hundredths percent effective January 1, 1988; two and twenty-five one-hundredths percent effective July 1, 1998; and two and one-half percent effective January 1, 2001. The unit benefit percentage applicable to a deferred retirement shall be that in effect on the actual date on which the employment of such member by the district finally terminated. In all other retirements, the unit benefit percentage factor shall be that in effect on the effective date of such retirement.

24-51-1703. Denver public schools division - consolidation. (1) The DPS plan shall continue to govern the benefits and programs specified in such plan through December 31, 2009. On January 1, 2010, the DPS plan shall be superseded by the provisions of this article except to the extent that it is necessary to refer to the DPS plan for the correction of errors and as it may be incorporated by reference in this article.

(2) On January 1, 2010, all the assets, liabilities, and obligations of the Denver public schools retirement system shall become the assets, liabilities, and obligations of the Denver public schools division of the association without any further act or document of transfer.

(3) On January 1, 2010, notwithstanding the provisions of subsection (2) of this section, the Denver public schools retirement system or the association, or both, may take such actions and execute such certifications or other instruments as may be convenient to evidence the consummation of the merger of the two systems, its effective date, and the assets or any particular asset transferred. Any such certification or other instrument purportedly executed by an authorized officer of either system and bearing the seal of such system shall be prima facie evidence of all matters stated in the certification or instrument and may be relied upon by any third party, without further inquiry, including, without limitation, any public trustee or other public official of this or any other state or local government. If any certification or other instrument is recorded in the appropriate real estate records in this or any other state or local government, a copy of the certification or instrument, when duly certified by the custodian of the real estate records to be a true copy of the recorded original, shall have the same effect as the original.

(4) The value of assets transferred as of January 1, 2010, as reflected in the audited financial report effective December 31, 2009, shall determine the initial asset value in the Denver public schools division trust fund for purposes of the initial and future valuations and the proportionate share of the total assets of the association attributable to the Denver public schools division. In the event that the audited value is adjudicated by a court of competent jurisdiction to be in error such that the true value on the date of transfer was different than reflected in the audited financials, an adjustment shall be made to the initial asset value of the Denver public schools division and appropriate adjustments made to the proportionate share of investment returns and expenses of the association attributed to the Denver public schools division. No adjustment to the starting asset value of the Denver public schools division shall result from a change in value after January 1, 2010, of the assets transferred. For purposes of this subsection (4), the Denver public schools retirement system real estate and private equity holdings shall be valued and audited as of December 31, 2009, and the directly owned real estate of the association shall be appraised for evaluation as of December 31, 2009.

(5) (a) Prior legislative attempts to accomplish the merger of the Denver public schools retirement system into the school division of the Colorado public employees'

retirement association with agreement among the three parties have proven unsuccessful notwithstanding substantial expenditures of time and money by the parties. The reasons for such lack of success include the methodology involved in the determination and allocation of the costs of a merger in order to avoid any subsidy to either merging party as a result of the merger. To avoid these problems and to obtain the public policy benefits of a merger, this section mandates the merger without any requirement of agreement among the parties and implements it through the creation of a separate division within the association. Notwithstanding such mandate, the successful integration of the Denver public schools retirement system into the association while maintaining a continuing high level of service to the members and beneficiaries of both systems has required and will continue to require the cooperation and best efforts of the governing bodies and staffs of the Denver public schools retirement system, the association, and the Denver public schools. In the course of the merger, the parties shall observe the fiduciary duties and legal obligations incident to their respective offices, positions, and employments, which duties and obligations may not always be entirely clear or easily accomplished. Therefore, to secure the public policy objectives incident to the merger and its successful implementation in the most efficient way feasible, so long as such governing bodies and staffs act or have acted in good faith and in accordance with a good faith interpretation of the requirements of this section and other applicable law, they shall be deemed to have fulfilled their fiduciary duties and other legal obligations. In addition, such governing bodies and staffs shall have no personal liability for their acts or omissions incident to the implementation of the merger, including all activities reasonably related thereto. Any person who contends otherwise shall bear the burden of proving that any act or omission challenged does not meet the requirements of good faith.

(b) It is the intent of this part 17 to achieve the mandated merger and to facilitate its implementation, thereby providing portability of the benefits of the members of the Denver public schools retirement system and the association. In addition, this part 17 is intended to pursue efficiencies in the administration of the benefits of members and beneficiaries of the Denver public schools retirement system and in the investment of moneys being transferred to the association and later accruing to it through employer and employee contributions, all in accord with changing conditions. The provisions of this part 17 and the benefit provisions for members and beneficiaries to be provided following the merger shall be interpreted and administered to attempt to further those objectives, and if pursued reasonably and in good faith shall be deemed to comply with applicable legal and fiduciary requirements. Any person who contends otherwise shall bear the burden of proving that any act or omission challenged does not meet all legal requirements applicable in the circumstances.

(c) On January 1, 2010, the separate existence of the Denver public schools retirement system shall cease, and the terms of its trustees shall expire. In addition, the employment of its employees shall cease, subject to section 24-51-1748, providing for

their employment by the association. Any claims against such trustees, former trustees, employees, or former employees in their respective capacities shall be commenced within such periods of limitation and shall be subject to such other provisions as may be provided by law, but in no case shall such an action be brought more than two years after January 1, 2010. Any claims relating to the merger and made against the trustees, former trustees, employees, or former employees of the association in their respective capacities, and any claims relating to the merger and made against members or former members of the board of education or employees or former employees of the school district in their respective capacities shall be commenced within such periods of limitation and shall be subject to such other provisions as may be provided by law, but in no case shall such an action be brought more than two years after January 1, 2010.

24-51-1704. Service credit. (1) "Accredited service", as used in the determination of benefits, allowed or allowable, shall include the following:

(a) Subject to the express limitations in this section, all periods of employment with the district or with a charter school as a regular employee for which the employee received or receives payments in accordance with annual compensation.

(b) All periods of employment with the district or with a charter school as a casual employee prior to the effective date of retirement for which the employee received or receives wages or salary from the district; except that no period of employment as a casual employee shall be counted as accredited service if such employee during such period is also a regular employee.

(c) Leaves of absence or permitted absences commencing prior to July 1, 1962, as governed by the DPS plan document.

(d) Leaves of absence or permitted absences commencing on or after July 1, 1962, under the following conditions:

(I) A leave of absence for service in the United States armed forces, study, travel, or research shall count as accredited service if the entire period of said leave qualifies as contributing service.

(II) If said leave is a sabbatical leave or a leave for restoration of health on a half-salary basis and if the normal contribution is based on the full annual compensation of the member and the leave qualifies as contributing service, then the entire period of such leave shall count as accredited service. If, however, the normal contribution is based only on a fraction of the annual compensation, then said fraction shall be multiplied by the total period of such leave to determine the portion of the leave that shall count as accredited service.

(III) (A) Notwithstanding any other provision of this subparagraph (III), an absence due to a temporary total disability compensable in accordance with the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., shall be deemed

accredited service only in accordance with the provisions of this sub-subparagraph (A).

(B) The portion of an absence due to a temporary total disability for which the employee is compensated by the district in accordance with its policies pertaining thereto from time to time shall be considered accredited service. If, however, the normal contribution is based only on a fraction of the annual compensation, then the fraction shall be multiplied by the total period of such leave to determine the portion of the leave that shall count as accredited service.

(C) The portion of an absence due to a temporary total disability for which the employee is not compensated in the manner provided in sub-subparagraph (B) of this subparagraph (III) but for which the employee receives workers' compensation shall be considered accredited service only if qualified as such within the earlier of two years after the employee's return to work full time or thirty days prior to the effective date of the employee's retirement. Such qualification shall be accomplished by payment into the DPS plan of an amount equal to the normal contributions and pension assessments, together with interest as calculated, and within the time limits determined by the association board and computed as of the date the agreement to pay is made, for the portion of the absence covered by this sub-subparagraph (C) in accordance with subparagraph (VI) of this paragraph (d).

(D) This subparagraph (III) shall become effective on January 1, 1986, and shall apply to absences covered by its terms that begin on or after that date.

(IV) No portion of a period of absence for illness where said period exceeds fifteen consecutive working days, for which period no payments in accordance with the employee's annual compensation were made, shall count as accredited service.

(V) Any other type of permitted absence not specified in this section may not be counted as accredited service unless the board of education, at the time such permitted absence is authorized, specifies that the time spent on such permitted absence shall be counted as accredited service for purposes of this retirement plan, subject to the requirement that the entire period of said absence shall qualify as contributing service. Notwithstanding this subparagraph (V), any such absence which is less than sixteen consecutive working days shall be counted as accredited service.

(VI) The normal contribution for all permitted absences other than those compensated in any way by the district shall be based upon the annual compensation in effect immediately prior to the date of commencement of such absence.

(VII) Service accrual for all permitted absences shall be consistent with service accruals that were allowed under this retirement plan immediately preceding the permitted absence. This shall include, without limitation, the retirement plan and associated rule definitions and provisions applicable to service accrual for job-sharing assignments as of any given date.

(e) Leaves of absences or permitted absence commencing on or after January 1, 1980, which can qualify as accredited service in accordance with this subsection (1), must

be qualified as contributing service within two years from the date the employee returns to work. On and after January 1, 1998, leaves of absence that are qualified as contributing service shall be qualified in accordance with provisions of the DPS plan document.

(f) A person employed in a job-sharing assignment shall receive earned service accruals appropriate to reduce such service to its equivalent in full-time service.

(g) A leave of absence granted to an employee to allow that employee to work in a charter school shall not count as accredited service unless the period of time spent in charter school employment is covered as contributing or affiliate membership, in which case the service shall be covered pursuant to the requirements of such membership.

24-51-1705. Purchase of service credit relating to a refunded member contribution account and noncovered employment. Purchases related to reemployment and noncovered employment for which payments are not complete prior to January 1, 2010, shall be governed by the DPS plan document. On January 1, 2010, service credit shall be credited to the member accounts to the extent of payments received, a new service credit purchase agreement shall be issued by the association using the previously existing lump-sum or installment payment amount, and future payments and service accruals shall be governed by part 5.

24-51-1706. Accreditation of casual employment and qualifiable leave. Accreditation of casual employment and qualifiable periods of leave as described in section 24-51-1704 for which payments are not complete prior to January 1, 2010, shall be governed by the DPS plan document. On January 1, 2010, such service shall be credited to the member accounts to the extent of payments received, and a new purchase agreement shall be issued by the association using the previously existing lump-sum or installment payment amount, and future payments and service accruals shall be governed by part 5 of this article. After January 1, 2010, accreditation of casual employment and qualifiable leaves as provided in this part 17 shall not be permitted.

24-51-1707. Affiliate membership. A casual employee who has been approved or has applied, and is ultimately approved, for status as an affiliate member as of December 31, 2009, shall remain an affiliate member and the benefits provided for pursuant to the DPS plan document shall govern at the time of retirement, unless such status is revoked pursuant to the DPS plan document. Any applicant for affiliate member status shall complete payments in accordance with the DPS plan document or be subject to revocation of affiliate member status. On or after January 1, 2010, further applications for affiliate membership shall not be permitted, and all eligible benefits payable to the existing

affiliate members shall be based on the highest average salary, as defined in section 24-51-1702 (17), and benefit descriptions, as detailed in sections 24-51-1715, 24-51-1729, and 24-51-1734 to 24-51-1746.

24-51-1708. Unclaimed moneys. Any moneys due under this part 17 to employees who have resigned, been dismissed, or died prior to retirement, and that have been unclaimed for a period of three years shall be forfeited and credited to the Denver public schools division.

24-51-1709. Arrearages. Arrearage contributions allowed pursuant to this part 17 that require employer contributions, as well as employee contributions, shall be the obligation of and shall be paid by the member's Denver public schools division employer at the time the payment obligation was initiated even if the service so qualified was rendered during a period of employment with a different Denver public schools division employer.

24-51-1710. Earned service. (1) Effective on January 1, 2004, each active member of the system shall be credited with earned service. Subject to the further provisions of this section, earned service shall be equal to the greater of a member's active or accredited service on January 1, 2004, calculated in accordance with the applicable provisions of this retirement plan as it existed immediately prior to January 1, 2004. Following December 31, 2003, a member's earned service shall be used in lieu of active or accredited service in determining both the eligibility for and the amount of retirement benefits under this retirement plan.

(2) On and after January 1, 2010, in making calculations of earned service, active service shall not include outside service, but outside service substantiated on or before December 31, 2009, may be added to earned service in determining a member's eligibility to retire for superannuation with an unreduced benefit at age fifty-five or older and with at least twenty-five years of service, in accordance with sections 24-51-1715 and 24-51-1734; except that outside service taken together with service purchased under sections 24-51-1705 and 24-51-1706 may not exceed ten years in determining such eligibility to retire. This subsection (2) only applies to DPS members who retire from the Denver public schools division without exercising portability and DPS members who retire a frozen segment of service in the Denver public schools division that includes outside service.

(3) On and after January 1, 2004, earned service shall be calculated in the same manner provided in the DPS plan document for calculating active service prior to January

1, 2004, except for casual employment, which shall be calculated in accordance with the provisions of the DPS plan document; except that earned service shall not include outside service.

(4) In the case of a person who is an employee of the district on January 1, 2004, and thereafter qualifies as a deferred member in accordance with the DPS plan document and later applies for benefits under this part 17, the conversion to earned service shall be accomplished in the manner provided in this part 17, and benefits shall be calculated accordingly.

(5) In the case of a person who, on January 1, 2004, has either qualified for disability retirement or has applied for disability retirement and is thereafter determined to be entitled to such disability retirement, the recomputation of retirement benefits in accordance with the DPS plan document shall be accomplished utilizing earned service calculated pursuant to the provisions of this section.

(6) On and after January 1, 2004, this section shall, in accordance with its terms, amend and supersede all prior provisions of this retirement plan in conflict with such terms.

24-51-1711. Contributions - refunds. (1) **Refund upon termination.** Upon termination of employment, a contributing member or affiliate member, subject to the portability provisions of section 24-51-1747, shall be entitled to a refund of the total accumulated contribution balance as of the date of such termination refund.

(2) **Request for refund for deferred members.** Subject to the provisions of portability in section 24-51-1747, a deferred member account shall be available for refund unless a retirement benefit has commenced. The amount of the refund of such deferred account shall include any accumulated contribution balance or interest as of December 31, 2009, and interest accumulated thereafter, which shall be in accordance with section 24-51-407 (5). The accumulation of contributions or interest in the deferred account prior to December 31, 2009, shall be governed by the DPS plan document.

24-51-1712. Application for retirement benefits. Notwithstanding any other provision of this part 17, application for and processing of retirement applications shall be governed by the rules and procedures adopted by the association's board. Pursuant to the provisions of this part 17 regarding portability, references in this part 17 to service with the district shall be deemed to include service with all employers affiliated with the association.

24-51-1713. Eligibility - retirements without actuarial reduction. (1) This

section shall only apply to DPS members who have five or more years of service credit as of January 1, 2011. For DPS members who have less than five years of service credit as of January 1, 2011, eligibility for retirement without an actuarial reduction shall be governed by section 24-51-602 (1) (a.7) and (1) (d).

(2) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of twenty-five years of active service, of which not less than fifteen years shall have been with the district, and has attained the age of fifty-five years while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the association.

(3) Whenever a contributing member or affiliate member of the DPS plan has completed a period of five years of active service and has attained the age of sixty-five while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the board of trustees.

(4) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of thirty years of active service with the district and has attained the age of fifty years while in the service of the district, said member shall be eligible for retirement for superannuation. Such retirement shall be made upon due application and subject to such rules as may be prescribed by the association.

24-51-1714. Eligibility - retirements requiring actuarial reduction. (1) This section shall only apply to DPS members who have five or more years of service credit as of January 1, 2011. For DPS members who have less than five years of service credit as of January 1, 2011, eligibility for retirement requiring an actuarial reduction shall be governed by section 24-51-604.

(2) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of twenty-five years of active service with the district but has not attained the age of fifty-five years, said member shall be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the member.

(3) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of fifteen years of active service with the district and has attained the age of fifty-five years while in the service of the district, said member shall be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the contributing member.

(4) Whenever a contributing member or affiliate member pursuant to the DPS plan has completed a period of thirty years of active service with the district but has not

attained the age of fifty years, said contributing member shall nevertheless be eligible for retirement for superannuation but with reduced benefits in accordance with the applicable provisions of section 24-51-1715. Any such retirement shall be voluntary and reflect the choice of the member.

24-51-1715. Benefits. (1) The annual superannuation retirement allowance shall be determined in the following manner:

(a) Subject to the provisions of paragraph (c) of this subsection (1) pertaining to certain members appointed or reappointed on or after July 1, 2005, and for persons who become affiliate members on or after July 1, 2005, the following calculations shall apply:

(I) If said member shall retire pursuant to section 24-51-1713, the highest average salary as defined in section 24-51-1702 (17) shall be multiplied by the primary percentage which shall determine the annual retirement allowance expressed as a single life annuity and known as option A.

(II) If, however, said member shall retire pursuant to section 24-51-1714 (2), and if the member has reached retirement eligibility as of January 1, 2011, and has attained a minimum age of fifty years, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by the lesser of four percent for each year that fifty-five exceeds said member's attained age or four percent for each year that thirty exceeds said member's number of years of active service with the district, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).

(III) If said member shall retire pursuant to section 24-51-1714 (2), and if the member has reached retirement eligibility as of January 1, 2011, and is younger than age fifty, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by the greater of four percent for each year that fifty exceeds said member's attained age or four percent for each year that thirty exceeds said member's number of years of active service with the district, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).

(IV) If said member shall retire pursuant to section 24-51-1714 (3), and the member has reached retirement eligibility as of January 1, 2011, the annual retirement

allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by the lesser of four percent for each year that twenty-five exceeds said member's number of years of active service with the district or four percent for each year that sixty-five exceeds said member's age, in either case prorated for a partial year. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).

(V) If said member shall retire pursuant to section 24-51-1714 (4), and if the member has reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by four percent for each year that fifty exceeds said member's age. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a), shall be reduced by an actuarially determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of this paragraph (a).

(b) If a reduction percentage is applicable, prior to calculation of the reduced retirement allowance, the annuity portion shall be determined and subtracted from the retirement allowance in order to determine the pension portion, using the terms of section 24-51-1726, if applicable, and then the reduced retirement allowance shall be determined by application of the appropriate reduction. The annuity portion of said allowance, as determined prior to the reduction, shall be subtracted from the reduced retirement allowance in order to determine the pension portion, if any, that may be applicable. In no event shall any reduced retirement allowance be less than the annuity portion of said allowance as determined prior to the reduction percentage. Said annual retirement allowance shall be payable on a monthly basis and shall continue for so long as said member shall live or so long as may be provided under any option available to and elected by such member pursuant to the provisions of this retirement plan. Payment shall be made at the end of the calendar month for any retirement allowance attributable to said month, and upon the death of said member payment shall be allowed for that portion of the calendar month in which death occurs up to and including the date of death.

(c) In making the calculation of the annual retirement allowance adjustment for a member who initially was appointed or who became an affiliate member on or after July 1, 2005, and who has reached retirement eligibility as of January 1, 2011, the reduction percentage provided in paragraph (a) of this subsection (1) shall be changed in each instance from four percent to six percent. For members who have not reached retirement eligibility as of January 1, 2011, the annual retirement allowance, calculated pursuant to subparagraph (I) of paragraph (a) of this subsection (1), shall be reduced by an actuarially

determined percentage as of the effective date of retirement to ensure that the benefit is the actuarial equivalent of the annual retirement allowance, calculated pursuant to subparagraph (I) of paragraph (a) of this subsection (1).

24-51-1716. Optional forms of allowance. Any contributing member or affiliate member whose effective date of retirement is on or after December 31, 2004, may elect to receive a superannuation retirement allowance in accordance with any of the options hereinafter stated. Option A shall be deemed a basic option, and the amount of the annual retirement allowance payable under such option as determined under the provisions of section 24-51-1715 shall be the amount that shall be duly adjusted in computing payments to be made under options other than option A. Prior to application for retirement, any such election may be changed or revoked, but when a member files application for retirement and elects an option, such option may not thereafter be changed or revoked, except where the designated co-annuitant under option P2 or option P3 predeceases the member prior to the effective date of retirement, pursuant to section 24-51-1723 or 24-51-1724, whichever is applicable. This shall not preclude the member's right to have the option elected become effective as of the date of retirement. In addition to the provisions of this section, in any dissolution of marriage action in any district court of the state of Colorado, the court shall have jurisdiction to order or allow an annuitant who is a petitioner or respondent in such action, and who selected an option P2 or P3 at the time of retirement designating the annuitant's spouse as the co-annuitant, to revoke the co-annuitant designation and for an option A benefit to become payable thereafter to the annuitant. The option A benefit shall be the original option A amount calculated as of the annuitant's effective date of retirement increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. If no option is elected by a member at or prior to the time of application for retirement, such member shall be considered to have automatically elected to receive the applicable benefit under option A.

24-51-1717. Option A. Option A is a single life annuity, which is defined as a specified sum of money payable monthly to an annuitant from the time of retirement until the death of said annuitant, without refund of any kind to the estate of the deceased annuitant or anyone claiming by or through the annuitant. The monthly retirement allowance under option A shall be calculated in accordance with the provisions of section 24-51-1715. For retirements having effective dates on or after December 31, 2004, option A shall be revised to provide that if, upon the death of the annuitant, the total amount of retirement allowance that has been paid to the annuitant does not exceed the amount of

the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant shall be paid to the named beneficiary of the annuitant or, if no named beneficiary exists, to the estate of the annuitant. The monthly retirement allowance under the revised option shall be calculated in accordance with the provisions of section 24-51-1715.

24-51-1718. Option B. (1) Option B is an installment refund annuity, which is defined as a smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as provided in this retirement plan, payable monthly to an annuitant from the time of retirement until death, with the additional provision that if said annuitant dies before receiving an amount equal to the total reserve credited to said annuitant, said payments shall be continued to beneficiaries designated by said annuitant until the total amount of the payments made to such annuitant and to beneficiaries of said annuitant is equal to the total amount of reserve allocated to the payment of said annuitant's retirement allowance.

(2) If a deceased member's estate is the beneficiary, payment in one sum of the commuted value of the retirement allowance shall be made to the member's estate. The rate of interest used in determining the commuted value shall be the actuarial investment assumption rate of the association on the date of death of the member.

(3) In the event of the death of a retired deceased member's beneficiary who is receiving monthly benefits under option B, a payment in one sum of the commuted value of the remaining monthly payments shall be made to the estate of the deceased beneficiary. The rate of interest used in determining the commuted value shall be the actuarial investment assumption rate of the association on the date of death of the beneficiary.

24-51-1719. Option C. Any contributing member or affiliate member choosing or having chosen option C through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option C will no longer be a permissible payment choice.

24-51-1720. Option D. Any contributing member or affiliate member choosing or having chosen option D through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option D will no longer be a permissible payment choice.

24-51-1721. Option E. Any contributing member or affiliate member choosing or having chosen option E through December 31, 2009, will be governed by the DPS plan document. As of January 1, 2010, option E will no longer be a permissible payment choice.

24-51-1722. Additional optional forms of allowance beginning December 31, 2004. In addition to the options provided in sections 24-51-1717 and 24-51-1721, any contributing member or affiliate member whose effective date of retirement is on or after December 31, 2004, may elect to receive a superannuation retirement allowance in accordance with any of the options provided in sections 24-51-1723 and 24-51-1724. Option A shall be deemed a basic option under this section, and the amount of the annual retirement allowance payable thereunder, as determined under the provisions of section 24-51-1715, shall be the amount that shall be duly adjusted in computing payments to be made under options P2 and P3. Prior to application for retirement, any such election may be changed or revoked, but when a member files application for retirement and elects an option, such option may not thereafter be changed or revoked except as provided in this part 17.

24-51-1723. Option P2. (1) Option P2 is a modified joint survivorship annuity, which is defined as a somewhat smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as calculated under this retirement plan, payable monthly to an annuitant from the time of retirement until the death of said annuitant, and, thereafter an amount equal to one-half of the monthly amount paid to the annuitant is payable monthly to the annuitant's designated coannuitant until the death of that person. The designation of the coannuitant shall be effective upon the effective date of the member's retirement and may not subsequently be changed except as provided in subsection (2) of this section. Upon the death of the coannuitant prior to the death of the annuitant, the benefit payable to the annuitant thereafter shall be the original option A amount increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. In addition to designating a coannuitant, the member shall designate a beneficiary and shall have the exclusive right to change such designation of beneficiary at any time prior to the annuitant's death. If, upon the death of both the annuitant and the coannuitant, the total amount of retirement allowance that has been paid to them does not exceed the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant and coannuitant shall be paid to the named beneficiary of the annuitant, or, if no named beneficiary exists, to the estate of

the coannuitant.

(2) In case of the death of the designated coannuitant under option P2 after the date of application for retirement and before the effective date of retirement, the member may make a change of option or designate a new coannuitant within thirty days after the death of the previously designated coannuitant and subject to the appropriate recalculation of the retirement allowance.

24-51-1724. Option P3. (1) Option P3 is a joint survivorship annuity, which is defined as a somewhat smaller sum of money than the amount that would be payable under option A but that is the actuarial equivalent thereof, as calculated under this retirement plan, payable monthly to an annuitant from the time of retirement until the death of said annuitant and thereafter to the annuitant's designated spouse or any one individual, so long as said designated spouse or individual shall live; except that, if the co-annuitant is not a designated spouse, the calculation of the payments to the annuitant and co-annuitant will be made in accordance with the further provisions of subsection (2) of this section. The designation of the co-annuitant shall be effective upon the effective date of the member's retirement and may not subsequently be changed except as provided in subsection (4) of this section. Upon the death of the co-annuitant prior to the death of the annuitant, the benefit payable to the annuitant thereafter shall be the original option A amount increased by any increases in the basic retirement allowance granted in accordance with the provisions of the DPS plan document and section 24-51-1732 subsequent to the annuitant's effective date of retirement. In addition to designating a co-annuitant, the member shall designate a beneficiary and shall have the exclusive right to change such designation of beneficiary at any time prior to the annuitant's death. If, upon the death of both the annuitant and the co-annuitant, the total amount of retirement allowance that has been paid to them does not exceed the member's accumulated contributions, then the difference between said accumulated contributions and the total amount of retirement allowance paid to such annuitant and co-annuitant shall be paid to the named beneficiary of the annuitant or, if no such named beneficiary exists, to the estate of the co-annuitant.

(2) If the designated co-annuitant is not the annuitant's designated spouse or a former spouse of the annuitant under the circumstances stated in subsection (3) of this section, the co-annuitant's benefit shall be calculated in accordance with the treasury regulations under section 401(a)(9) of the federal "Internal Revenue Code of 1986", as amended, but, as so calculated, the benefits to the annuitant, the co-annuitant, and any beneficiary or to the estate of the co-annuitant, as provided for in option P3, shall be the actuarial equivalent of the amount that would be payable under option A as calculated under this retirement plan.

(3) If the designated co-annuitant is a former spouse, and if pursuant to a properly

executed and filed agreement under section 14-10-113, C.R.S., the designated co-annuitant may, upon the prior death of the annuitant, and for the life of the co-annuitant, receive a monthly payment equal to that otherwise payable to the annuitant.

(4) In case of the death of the designated co-annuitant under option P3 after the date of application for retirement and before the effective date of retirement, the member may make a change of option or designate a new co-annuitant within thirty days after the death of the previously designated co-annuitant and subject to the appropriate recalculation of the retirement allowance.

24-51-1725. Determination of option P2 or P3 benefits. For reduced superannuation retirements and disability recalculations, for members who retire with an effective date of retirement on or after December 31, 2004, the calculation of benefits payable pursuant to option P2 or P3, as set forth in sections 24-51-1723 and 24-51-1724, shall be actuarially determined as of the effective date of retirement or, in the case of a recalculation pursuant to the DPS plan document for a member retired for disability, the applicable recalculation date.

24-51-1726. Minimum benefits - contributing members and affiliate members. (1) The minimum monthly pension portion of the retirement allowance under an option A settlement shall be the greater of:

(a) Such pension amount payable as a part of the retirement allowance computed under the provisions of section 24-51-1715 in the case of a member retiring for superannuation.

(b) The minimum benefits in effect on or after January 1, 1974, and prior to January 1, 1985, as governed by the DPS plan document.

(c) Effective January 1, 1985, the sum of fifteen dollars, multiplied by the number of whole years of accredited service plus additional whole months expressed as a fraction of a year of accredited service but in no event in excess of the total sum of one hundred fifty dollars, plus the sum of twenty dollars multiplied by the number of whole years of accredited service in excess of ten years plus additional whole months expressed as a fraction of a year of accredited service. These minimum benefits shall not apply to retirements previous to January 1, 1985.

(d) The minimum monthly pension portion of the retirement allowance under options other than option A shall be computed by taking such minimum amount as established under an option A settlement and making the appropriate reduction to reflect the additional actuarial factors involved under such other option pursuant to the applicable tables then in use.

24-51-1726.5. Contributions for a retiree who returns to membership - benefit calculation upon subsequent retirement - survivor benefit rights. (1) Except as otherwise provided in section 24-51-1747, a DPS retiree who returns to work in a position that is subject to membership may voluntarily suspend his or her retirement allowance and resume membership. Upon such suspension, employer and member contributions are required to be made pursuant to the provisions of part 4 of this article.

(2) A DPS retiree who, on or after January 1, 2011, suspends his or her retirement allowance shall not add any service credit to the benefit segment from which the retiree suspends his or her retirement. Subject to the election set forth below, any additional service credit accumulated will be reflected in separate benefit segments upon subsequent termination of membership, but only after one year of service credit has been earned during a period of suspension. The retirement allowance for each qualifying separate benefit segment will be calculated pursuant to the benefit structure under which the retiree originally retired. The benefit for each separate benefit segment resulting from suspension shall be determined using the DPS member's salary and service credit acquired during the period of suspension. The DPS member's age and total service credit with the association upon retirement after each suspension shall govern whether the DPS member shall receive a retirement allowance pursuant to section 24-51-1713 or 24-51-1714 for that segment. Previous separate benefit segments shall be subject to recalculation only to reflect a change in the selected option or a designated coannuitant, if applicable, and no benefit increases pursuant to section 24-51-1001 will be applicable to any separate benefit segment during any period of suspension. Upon reinstatement of the retirement benefit allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1. Upon resumption of retirement after suspension, the association shall refund all moneys credited to the member contribution account during the period of suspension pursuant to section 24-51-405 unless, within a time set by the association, the retiree makes written election to establish a separate benefit segment calculated as set forth above. The refund shall be an amount equal to all moneys credited to the member contribution account during the period of suspension and payment of matching employer contributions pursuant to section 24-51-1711 or 24-51-1729 (6) (a) (I), whichever is applicable. No refund can issue for any benefit segment from which a benefit has been drawn. Such refund shall be required for any separate benefit segment during which less than one year of service credit has been earned.

(3) (a) A DPS member whose retirement allowances are in separate benefit segments pursuant to this section must elect the same option and designate the same coannuitant for all of his or her separate benefit segments.

(b) A DPS retiree who suspends his or her retirement and elects a separate benefit segment pursuant to this section may change his or her original option and coannuitant election only if the original option selected was option A, P2, or P3. DPS retirees who

selected option B, C, D, or E shall not be allowed to change that election.

(4) Survivor benefit rights provided for in this part 17 shall be available to a DPS retiree who voluntarily suspends the benefits and returns to membership as if such retiree had not retired.

24-51-1727. Eligibility for deferred members. (1) Benefits shall be payable under this section and sections 24-51-1728 to 24-51-1731 if the following conditions are met:

(a) The employee must be an affiliate member or contributing member who has completed a period of not less than five years of active service with the district. Any contributing member or affiliate member who terminated employment prior to January 1, 1997, shall be governed by the DPS plan document.

(b) Such member is not eligible to receive and has not received, by virtue of district employment, payment of any other benefits under this retirement plan. A refund of accumulated contributions is not deemed a benefit within the meaning of this section.

(c) The employment of such member with the district, either regular or casual, has been terminated and there has not been a withdrawal of the member's accumulated contributions. In the case of a member whose employment has terminated and who withdrew such contributions but thereafter accepted reemployment with the district, such prohibition against withdrawal shall refer to any normal, arrearage, or additional contributions thereafter made by such employee.

(d) Within one year following an effective date of termination of employment falling on or before December 31, 2008, such member must file an election and declaration of intent to apply for a deferred retirement allowance. Such election and declaration shall be made in the manner and form as prescribed.

(e) If a member's effective date of termination of employment falls on or after January 1, 2009, such member is automatically deemed a deferred member and is eligible to apply for a deferred retirement allowance upon meeting the requirements for commencement of a deferred retirement allowance.

24-51-1728. Accredited service - deferred members. In computing the amount of any deferred retirement allowance becoming due to such member upon final termination of employment, such member must, at the time of the effective date of termination of service, have a credit of accumulated contributions in such amount as would have been to such member's credit if such member had complied in full with the requirements of sections 24-51-1705 and 24-51-1707 as such requirements may apply. In the event said member fails to comply with such requirements, as applicable, then the accredited service of such member, subsequent to December 1, 1945, shall be credited in

the same ratio that accumulated contributions, at the time of termination of service, bear to such member's credit if such member had complied in full with the requirements of sections 24-51-1705 and 24-51-1707 as such requirements may apply. If the provisions of section 24-51-1706 apply to such member applying for a deferred retirement allowance, then no portion of service subject to said provisions shall be counted as accredited service unless, at the time of termination of service, said member completed payment of the total amounts required by said section 24-51-1706. If such total amount as required by section 24-51-1706 is not so paid within such time, any incomplete amount paid in pursuant to section 24-51-1706 shall be refunded, without increase of any kind to such member, under such rules and regulations as the association may provide.

24-51-1729. Benefits - deferred members. (1) In the event the employment of such member with the district terminates on or after July 1, 1962, the deferred retirement allowance, subject to the limitations set forth in section 24-51-1731, shall be computed in the following manner and paid under the following conditions:

(a) The amount of the deferred retirement allowance under option A shall be determined in the same manner and subject to the same conditions as is set forth in section 24-51-1715, if the member was a contributing member or affiliate member at the time that employment was terminated, with the following limitations:

(I) Accredited service shall be determined to the actual date on which employment of such member finally terminated.

(II) For contributing members and affiliate members, highest average salary as defined in section 24-51-1702 (17) shall be determined over the period to the actual date on which employment of such member finally terminated.

(III) The age factor for such member that is employed in calculating such deferred retirement allowance shall be that of attained age of fifty-five for employees having twenty-five or more years of active service, and that of attained age of sixty-five for employees having less than twenty-five years of active service. If, however, a member attains thirty or more years of active service with the district on or after January 1, 2001, the age factor for such member that is employed in calculating the deferred retirement allowance shall be that of attained age fifty.

(IV) The unit benefit percentage shall be in accordance with section 24-51-1702 (39).

(V) In making the calculation of the deferred retirement allowance for one qualified for deferred benefits, the provisions of section 24-51-1715 (1) (c) changing the reduction percentage from four percent to six percent for certain retirements shall not apply if the retiree terminated employment on or before June 30, 2005.

(b) Said member must apply to the association for a deferred retirement allowance in the manner and form as may be prescribed in section 24-51-1712. Such application

may not be filed sooner than sixty days before the effective date of the member's deferred retirement allowance. No deferred retirement allowance shall be payable to any otherwise eligible member unless proper application is received within the three-year period following the earliest possible effective date of such an allowance.

(2) On or after January 1, 1998, the effective date of the deferred retirement allowance shall be thirty days after the date proper application for such allowance is received, but in no event before the attainment of age fifty-five by a member who has at least twenty-five years of active service, or age sixty-five, if such member has less than twenty-five years of active service. If, however, a member attains thirty or more years of active service with the district on or after January 1, 2001, the effective date of the deferred retirement allowance shall be thirty days after the date proper application for such allowance is received, but in no event before the attainment of age fifty. The first monthly installment of said allowance shall be payable at the end of the month in which such effective date falls. No payment shall be made for any period prior to such effective date.

(3) The deferred retirement allowance shall be payable under any of the options provided in sections 24-51-1717 to 24-51-1724, as elected by such member at the time of application for a deferred retirement allowance, and shall be calculated as provided therein, subject to the further provisions of this section. The age factor employed in calculating such deferred retirement allowance shall be that of attained age sixty-five as to such member, and under any option involving a co-annuitant the age of such co-annuitant at said attained age of sixty-five of such member; except that, for annuitants eligible for benefits at age fifty or age fifty-five, as applicable, the age factor employed in calculations shall be that of attained age fifty or age fifty-five, as applicable, as to such member and under any option involving a co-annuitant the age of such co-annuitant at said attained age of fifty or age fifty-five, as applicable, of such member.

(4) In the case of a deferred retirement allowance payable after December 31, 1973, and prior to January 1, 1985, the minimum monthly pension attributable under an option A settlement shall be governed by the DPS plan document.

(5) In the event the employment of a member with the district terminates on or after January 1, 1985, the minimum monthly pension portion of the retirement allowance under an option A settlement shall be the greater of:

(a) Such pension amount payable as a part of the retirement allowance computed under the provisions of section 24-51-1729;

(b) The sum of fifteen dollars, multiplied by the number of whole years of accredited service plus additional whole months expressed as a fraction of a year of accredited service but in no event in excess of the total sum of one hundred fifty dollars, plus the sum of twenty dollars multiplied by the number of whole years of accredited service in excess of ten years plus additional whole months expressed as a fraction of a year of accredited service.

(6) (a) In the event the employment of a member with the district terminates on or after January 1, 2001, at the time said member becomes eligible to receive benefit payments in accordance with this section, the member shall have the following additional options:

(I) A payment equal to two hundred percent of the deferred member's then-accumulated contributions calculated without reference to amounts contributed for purchase of periods of noncovered employment service credit and interest credits on amounts so contributed; or

(II) A retirement allowance equal to the sum of the amount determined in paragraph (b) of subsection (5) of this section plus a money purchase monthly annuity that is the actuarial equivalent of two hundred percent of the deferred member's accumulated contributions at the time the member becomes eligible to receive benefit payments calculated without reference to amounts contributed for purchase of periods of noncovered employment service credit and interest credits on amounts so contributed. The determination of the money purchase monthly annuity shall incorporate the provisions of section 24-51-1732 and utilize the assumptions of the association.

(b) The minimum monthly pension portion of the retirement allowance under options other than option A shall be computed by taking such minimum amount as established under an option A settlement and making appropriate reduction therein to reflect the additional actuarial factors involved under such other option pursuant to the applicable tables then in use.

24-51-1730. Deferred member death. In case any deferred member, as defined under section 24-51-1702 (19) (e), dies while such membership status remains in force but before the effective date of the deferred retirement allowance, the amount of the accumulated contribution balance at the time of death shall be paid to the designated beneficiary of record or to the member's estate.

24-51-1731. Benefits for deferred members determined upon date of termination. Subject to the provisions of this section, in the event of reemployment, all rights and privileges incident to a deferred retirement allowance shall be and remain as provided under the retirement plan and its pertinent policies and rules and regulations in effect at the time of such termination of employment. If such employee whose employment has been terminated is reemployed by the district and thereafter remains continuously in the employ of the district for a sufficient period to establish a full year of accredited service, then any rights with respect to a deferred retirement allowance shall be determined by the provisions of sections 24-51-1727 to 24-51-1730 in effect on the date of such subsequent termination of employment.

24-51-1732. Benefit increases - annual retirement allowance adjustment - contributing members - affiliate members - deferred members - survivors (2001 and 2005). (1) (a) Monthly retirement and survivor benefit payments, including the increases determined under the provisions of the DPS plan document attributable to retirement or death of an eligible employee of the district who retired or died after December 1, 1945, shall be increased in accordance with part 10 of this article.

(b) Adjusted payments based on survivor benefits that are suspended by reason of the beneficiary not having attained the minimum age requirements provided in sections 24-51-1738 to 24-51-1740 or pursuant to the provisions of the DPS plan document shall not continue to accumulate or accrue during such period of suspension.

(2) Upon attainment of the minimum age requirements and resumption of such survivor's benefit payments or reinstatement under the provisions of the DPS plan document, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1.

(3) (Deleted by amendment, L. 2010, (SB 10-001), ch. 2, p. 30, § 32, effective February 23, 2010.)

(4) No increase shall be payable incident to any retirement or survivor benefits becoming payable to any legal entity other than an individual person, to a personal representative or other person acting in an analogous representative capacity. This subsection (4) shall not preclude payment of such increase to the guardian or conservator of a person otherwise entitled thereto.

(5) Pursuant to section 24-51-1726.5, adjusted payments based on benefits that are suspended by reason of the annuitant's having returned to service with an employer affiliated with the association as a regular employee shall not continue to accumulate or accrue during such period of suspension. Upon reinstatement of the retirement allowance payments, no increase shall be made until such resumed payments have been paid continuously for the twelve months prior to July 1.

(6) Annuitants who are reemployed by the district on or before December 31, 2009, shall until termination of such employment be subject to the DPS plan document provisions related to the reemployment of an annuitant. Any subsequent employment shall be governed by part 11 of this article.

24-51-1733. Domestic relations order. Agreements entered into pursuant to section 14-10-113 (6), C.R.S., on or before December 31, 2009, shall be subject to the provisions of the DPS plan document, and agreements entered into on and after January 1, 2010, pursuant to section 14-10-113 (6), C.R.S., shall be subject to the provisions of the rules and regulations of the association.

24-51-1734. Disability retirement. Applications for disability for DPS members filed on or before December 31, 2009, shall be governed by the disability provisions of the DPS plan document, and on or after January 1, 2010, disability shall be governed by the provisions of part 7 of this article. Persons receiving disability benefits under the DPS plan as of December 31, 2009, shall continue to receive such benefits in accordance with the DPS plan. The association board shall administer the provisions of the DPS plan regarding discontinuance or reduction of disability benefits paid under the DPS plan.

24-51-1735. Survivor benefits - refund. (1) The determination of death and survivor benefits for DPS members shall be governed by this section. Pursuant to the provisions of this part 17 regarding portability, references in this section to service with the district shall be deemed to include service with all employers affiliated with the association.

(2) In case of death of any affiliate or contributing member prior to retirement, the total accumulated contribution balance at the time of death shall be payable in one lump sum to the designated beneficiary, if applicable, or to the member's estate, unless one or more of the following circumstances exist:

(a) Said member meets the definition of deferred member under section 24-51-1702 (19) (e) at the time of death, in which case section 24-51-1730 shall apply.

(b) The designated beneficiary or beneficiaries of said member shall elect, pursuant to the provisions of sections 24-51-1736 to 24-51-1746, to have the provisions of said sections 24-51-1736 to 24-51-1746 applied in lieu of the refund above mentioned.

24-51-1736. Eligibility for survivor benefits. (1) No benefits shall be payable under sections 24-51-1736 to 24-51-1746 unless all of the following conditions are met:

(a) At the time of death the deceased member was a contributing member, or a contributing member who retired for disability on or after July 1, 1962, and who would not be precluded pursuant to the DPS plan document from rights for survivor benefits.

(b) The deceased contributing member was a regular employee in the active service of the district continuously for the five-year period prior to said member's death, said five-year period having been contributing service, except:

(I) Absence on sabbatical leave or on a leave for restoration of health on a half-salary basis for periods during which contributions are paid shall be deemed continuous employment within the meaning of sections 24-51-1736 to 24-51-1746 and included in the required five-year period. Time absent from employment because of leave other than sabbatical leave or a leave for restoration of health on a half-salary basis and time absent from employment because of a permitted absence not constituting a termination of regular employment shall be disregarded and for the purposes of sections 24-51-1736 to 24-51-

1746 shall not be deemed either an interruption of service or included in the required five-year period.

(II) If the deceased member was retired for disability on or after July 1, 1962, and was a contributing member upon the effective date of disability retirement, the requirement of five years of service prior to death shall be waived.

24-51-1737. Eligible beneficiaries. (1) Payments under sections 24-51-1736 to 24-51-1746 are limited to:

(a) (I) A child, including an adopted child, of the deceased member, so long as the child is living, under the age of eighteen years, and unmarried; except that where an eligible member dies on or after January 1, 1988, the definition of an eligible child shall include:

(A) An unmarried child under the age of twenty-three years who is enrolled on a full-time basis, within four months of the member's death, in a duly accredited school; or

(B) An unmarried child, regardless of age, who is found to be so mentally or physically incapacitated that such person is financially dependent upon the member pursuant to the test of financial dependency established for a surviving parent in paragraph (d) of this subsection (1).

(II) Adoptions involving an otherwise eligible child and occurring subsequent to the death of the member shall terminate the eligibility of such a child, unless such adoption is by the unremarried surviving spouse of the member, and in such a case eligibility of the child shall be terminated by a subsequent remarriage of said surviving spouse.

(b) The surviving widow or widower of the deceased member who has not remarried and has in her or his care a child eligible to receive benefits as set forth in paragraph (a) of this subsection (1). If benefits are payable under said paragraph (a) or this paragraph (b), the DPS plan document shall govern any amounts due to any unremarried widow or widower.

(c) The surviving widow or widower who has not remarried, if no benefits are payable or if payable have ceased to any beneficiary qualified under paragraph (a) or (b) of this subsection (1).

(d) A dependent parent of the deceased member who has not remarried since such member's death, so long as such parent is living; except that said parent shall be eligible only if there are no beneficiaries qualified under paragraph (a), (b), or (c) of this subsection (1) at the time of the member's death. Dependence of a surviving parent must be established by a showing to the association beyond reasonable doubt that such parent was dependent upon the deceased member for not less than one-half of the parent's support and actually received such support from the deceased member during the six-month period prior to the death of such member.

(2) Effective for surviving spouses of members who die on or after January 1, 1984, eligibility for beneficiaries as described in paragraphs (a), (b), and (c) of subsection (1) of this section will not be forfeited by remarriage.

24-51-1738. Survivors of members who died between 1974 and 1984. Benefits payable to survivors of deceased eligible members who die on or after January 1, 1974, and prior to January 1, 1984, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be governed by the DPS plan document.

24-51-1739. Survivors of members who died between 1984 and 1988. Benefits payable to survivors of deceased eligible members who die on or after January 1, 1984, and prior to January 1, 1988, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be governed by the DPS plan document.

24-51-1740. Survivors of members who die in 1988 or later. (1) Benefits payable to survivors of deceased eligible members who die on or after January 1, 1988, subject to the limitations provided in sections 24-51-1736 to 24-51-1746, shall be as follows:

(a) To each beneficiary under section 24-51-1737 (1) (a), a monthly amount equal to the greater of ten percent of highest average salary as defined in section 24-51-1702 (17), or one hundred sixty dollars prorated, if there are four or more eligible beneficiaries so long as such condition continues and is required in order not to exceed a maximum total allowance of the greater of thirty percent of highest average salary as defined in section 24-51-1702 (17), or four hundred eighty dollars;

(b) To the surviving spouse of the deceased member, as defined in section 24-51-1737 (1) (b), so long as living, and having in his or her care a child eligible to receive benefits as provided in paragraph (a) of this subsection (1), calculated as follows:

(I) Where the deceased member had less than fifteen years of accredited service, the difference, if any, between the amounts payable to beneficiaries under paragraph (a) of this subsection (1) and the greater of thirty percent of highest average salary as defined in section 24-51-1702 (17), or four hundred eighty dollars;

(II) Where the deceased member had more than fifteen years of accredited service, the difference, if any, between the amounts payable to beneficiaries under paragraph (a) of this subsection (1) and the greater of four hundred eighty dollars or forty percent of highest average salary as defined in section 24-51-1702 (17), which percentage shall be increased by two percent of highest average salary as defined in section 24-51-1702 (17), for each whole year, and month prorated as a portion of a year, of accredited service in

excess of twenty-five;

(c) To a beneficiary under section 24-51-1737 (1) (c) who has attained age sixty and who is the survivor of a deceased member who had less than fifteen years of accredited service, the lesser of thirty percent of highest average salary as defined in section 24-51-1702 (17) or four hundred eighty dollars. So long as benefits, if any, are payable under paragraphs (a) and (b) of this subsection (1), only the excess, if any, of the benefit provided under this paragraph (c) shall be payable in addition thereto, but if no benefits are payable under said paragraphs (a) and (b) of this subsection (1), or, if payable, such amounts have been terminated, then the full amount of the benefit payment provided by this paragraph (c) shall be payable.

(d) To a beneficiary under section 24-51-1737 (1) (c) who has attained age fifty and who is the survivor of a deceased member who had fifteen or more years of accredited service, a monthly amount of four hundred eighty dollars or, if greater, thirty percent of highest average salary as defined in section 24-51-1702 (17), increased by one percent of highest average salary, as defined in section 24-51-1702 (17), for each whole year, and month prorated as a portion of a year, of accredited service in excess of fifteen. So long as benefits, if any, are payable under paragraphs (a) and (b) of this subsection (1), only the excess, if any, of the benefit provided under this paragraph (d) shall be payable in addition thereto, but if no benefits are payable under said paragraphs (a) and (b) of this subsection (1), or, if payable such amounts have terminated, then the full amount of the benefit payment provided by this paragraph (d) shall be payable.

(e) To each beneficiary under section 24-51-1737 (1) (d), a monthly amount equal to the greater of ten percent of the deceased member's highest average salary as defined in section 24-51-1702 (17), or two hundred forty dollars.

24-51-1741. Effective date of survivor benefits. On or after January 1, 1998, if survivor benefits are payable under sections 24-51-1736 to 24-51-1746, such benefits shall be deemed to accrue as of the first day following the death of the member or the first day when the first beneficiary becomes eligible, whichever is later, and shall be computed and payable from that date accordingly.

24-51-1742. Election by designated beneficiary. If the deceased member had designated a beneficiary, other than the member's estate, to receive the refund of the accumulated contribution balance, no survivor's benefits shall be subject to claim under sections 24-51-1736 to 24-51-1746 unless such designated beneficiary or beneficiaries then entitled to receive such refund, by written notification delivered within such time and in such form as prescribed, shall elect, in lieu of receiving such refund, to have the provisions of sections 24-51-1736 to 24-51-1746 applied. If there is more than one

designated beneficiary then entitled to receive such refund, such election must be joined in by all of them. If the deceased member had designated the estate as such beneficiary or if by operation of law the estate shall be entitled to such refund, then such election may be made by the duly appointed personal representative of the estate of such deceased member in like time and in like manner as may be prescribed by the board by general rule as specified in this section. If, however, such deceased member was qualified for retirement under the terms and conditions of sections 24-51-1713 and 24-51-1714, the designated beneficiary or beneficiaries so entitled to refund or benefits under sections 24-51-1736 to 24-51-1746, may elect, in lieu of such benefits, to allow benefits to be paid under either option B or option P3 subject to the applicable sections thereof providing for superannuation retirement. Such election shall be made within such time and in such form as the board may prescribe and shall become effective as of the day after the date of the member's death. If there is more than one designated beneficiary entitled to receive such benefits, such election must be joined in by all of them.

24-51-1743. When election becomes irrevocable. The election described in section 24-51-1742 shall become irrevocable upon the first payment thereunder of any benefits provided under sections 24-51-1736 to 24-51-1746 or under sections 24-51-1713 and 24-51-1714. If, subsequent to exercise of such election by the appropriate beneficiary or beneficiaries but prior to the first payment of benefits thereunder, such beneficiary or beneficiaries desire to revoke such earlier election, such person or persons shall be permitted to do so and shall thereupon be eligible to receive a refund paid under the terms and conditions set forth in section 24-51-1735, and such revoking beneficiary or beneficiaries shall thereafter have no rights to any benefits of any kind, incident to the death of such member, other than said refund. If the election has been made to receive benefits hereunder and there is only one beneficiary and such beneficiary shall die before any payment of such benefits is made, a refund of such deceased member's accumulated contributions, computed as of the date of death, shall be made to the estate of such deceased beneficiary. If there shall be more than one beneficiary but all of them shall have died before any payment of such benefits is made, such refund shall be made to the estate of the last survivor of said several beneficiaries.

24-51-1744. Fund transfer. Upon the effective date of benefits under sections 24-51-1736 to 24-51-1746, the accumulated contributions of said deceased member at the time of death shall be transferred to and merged with that portion of the Denver public schools division trust fund set aside as a reserve to provide such benefits.

24-51-1745. Payment in good faith. Any payments of such survivor's benefits made to any person who is an eligible survivor of the deceased member and entitled thereto shall, to the extent of such payments actually made, be and constitute a complete release and acquittance to the system under this retirement plan. Such release shall not be deemed to preclude the right of another claimant or an adverse claimant of such survivor's benefits from establishing a right to future payments.

24-51-1746. Waive appointment of guardian. In the payment of survivor benefits hereunder, the association may, from time to time, authorize and approve payments directly to a minor or the parent caring for such minor without requiring the appointment of a duly constituted guardian for such minor. Likewise, the association may waive the appointment of a conservator for a beneficiary deemed mentally incompetent or otherwise unable by reason of age or illness to act without assistance, and may, from time to time, authorize and approve such payments to the person or institution having care of such beneficiary. The receipt of the person or institution so receiving such payments shall be a complete release and acquittance under this retirement plan with respect to such payments in all respects as if such payments had been made to a duly constituted guardian or conservator.

24-51-1747. Portability between the Denver public schools division and the other four divisions within the association - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "DPS active member" means a person, as defined in subsection (2) of this section, who as of December 31, 2009, is an employee of the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school, and is a member of the Denver public schools retirement system. Active members include employees, other than part-time or hourly employees, on leave of absence from the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school on December 31, 2009.

(b) "DPS inactive member" means a person, as defined in subsection (3) of this section, who as of December 31, 2009, has a member account balance at the Denver public schools retirement system, is not employed by the Denver public school district, the Denver public schools retirement system, or a Denver public school district charter school, and is not receiving benefits from the Denver public schools retirement system.

(c) "Denver public schools retirement system" means the Denver public school district retirement system that will become the Denver public schools division within the association.

(d) "Freeze" or "frozen" means cessation of the collection of contributions and the

granting of benefit or service accruals. However, interest will continue to accrue on frozen accounts at the applicable interest rate.

(e) "Nonretirement plan choice affiliate employer" means any employer, other than the state or the community colleges, affiliated with the association.

(f) "One-time irrevocable choice" refers to the choice of either the benefits as specified in this part 17 or the benefits under the PERA benefit structure. The choice period shall be a sixty-calendar-day choice period. Unless otherwise specified, the sixty-day choice period shall begin on the date the association receives the first contributions from the affiliated employer. If an individual is eligible to make a one-time irrevocable choice and fails to make the choice within the choice period, he or she will be automatically enrolled in the benefit structure with which the individual has accrued the most service credit at the beginning of the choice period. If the individual fails to make a choice and has service credit in both benefit structures and the amount of service credit in both structures is equal, then he or she will be automatically enrolled in the benefit structure with the most recent contribution prior to the first day of the choice period. Contributions received prior to a choice being made will be applied to the PERA benefit structure. Upon a choice being made within the sixty-day period, these contributions will be applied to the applicable division and the applicable benefit structure within that division. While the choice is pending, the individual shall not be allowed a refund or to retire.

(g) "Parties" means the association, the Denver public schools retirement system, and the Denver public school district.

(h) "PERA benefit structure" means the benefits provided in this article, except for the benefits provided for in part 15 of this article unless otherwise indicated, and except for the benefits provided for in this part 17.

(i) "Retirement plan choice affiliated employer" means the state or the community colleges of the state.

(j) "Denver public school district" means the school district sponsoring the Denver public schools retirement system.

(k) "Denver public school district charter school" means a charter school that was approved before January 1, 2010, by the Denver public school district board of education and that has employees participating in the Denver public schools retirement system before January 1, 2010, and that is certified as a Denver public school district charter school at the time of merger. "Denver public school district charter school" also means a charter school approved by the Denver public school board of education on or after January 1, 2010. A Denver public school district charter school is considered an employer within the Denver public schools division.

(l) "Denver public schools division" refers to the separate division created within the association that will consist solely of the Denver public school district and Denver public school district charter schools and have a separate benefit structure from the other

divisions within the association. The benefit structure for the Denver public school district division shall be governed by the DPS plan document and this part 17, where applicable.

(2) (a) (I) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the school district division benefit structure as set forth in this part 17. Employment with any nonretirement plan choice eligible employer affiliated with the association other than the Denver public school district or a Denver public school district charter school on and after January 1, 2010, either concurrent or not concurrent, shall trigger a one-time irrevocable choice. This choice shall freeze the account not chosen. If the individual becomes an inactive member and decides to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, shall be under the PERA benefit structure in effect at that time.

(II) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the Denver public schools benefit structure as set forth in this part 17. Employment with any retirement plan choice employer affiliated with the association on and after January 1, 2010, without a twelve-month break in service, shall trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and decides to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(III) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the benefit structure as set forth in this part 17. If the individual is employed with any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title, in an optional retirement plan choice position, he or she will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit with the association will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined

benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(IV) A person who is not retired and is a DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who continues his or her employment with an employer within the Denver public schools division on and after January 1, 2010, shall continue to accrue a benefit under the benefit structure as set forth in this part 17. If the individual is employed at the university of Colorado in a position defined as eligible for the university retirement plan, he or she will have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit with the association will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(b) (I) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any nonretirement plan choice affiliated employer of the association, including the Denver public school district and a Denver public school district charter school, will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(II) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any retirement plan choice affiliated employer of the association within twelve months of the date of termination will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a

Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(III) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any retirement plan choice affiliated employer of the association after a twelve-month break in service will have a retirement plan choice pursuant to section 24-51-1503 (1). If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time. If the individual chooses to participate in the association's defined contribution plan, the individual may either elect to maintain his or her inactive account or direct that his or her member account be transferred to the defined contribution account; except that after-tax contributions shall be transferred to an after-tax account in the association's 401(k) account. If an individual elects to transfer his or her account pursuant to this subparagraph (III), the association shall transfer such account within ninety days after the employee's election becomes effective.

(IV) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed by any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title, in an optional retirement plan choice position, will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(V) A DPS active member on January 1, 2010, with either an inactive account with the association or no account with the association who terminates employment with his or her employer and becomes inactive and is later reemployed at the university of

Colorado in a position defined as eligible for the university retirement plan shall have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(c) A DPS active member who is also a member of the association pursuant to section 24-51-101 (29) on January 1, 2010, will immediately be given a one-time irrevocable choice. The sixty-day choice period will begin on January 1, 2010. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(3) (a) (I) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any nonretirement plan choice affiliated employer of the association, including the Denver public school district and a Denver public school district charter school, will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(II) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any retirement plan choice affiliated employer of the association within twelve months of the date of termination will trigger a one-time irrevocable choice. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(III) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any retirement plan choice affiliated employer of the association after a twelve-month break in service will have a retirement plan choice

pursuant to section 24-51-1503 (1). If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the benefit structure of the association in effect at that time. If the individual chooses to participate in the association's defined contribution plan, the individual may either elect to maintain his or her inactive account or direct that his or her member account be transferred to the defined contribution account; except that after-tax contributions shall be transferred to an after-tax account in the association's 401(k) account. If an individual elects to transfer his or her account pursuant to this subparagraph (III), the association will transfer such account within ninety days after the employee's election becomes effective.

(IV) A person who is not retired and is a DPS inactive member on January 1, 2010, who is subsequently employed by any employer that is under the optional retirement plan choice pursuant to article 54.5 of this title in an optional retirement plan choice position will have the choice as provided in article 54.5 of this title. For purposes of determining optional retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(V) A person who is not retired and is a DPS inactive member on January 1, 2010, with either an inactive account with the association or no account with the association who is subsequently employed at the university of Colorado in a position defined as eligible for the university retirement plan will have the choice as provided in section 23-20-139, C.R.S. For purposes of determining university retirement plan choice eligibility, service credit within the benefit structure as set forth in this part 17 and service credit within the PERA benefit structure will be combined. If the individual chooses to participate in the defined benefit plan, it will trigger a one-time irrevocable choice. The sixty-day choice period shall begin upon the date the association is notified of the selection of the defined benefit plan. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall

refund all member accounts. Any subsequent employment after a refund with any association affiliated employer, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(b) A person who is not retired and is a DPS inactive member on January 1, 2010, who is also an active member of the association pursuant to section 24-51-101 (29) on January 1, 2010, will immediately be given a one-time irrevocable choice. The sixty-day choice period will begin on January 1, 2010. The choice shall freeze the account not chosen. If the individual becomes an inactive member and elects to take a refund, he or she shall refund all member accounts. Any subsequent employment after a refund with an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, will be under the PERA benefit structure in effect at that time.

(c) A DPS inactive member who is also an inactive member of the association who does not make a one-time irrevocable choice and subsequently retires from either benefit structure shall choose at time of retirement which of the two benefits to accrue upon returning to employment with any affiliated employer.

(4) Notwithstanding subsections (1), (2), and (3) of this section, any employment with a Denver public schools division employer prior to January 1, 2010, is considered employment with the association for purposes of the eligibility for retirement plan choice as specified in part 15 of this article.

(5) Any individual hired by the Denver public school district or a Denver public school district charter school on or after January 1, 2010, without an existing account in either the benefit structure under this part 17 or the PERA benefit structure shall be governed exclusively by the statutes and rules of the association as they exist at the time of hire.

(6) (a) A person who is a retiree of the Denver public schools retirement system before January 1, 2010, shall not be subject to the working retiree contributions or a benefit reduction due to postretirement employment with an affiliated employer of the association existing before January 1, 2010, as long as the retiree continues to be employed by that same employer. A retiree so situated shall be entitled to a second and entirely separate retirement coverage segment under the PERA benefit structure.

(b) (I) A retiree of the Denver public schools retirement system with no member contribution account with the association on January 1, 2010, who returns to work for any affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. The retiree may suspend and add a separate benefit segment to his or her Denver public schools retirement system benefit. The retiree shall not be entitled to accrue a benefit under the PERA benefit structure.

(II) An individual who retires under the benefit structure provided in this part 17 after January 1, 2010, who did not make a one-time irrevocable choice and returns to work for any affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. The individual may suspend and add a separate benefit segment to his or her Denver public schools retirement system benefit. The individual shall not be entitled to accrue a benefit under the PERA benefit structure.

(c) A retiree of the Denver public schools retirement system with an inactive account in the association on January 1, 2010, who is employed by an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she must make a one-time irrevocable choice within sixty days from the date of suspension to either add to his or her inactive account under the benefit structure for that account or add a separate benefit segment to his or her Denver public schools retirement system benefit. The retiree shall not be required to suspend his or her retirement benefit but will not be able to add to the inactive account or add a separate segment to the Denver public schools retirement system benefit unless the Denver public schools retirement system benefit is suspended. If the inactive account is chosen, the retiree will be permanently ineligible to add a separate segment to the Denver public schools retirement system benefit. If adding a separate segment to the Denver public schools retirement system benefit is chosen, the retiree will be permanently ineligible to add to the inactive account.

(d) A Denver public schools retirement system retiree shall be considered a retiree of the association for purposes of part 15 of this article and article 54.5 of this title. A Denver public schools retirement system retiree shall also be considered a retiree of the association when employed by the university of Colorado after January 1, 2010.

(e) A retiree of the Denver public schools retirement system before January 1, 2010, who is an active member of the association's defined contribution plan shall not be subject to a benefit reduction due to postretirement employment with his or her employer as long as the retiree continues to be employed by that same employer. The retiree shall be entitled to continue to contribute to the defined contribution plan. If the retiree begins employment with another nonretirement plan choice employer, including the Denver public school district or a Denver public school district charter school, the retiree will be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she must add a separate benefit segment to his or her benefit as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefit, but will not be able to add a separate segment to the benefit as set forth in this part 17 unless the benefit is suspended.

(f) A retiree of the Denver public schools retirement system before January 1, 2010, who is an active member of the association's defined contribution plan shall not be subject to a benefit reduction due to postretirement employment with his or her employer as long as the retiree continues to be employed by that same employer. The retiree shall be entitled to continue to contribute to the defined contribution plan. If the retiree begins employment with another retirement plan choice employer without a twelve-month break in service, the retiree shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit within twelve months from the date of employment, he or she shall be placed into the defined contribution plan and will continue to build on his or her defined contribution account. If the retiree chooses to suspend after twelve months, he or she will build another segment onto the benefit as set forth in this part 17.

(g) An association retiree who is also a Denver public schools retirement system retiree on January 1, 2010, and who is subsequently employed by an affiliated employer of the association, including the Denver public school district or a Denver public school district charter school, shall be subject to the provisions of this article and rules of the association governing employment after service retirement with regard to both benefits. If the retiree does not suspend the benefits and works beyond the statutory limits, both retirement benefits shall be offset by five percent per day for every day worked beyond the limit. If the retiree chooses to suspend the benefits, he or she shall suspend both benefits and shall make a one-time irrevocable choice within sixty days from the date of suspension to either add to his or her association account under the benefit structure for that account or add a separate benefit segment to his or her benefit as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefits but will not be able to add to either account unless the benefits are suspended. If the association account is chosen, the retiree permanently forfeits the ability to add a separate segment to the benefit under this part 17. If the benefit under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account.

(7) (a) A person who is a retiree of the association and a DPS active member before January 1, 2010, shall not be subject to a benefit reduction due to postretirement employment with the Denver public school district or a Denver public school district charter school as long as the retiree continues to be employed by the same employer. A retiree so situated shall be entitled to a second and entirely separate retirement coverage segment under the benefit structure as set forth in this part 17. If such a retiree terminates employment with that employer, the retiree shall be subject to the provisions of this article and rules of the association governing employment after service retirement if reemployed by any affiliated employer. If the retiree chooses to suspend his or her benefit, the retiree shall make a choice within sixty days from the date of suspension to either add to his or her account under the PERA benefit structure for that account or add to his or her account as set forth in this part 17. The retiree shall not be required to

suspend his or her retirement benefit, but will not be able to add to the benefit or add to the account under this part 17 unless the retirement benefit is suspended. If the association account is chosen, the retiree permanently forfeits the ability to add to the account under this part 17. If the account under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account. If the retiree does not suspend the association benefit, the separate segment of coverage will become an inactive account.

(b) Subject to the provisions of paragraph (d) of this subsection (7), a retiree of the association with no member account in the Denver public schools retirement system on January 1, 2010, who is employed by the Denver public school district or a Denver public school district charter school after January 1, 2010, shall be subject to the provisions of this article and rules of the association governing employment after service retirement.

(c) A retiree of the association with an inactive account with the Denver public schools retirement system on January 1, 2010, who is employed by any affiliated employer, including the Denver public school district or a Denver public school district charter school, beginning on or after January 1, 2010, shall be subject to the provisions of this article and rules of the association governing employment after service retirement. If the retiree chooses to suspend his or her benefit, he or she shall make a one-time irrevocable choice within sixty days from the date of suspension to either add to his or her account with the association under the benefit structure for that account or add to the account as set forth in this part 17. The retiree shall not be required to suspend his or her retirement benefit, but will not be able to add to either account unless the retirement benefit is suspended. If the association account is chosen, the retiree permanently forfeits the ability to add to the account under this part 17. If the account under this part 17 is chosen, the retiree permanently forfeits the ability to add to the association account.

(d) A retiree of the association who was not a member of the Denver public schools retirement system on December 31, 2009, but who was employed by the Denver public school district or a Denver public school district charter school as an hourly employee on December 31, 2009, shall not be subject to a benefit reduction due to postretirement employment with the Denver public school district or a Denver public school district charter school as long as the retiree continues to be employed by the same employer. The retiree shall be subject to the working retiree contributions beginning January 1, 2011, as specified in section 24-51-1101 (2), and the employer shall be required to remit employer contributions as specified in section 24-51-1101 (2), plus the applicable amortization equalization disbursement and supplemental amortization equalization disbursement as specified in section 24-51-411.

(8) An individual may reinstate time within the benefit structure that he or she is in as long as the time is not concurrent with the time, either earned or purchased, in the other benefit structure. The cost to reinstate the time shall be the cost required by the association's statutes and rules. An individual may purchase, at the actuarial cost

according to the association's statutes and rules, time that has been previously refunded in the other benefit structure as long as the time is not concurrent with time, either earned or purchased, in the other benefit structure. The limits on the amount of service credit an individual may purchase set forth in this article shall apply to members under the benefit structure in this part 17.

(9) (a) A disability application submitted to the Denver public schools retirement system prior to January 1, 2010, shall be processed in accordance with this part 17.

(b) Any disability application submitted to the association on or after January 1, 2010, shall be processed in accordance with the provisions of this article and rules of the association.

(c) An individual shall not be eligible for disability benefits based on an account that is frozen.

(10) A frozen account shall be considered an inactive account for purposes of survivor benefit eligibility.

(11) Any time an individual continues to accrue a benefit under this part 17 while employed by an association affiliated employer other than the Denver public school district or a Denver public school district charter school, the individual's salary for pension purposes shall be governed by the association's definition of salary. On and after January 1, 2010, individuals in the Denver public schools division shall earn service credit based on the association's accrual rate of one month of service earned if the member receives eighty times federal minimum wage in one month while employed by a PERA affiliated employer, including the Denver public school district or a Denver public school district charter school.

(12) A retiree or a beneficiary receiving a benefit from the Denver public schools retirement system, a disability retiree of the Denver public schools retirement system who applied for a disability retirement benefit prior to January 1, 2010, and a survivor benefit recipient based on an account of a person who died prior to January 1, 2010, shall have his or her benefits paid in accordance with the benefit structure as set forth in this part 17. For administrative convenience, annual benefit adjustments for such individuals may be scheduled so that the adjustments coincide with the dates on which benefit adjustments are effective under the rules of the association. Within the first calendar year following the effective merger date, it shall not be the intention of the association to deny an anticipated annual increase or to grant an additional increase to any annuitant, beneficiary, or survivor, as defined in section 24-51-1702, but rather that the association will administer an appropriate annual increase considering any differences between the administrative procedures under the DPS plan and the association in relation to the timing of the payment of such increase.

(13) The funding of a benefit based on an account that has contributions from the Denver public schools division shall be funded in the same manner as the association funds the benefit based on an account that has contributions in any one of the other four

divisions as provided in section 24-51-208 (4).

24-51-1748. Staff members of the Denver public schools retirement system. (1) Each staff member employed by the Denver public schools retirement system on the date of the merger shall be hired as an employee-at-will of the association at a salary not less than the annual salary received from the Denver public schools retirement system as of the merger date, and the staff member's employment thereafter shall be governed by the policies, rules, and statutes applicable to the employees of the association; except that such staff members may accrue retirement benefits in accordance with the rules of the Denver public schools retirement system as they existed on the day preceding the effective date of the merger. As of the effective date of the merger, Denver public schools or the Denver public schools retirement system shall be responsible for the payment to the association of any accrued employment benefits other than benefits provided for under the association owed to each employee of the Denver public schools retirement system.

(2) Notwithstanding the provisions of section 24-51-1206.7 (5), service credit of staff members described in subsection (1) of this section prior to January 1, 2010, that was accrued with the Denver public schools and the Denver public schools retirement system shall apply toward the calculation of the premium subsidy as provided in section 24-51-1206.7.

ARTICLE 52

Deferred Compensation Plan

24-52-101 to 24-52-209. (Repealed)

ARTICLE 52.5

Retirement Health Savings Trust

24-52.5-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is essential for the state to be able to attract and retain qualified employees in order to provide the highest quality of service to the people of Colorado.

(b) The quality and flexibility of health and retirement benefits are important factors in hiring and retaining qualified state employees.

(c) The cost of medical care rises every year and because medicare and state retiree health benefits do not fully cover those costs, retirees are increasingly responsible for covering their medical costs after retirement.

(d) A properly constructed program to help state employees prepare for the costs of medical expenses after retirement could be cash funded through contributions of state employees and could operate as an enterprise as defined in section 20 of article X of the state constitution.

(2) The general assembly further finds and declares that:

(a) A new concept for providing retirement health benefits for the employees of nonprofit entities, including state governments, is for the nonprofit entity to create a retirement health savings trust. Such trust offers the following advantages:

(I) A retirement health savings trust is established by the nonprofit entity for the purpose of providing retirement health benefits to the employees of the entity.

(II) The provision of retirement health benefits is considered an integral part of the nonprofit entity's activities.

(III) A retirement health savings trust that makes the provision of retirement health benefits possible is considered a part of the nonprofit entity and therefore may be included in the entity's tax-exempt status.

(IV) A retirement health savings trust creates an individual account within the trust for each employee who chooses to participate and allows the employer to make pretax contributions, including unused annual or sick leave, to an employee's account on behalf of the employee.

(V) The nonprofit entity that creates a retirement health savings trust maintains substantial control of the trust in that it has the power to amend or terminate the trust and to appoint the trustees of the trust.

(VI) A retirement health savings trust allows each participating employee to determine how his or her money will be invested.

(VII) All earnings in a retirement health savings trust grow on a tax-deferred basis, and a participating employee may make withdrawals on a tax-free basis after reaching a certain age, so long as the moneys are used for qualified medical expenses.

(VIII) Any assets that remain in a participating employee's account at the time of the employee's death may be used for qualified medical expenses by the employee's spouse, dependents, or other beneficiaries.

(b) The creation of a retirement health savings trust by the state for the benefit of state employees would give such employees an opportunity to prepare for health costs that they will incur during retirement and would be beneficial to the health and well-being of such employees.

24-52.5-102. Retirement health savings trust - state personnel director - investigation. (1) The state personnel director shall investigate the benefits and drawbacks of establishing a retirement health savings trust for the benefit of state employees.

(2) In investigating the benefits and drawbacks of establishing a retirement health savings trust, the state personnel director shall consider the feasibility of the following:

(a) The state, as an employer, establishing a trust for the purpose of providing retirement health savings benefits to state employees who choose to participate in the trust;

(b) The state specifying that providing retirement health savings benefits is an integral part of the state's activities;

(c) The state treating a trust that makes the provision of retirement health benefits possible as an integral part of the state and therefore including the trust in the state's tax-exempt status;

(d) The state creating an individual account within the trust for each state employee who chooses to participate and allowing the state to make pretax contributions, including unused annual or sick leave, to a state employee's account on behalf of the employee;

(e) The state maintaining substantial control of the trust and having the power to amend or terminate the trust and appoint the trustees of the trust;

(f) The state allowing each state employee who participates in the trust to determine how his or her money will be invested;

(g) The state allowing all moneys in the trust to grow without being subject to state or federal income taxes;

(h) The state allowing participating state employees to make withdrawals on a tax-free basis after reaching a certain age, so long as the moneys are used for qualified medical expenses; and

(i) The state allowing an employee's spouse, dependents, or other beneficiaries to use any assets that remain in a participating employee's account at the time of the employee's death for qualified medical expenses.

(3) The state personnel director, in investigating the feasibility of establishing a retirement health savings trust, shall investigate the benefits and drawbacks to the state and to state employees of allowing the state as an employer and state employees the option to make the following contributions to the trust:

(a) Pretax contributions, including a portion of unused employee annual and sick leave, by the state to an employee's account on behalf of the employee;

(b) Voluntary after-tax contributions by the state to an employee's account on behalf of the employee;

(c) Voluntary after-tax contributions by the employee into the employee's account; and

(d) Voluntary pretax contributions by the employee to the employee's account based on a one-time irrevocable election to make such contributions.

(4) The state personnel director shall investigate the benefits and drawbacks to the state and to state employees of various potential terms of a retirement health savings trust, including, but not limited to:

(a) The design, adoption, and schedule for implementation of the trust;

(b) The nature and amount of the contributions that the state may make to the trust on behalf of a participating state employee;

(c) The nature of the investments that a state employee may choose to make with the moneys contributed to the trust;

(d) The terms of eligibility for participating in the trust and for withdrawing the moneys contributed to the trust;

(e) The nature of the expenses that qualify as medical expenses for purposes of tax-free withdrawal of moneys from the trust; and

(f) The negotiation and payment of any administrative expenses to be paid by the state or by each employee who chooses to participate in the trust.

(5) (Deleted by amendment, L. 2008, p. 1903, § 91, effective August 5, 2008.)

ARTICLE 53

Public Employees' Social Security

24-53-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Department" means the department of labor and employment created pursuant to the provisions of section 24-1-121.

(2) "Employee" means a person performing service which constitutes employment, as defined in this section, for a political subdivision of the state, as defined in this section.

(3) "Employment" means any service performed by an employee of a political subdivision of the state, except for:

(a) Service which, in the absence of an agreement entered into pursuant to the provisions of this article, would otherwise constitute "employment" as defined in the social security act;

(b) Service which, pursuant to the provisions of the social security act, may not be included in an agreement between the state and the secretary entered into pursuant to the provisions of this article;

(c) Service in any class of positions the compensation for which is on a fee basis,

except for any county sheriff, treasurer, clerk and recorder, judge, and their clerks, deputies, and assistants;

(d) Service in any class of positions filled by popular election if so provided for in the plan submitted by the political subdivision pursuant to the provisions of section 24-53-104; or

(e) Service in any class of positions covered by an existing retirement system which is supported in whole or in part by the state or any of its political subdivisions.

(4) "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal "Internal Revenue Code of 1939" and subchapters A and B of chapter 21 of the federal "Internal Revenue Code of 1986", as amended.

(5) "Political subdivision" includes an instrumentality of this state, or of one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not, by virtue of their relations to such juristic entity, employees of the state or subdivision. "Political subdivision" does not include a school district.

(6) "Secretary" means the secretary of health and human services and includes any individual to whom the secretary has delegated any of his functions specified in the social security act with respect to coverage pursuant to such act of employees of states and their political subdivisions.

(7) "Sick pay" means any payment made on account of sickness or accident disability of the type specified in section 209 (b) or (d) of the social security act.

(8) "Social security act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", as amended.

(9) "Wages" means all remuneration for employment, as defined in this section, including the fair cash value of all remuneration paid in any medium other than cash; except that such term does not include that part of such remuneration which, even if it were for employment within the meaning of the federal insurance contributions act, would not constitute wages within the meaning of that act.

24-53-102. Federal-state and interstate agreements. (1) The department, with the approval of the governor, is authorized to enter on behalf of the state into an agreement with the secretary, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old-age, survivors', disability, and health insurance system to employees of political subdivisions thereof with respect to services specified in such agreement which constitutes employment, as defined in section 24-53-101. Such agreement may contain provisions relating to coverage, benefits, contributions, effective date, modification, and termination of the agreement, administration, and other appropriate provisions as the department and secretary agree upon, but, except as may be otherwise required by or pursuant to the social security act as

to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees, and their dependents and survivors, whose services are covered by the agreement on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the United States secretary of the treasury, at such times as may be prescribed by the social security act, contributions with respect to wages, as defined in section 24-53-101, equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment, covered by the agreement, performed after December 31, 1950, but in no event shall it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into; except that, in the case of an agreement or a modification of an agreement made prior to January 1, 1955, if the date specified in section 218 (f) of the social security act, as amended, is not in conflict with such date, such agreement or modification may be made effective as of January 1, 1951, or as of the first day of any intervening calendar quarter; except that such effective date may be made retroactive to the extent permitted by section 218 (f) of the social security act, as amended;

(d) All services which constitute employment, as defined in section 24-53-101, and are performed in the employ of the covered political subdivision shall be covered by the agreement, except as to those employees of political subdivisions not coming within the provisions of this article;

(e) All services which constitute employment, as defined in section 24-53-101, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the department pursuant to the provisions of section 24-53-104 shall be covered by the agreement.

(2) Any instrumentality jointly created by this state and any other state is hereby authorized, upon the granting of like authority by such other state:

(a) To enter into an agreement with the secretary whereby the benefits of the federal old-age, survivors', disability, and health insurance system shall be extended to employees of such instrumentality;

(b) To require its employees to pay and for that purpose to deduct from their wages contributions equal to the amounts which they would be required to pay pursuant to the provisions of section 24-53-103 (1) if they were covered by an agreement made pursuant to subsection (1) of this section; and

(c) To make payments to the United States secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply

with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) of this section and other provisions of this article.

24-53-103. Employee contribution. (1) Every employee of the political subdivision whose services are covered by an agreement entered into pursuant to the provisions of section 24-53-102 shall be required to pay for the period of such coverage into the contribution fund, established pursuant to the provisions of section 24-53-105, contributions with respect to wages, as defined in section 24-53-101, equal to the amount of tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the retention of the employee in the service of the political subdivision, or his entry upon such service, after July 1, 1987.

(2) The contribution imposed by the provisions of this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by the provisions of this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the department shall prescribe.

24-53-104. Coverage of political subdivisions. (1) Each political subdivision of the state is authorized to submit for approval by the department a plan for extending the benefits of Title II of the social security act, in conformity with applicable provisions of such act, to employees of such political subdivision. Each such plan and any amendment thereof shall be approved by the department if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the department; except that no such plan shall be approved unless:

(a) It is in conformity with the requirements of the social security act and with the agreement entered into pursuant to the provisions of section 24-53-102;

(b) It provides that all services which constitute employment, as defined in section 24-53-101, and are performed in the employ of the political subdivision by employees thereof shall be covered by the plan;

(c) It specifies the source from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(d) It provides for such methods of administration of the plan by the political

subdivision as are found by the department to be necessary for the proper and efficient administration of the plan;

(e) It provides that the political subdivision make such reports, in such form and containing such information as the department may from time to time require, and comply with such provisions as the department or the secretary from time to time may find necessary to assure the correctness and verification of such reports; and

(f) It authorizes the department to terminate the plan in its entirety, in the discretion of the department, if it finds that there has been failure to comply substantially with any provisions contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the department and may be consistent with the provisions of the social security act.

(2) The department shall not finally refuse to approve a plan submitted by a political subdivision pursuant to the provisions of subsection (1) of this section and shall not terminate an approved plan without sixty days' notice and opportunity for hearing to the political subdivision affected thereby.

(3) (a) Each political subdivision as to which a plan has been approved pursuant to the provisions of this section shall pay into the contribution fund, with respect to wages, as defined in section 24-53-101, contributions in the amounts and at the rates specified in the applicable agreement entered into by the department pursuant to the provisions of section 24-53-102. Such contributions from the political subdivision to the department shall be due not earlier than the expiration of the initial one-third of the time provided for payment by the department to the United States secretary of the treasury pursuant to the provisions of section 24-53-102.

(b) Each political subdivision required to make such payments pursuant to the provisions of paragraph (a) of this subsection (3) is authorized, in consideration of the retention of the employee in or entry of the employee upon employment after July 1, 1987, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages, as defined in section 24-53-101, not exceeding the amount of tax which would be imposed by the federal insurance contributions act, if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality pursuant to the provisions of paragraph (a) of this subsection (3). Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent payments due pursuant to the provisions of paragraph (a) of subsection (3) of this section, with interest at the rate established by regulation pursuant to the social security act or pursuant to the provisions of this article, whichever is higher, may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or, at the request of the department, may be deducted from any

other moneys payable to such subdivision by any department or agency of the state. The department may establish additional penalties for failure of any political subdivision to make timely reports or contribution payments.

(5) Each political subdivision may exclude from wages such payment made under a plan or system if such plan or system is approved by the department. This subsection (5) shall authorize a political subdivision to establish a plan or system as required by section 209 (b) of the social security act.

24-53-105. Contribution fund. (1) There is hereby established a special fund to be known as the Colorado social security contribution fund, of which the state treasurer shall be custodian.

(2) (a) The department is authorized to administer said fund and to perform all acts necessary for such administration, whether or not expressly prescribed in this article.

(b) The department may establish within such fund, from interest and other charges accruing thereto not payable to the United States secretary of the treasury, a contingency account for the purpose of making payments to the United States secretary of the treasury of amounts claimed by the secretary of the United States department of health and human services to be due and owing from any political subdivision, payment of which amounts have not theretofore been made to the department by said political subdivision. The department may also establish within such fund, from such interest and other charges, an account from which the administrative expenses and costs incurred by the department may be paid directly to the department or to the department of the treasury in reimbursement of such expenses and costs previously paid. Such accounts shall be subject to annual audit. All moneys expended by the department from this account shall be appropriated by the general assembly. For the fiscal year beginning July 1, 1989, the state treasurer shall transfer to the general fund out of any unappropriated moneys in this account the sum of five hundred thousand dollars ($500,000).

(3) There shall be credited and paid to said contribution fund:

(a) All moneys appropriated thereto by the general assembly;

(b) All contributions, interest, and penalties collected by the department pursuant to the provisions of sections 24-53-103 and 24-53-104;

(c) Any interest derived from investment of moneys belonging to the fund and any property or securities received from the use of said moneys;

(d) Any moneys recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source.

(4) (a) Said fund shall be held separate and apart from other state moneys and shall be used exclusively for the purposes of this article. Payments therefrom shall be made solely for amounts required to be paid under this article to the United States secretary of the treasury from time to time pursuant to agreements entered into pursuant to

the provisions of section 24-53-102, for refunds provided for in section 24-53-103 (3), for refunds of overpayments of political subdivisions not otherwise adjustable, and for payments made pursuant to the provisions of subsection (2) (b) of this section.

(b) All such payments shall be made upon vouchers submitted to the office of the state controller and by warrants drawn upon the state treasurer in the manner prescribed by law.

(c) Any moneys in the fund not immediately required for such payments shall, at the direction of the department, be temporarily invested by the state treasurer, or, at the direction of the department, all amounts in excess of anticipated expenditures shall be paid annually to the general fund.

(d) If moneys in the fund are paid into the general fund pursuant to the provisions of paragraph (c) of this subsection (4) and if, subsequent to the payment to the general fund, the department becomes liable for any expenditure under this article, the expenditure shall be paid out of moneys in the general fund up to the amount paid into the general fund by the department.

24-53-106. Rules and regulations. The department shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article.

24-53-107. Studies and reports. The department may study the problem of old-age, survivors', disability, and health insurance protection for employees of local governments and their instrumentalities covered by this article and concerning the operation of agreements made and plans approved under this article. Information concerning the administration of this article may form a part of the annual report of the department.

24-53-108. Coverage groups - terms and conditions. (1) Notwithstanding any limitations contained in section 24-53-101 (3) (e) and (5), any of the coverage groups participating in an existing retirement system on March 17, 1955, and described in subsection (2) of this section may, effective January 1, 1955, or any time thereafter, be covered pursuant to the provisions of sections 24-53-101 to 24-53-107 extending the benefits of the federal social security act pursuant to the additional terms and conditions set forth in subsection (3) of this section.

(2) Coverage groups:

(a) Positions in each state institution of higher education covered on March 17,

1955, by annuity contracts with each such institution and the teachers' insurance and annuity association;

(b) Positions in any individual municipal corporation or subdivision thereof having a separate existing retirement system operated singly and independently from any other municipal corporations or subdivisions thereof, except for policemen and firefighters;

(c) Positions in any municipal corporation which has less than five employees covered as of March 17, 1955, by an existing retirement system supported in whole or in part by said municipal corporation. This coverage group constitutes a separate retirement system for purposes of the social security act, as amended.

(3) Terms and conditions:

(a) The governor has certified to the secretary of health and human services that:

(I) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be included pursuant to an agreement; and

(II) An opportunity to vote in such referendum was given, and was limited, to all eligible employees; and

(III) Not less than ninety days' notice of such referendum was given to employees eligible to vote in such referendum; and

(IV) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(V) Two-thirds of the eligible employees voted in favor of including service in such positions under an agreement.

(b) The appropriate governing body of the coverage group as defined in subsection (2) of this section has given approval to the holding of the referendum.

(c) A referendum has not been conducted during a period of one year immediately preceding the referendum.

(d) A referendum was requested by at least ten percent of the employees eligible to vote in such referendum.

(e) The notice of referendum has been accompanied by a statement to the effect that, with respect to both present and future members, the existing retirement system may be revised so that the retirement benefits of each individual member and the benefits of his dependents and those individuals entitled to benefits on account of the membership in such system of any such members pursuant to any revised retirement system and pursuant to the federal old-age, survivors', disability, and health insurance system shall be at least equal to the benefits which would have been payable to them under the existing retirement system. Former members already retired and their dependents and those individuals entitled to benefits on account of the membership in such system of any such member shall continue to receive the full benefits to which they are entitled pursuant to the existing system.

(f) The retirement benefits of each individual member and the benefits of his dependents and individuals entitled to benefits on account of membership in such system of any such members pursuant to any revised retirement system and the federal social security act shall be at least equal to the benefits which would have been payable to them pursuant to the existing retirement system.

(4) For purposes of the referendum required in subsection (3) of this section, an employee shall be deemed an "eligible employee" with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system and if he was in such a position at the time notice of such referendum was given as required in subsection (3) of this section; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the state agreement already applied.

(5) No referendum with respect to a retirement system shall be valid unless held within the two-year period which ends on the date of execution of the federal-state agreement or modification which extends the insurance system established pursuant to the federal social security act to such retirement system, nor shall any referendum with respect to a retirement system be valid if held less than one year after the last previous referendum held with respect to the retirement system.

24-53-109. Coverage of agricultural inspectors. (1) On and after January 1, 1955, the provisions of this article are extended to individuals employed pursuant to an agreement entered into pursuant to the provisions of section 205 of the "Agricultural Marketing Act of 1946", 7 U.S.C. sec. 1624, or section 14 of the "Perishable Agricultural Commodities Act of 1930", 7 U.S.C. sec. 499n, between the state of Colorado and the United States department of agriculture to perform services as inspectors of agricultural products who are not eligible for coverage pursuant to the public employees' retirement association because of the temporary nature of their positions.

(2) The department of agriculture is authorized to make necessary deductions from the salaries of such temporary employees, and to make the payment of contributions as provided in sections 24-53-104 and 24-53-105, and to do such other things as are necessary pursuant to the law to bring about such coverage.

(3) In case any of such temporary employees who are so covered pursuant to the provisions of subsection (1) of this section thereafter become eligible to be members of the said public employees' retirement association, as may be determined by the board of trustees of the association, such persons shall thereupon cease to be subject to the coverage provided for in subsection (1) of this section and shall forthwith become members of said association as otherwise provided by law.

24-53-110. Civil employees of National Guard. Effective January 1, 1954, the provisions of this article are extended to civilian employees of the Colorado National Guard who are employed pursuant to the provisions of section 90 of the "National Defense Act", now codified at 32 U.S.C. sec. 709, as amended, and paid from funds allotted to the Colorado National Guard by the department of defense and who are not eligible for coverage pursuant to the public employees' retirement association, and, upon presentation of reports and payment of contributions as provided in sections 24-53-104 and 24-53-105, they shall be entitled to the basic protection afforded such employees, their dependents, and their survivors accorded to others by the federal old-age, survivors', disability, and health insurance system embodied in the social security act.

24-53-111. Transfer of powers, duties, and obligations. On and after March 26, 1984, all powers, duties, and obligations pursuant to this article which were undertaken prior to March 26, 1984, by the division of employment and training of the department shall be undertaken by the department.

ARTICLE 54

County, Municipal, and Political Subdivision Officers'
and Employees' Retirement Systems

24-54-101. Authorization to establish and maintain retirement plan or system - definitions. (1) Any county, municipality, or other political subdivision by itself or in conjunction with any other county, municipality, or political subdivision is hereby authorized to establish and maintain a general plan or system of retirement benefits for its elected or appointed officers and its employees, or any class thereof, subject to appropriations being available therefor.

(2) (Deleted by amendment, L. 2005, p. 358, § 1, effective April 22, 2005.)

(2.5) Any pension plan or system of retirement benefits established by a county or counties may include participating county departments of health and social services, library districts organized or existing pursuant to part 1 of article 90 of this title located in whole or in part within those counties, and the district attorneys' offices serving those counties.

(2.7) For purposes of this article, unless the context otherwise requires:

(a) "County" means a county or a city and county, including any entity formed by such county or city and county.

(b) "Defined benefit plan or system" means any retirement plan or system that is

not a defined contribution plan or system.

(c) "Defined contribution plan or system" means a retirement plan or system that provides for an individual account for each participant and the benefits of which are based solely on the amount contributed to the participant's account and that includes any income, expenses, gains, losses, or forfeitures of accounts of other participants that may be allocated to the participant's account.

(d) "Municipality" means a city or a town and any entity formed by such city or town.

(e) "Political subdivision" means any district, special district, improvement district, authority, council of governments, governmental entity formed by an intergovernmental agreement, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(3) Any municipality, special district, fire authority, or county improvement district offering fire protection services that is not required to affiliate with the police officers' and firefighters' pension plans established pursuant to the provisions of title 31, C.R.S., may affiliate with a retirement plan or system established pursuant to this article.

(4) No member of the governing board of the plan shall act upon his own application for retirement.

(5) Any county, municipality, political subdivision, or other participating entity not participating in the social security system pursuant to the provisions of article 53 of this title shall also have the authority to establish a retirement plan or system extending benefits to its employees in lieu of those benefits provided by the social security act, as defined in section 24-53-101.

(6) The board of any retirement plan or system established in accordance with this section may allow its employees to participate as members of such plan or system.

(7) Notwithstanding the provisions of this section, any entity that is not a county, municipality, or political subdivision as defined in this section but that was included in a retirement plan or system established pursuant to this article before April 22, 2005, shall be allowed to remain in the plan or system.

24-54-101.5. Retirement plans or systems - exemption. A retirement plan or system established pursuant to a provision of law other than this article may elect not to be covered under this article.

24-54-102. Type of plan or system. Any plan or system adopted pursuant to the provisions of this article shall be based either on the purchase of an insured group plan of retirement annuities funded through a group carrier or on a noninsured trust retirement plan; or such plan or system may provide for participation in the public employees'

retirement association as provided in article 51 of this title.

24-54-103. Prior service benefits. Employees of a county, municipality, political subdivision, or other participating entity that adopts a retirement plan or system may receive prior service benefits not to exceed five years to be funded entirely by the county, municipality, political subdivision, or other participating entity; but prior service benefits in excess of five years may be allowed if funded entirely by the employee.

24-54-104. Funds for plan or system - additional contribution. (1) Except as otherwise provided in this section, any plan or system adopted pursuant to the provisions of this article shall require participants to contribute a percentage of their salaries toward the cost thereof, such rate of contribution to be not less than that made by the county, municipality, political subdivision, or other participating entity. Participation in the public employees' retirement association shall be as provided by article 51 of this title.

(2) The governing body of each county, municipality, political subdivision, or other participating entity shall establish the percentage of the governing body's contribution to any plan or system, adopted pursuant to this article, made on behalf of the employee of the county, municipality, political subdivision, or other participating entity. The amount of the contribution made on behalf of each employee shall not be less than three percent of the employee's basic salary or wage.

(3) When a plan or system in lieu of social security benefits is established pursuant to the provisions of section 24-54-101 (5), such plan may require additional contributions from the county, municipality, political subdivision, or other participating entity and its employees, and said contributions shall be set at a rate not to exceed the total contribution required by the county, municipality, political subdivision, or other participating entity and its employees pursuant to the "Federal Insurance Contributions Act", as defined in section 24-53-101.

(4) Any plan or system adopted pursuant to this article may, pursuant to the provisions of section 414 (h) (2) of the federal "Internal Revenue Code of 1986", as amended, provide that the county, municipality, political subdivision, or other participating entity may elect to pick up the contributions of employee or elected official participants required in this section.

24-54-105. Insurer authorized to do business in state - county, municipal, or political subdivision charge. (1) Any group annuity contract purchased pursuant to the provisions of this article shall be obtained from a life insurance company duly authorized to do an insurance and annuity business in this state, responsible and financially sound

considering the extent and duration of coverage required.

(2) The consideration paid by any county, municipality, or political subdivision pursuant to any group annuity contract shall be a proper charge against the county, municipality, or political subdivision participating in any such contract.

24-54-106. Association shall be formed - withdrawal. (1) Any county, or group of counties, any municipality or group of municipalities, any political subdivision or group of political subdivisions, or any other participating entity or group of participating entities adopting a retirement plan or system pursuant to the provisions of this article shall form and maintain an association for the purchase, establishment, or procurement of a group annuity retirement plan or a noninsured trust retirement plan. Any such association so formed shall be an instrumentality of the members thereof. The cost and expenses incident to the formation and maintenance of such an association and the consideration paid by any county, any municipality, any political subdivision, or any other participating entity as an employer pursuant to any such plan are proper charges against the county, the municipality, the political subdivision, or any other participating entity comprising the association.

(2) (a) Any employer may withdraw from its participation in and contributions to the association formed pursuant to this article. The employer may initiate withdrawal from the association by filing with the board of the association a resolution adopted by the employer pursuant to paragraph (b) of this subsection (2) no less than ninety days prior to the effective date of withdrawal unless a shorter waiting period is approved by the board. The effective date of withdrawal shall be the first day of the month immediately following the month in which the waiting period expires.

(b) The employer's withdrawal resolution shall be adopted by the governing body of the employer and shall state the employer's intent to withdraw from participation in the association.

(c) Any withdrawal shall be approved by at least sixty-five percent of all active members employed by the employer who are participating in the association at the time of the election.

(d) The board shall disclose all ramifications and procedures for obtaining the member approval provided for in paragraph (c) of this subsection (2).

(e) All withdrawals from the association shall comply with the requirements set forth in this section, and, except as otherwise provided in this section, all withdrawals meeting such requirements shall be approved by the board of the association. Withdrawal requests that do not meet the requirements of this section shall not be approved by the board.

24-54-107. Boards of retirement. (1) The management of the county retirement system shall be vested in a county board of retirement consisting of five members, one of whom shall be the county treasurer of the county in the system or from the county with the largest population if two or more counties are involved, two of whom shall be nonelected county employees elected by said employees within thirty days after the retirement system becomes operative, and two of whom shall be registered electors of the county chosen by the board of county commissioners. The county board of retirement shall by its own rules establish staggered four-year terms for its board members, and their successors shall be selected as provided in this subsection (1).

(2) The management of the municipal retirement system shall be vested in a municipal board of retirement consisting of five members, one of whom shall be the treasurer of the municipality in the system or from the municipality with the largest population if two or more municipalities are involved, two of whom shall be nonelected municipal employees elected by said employees within thirty days after the retirement system becomes operative, and two of whom shall be registered electors of the municipality not connected with municipal government and chosen by the governing body of the municipality. The municipal board of retirement shall by its own rules establish staggered four-year terms for its board members, and their successors shall be selected as provided in this subsection (2).

(3) The management of the political subdivision retirement plan or system shall be vested in a political subdivision board of retirement consisting of five members, one of whom shall be the treasurer of the political subdivision in the plan or system or from the political subdivision with the largest population if two or more political subdivisions are involved, two of whom shall be nonelected employees of the political subdivision elected by said employees within thirty days after the retirement plan or system becomes operative, and two of whom shall be registered electors of the political subdivision not connected with the government of the political subdivision and chosen by the board of directors. The board of retirement shall by its own rules establish staggered four-year terms for its board members, and their successors shall be selected as set forth in this subsection (3).

(4) The management of a county retirement system under section 24-54-101 (2.5) shall be vested in a county board of retirement consisting of five members, one of whom shall be the county treasurer of the county in the system or from the county with the largest population if two or more counties are involved, two of whom shall be nonelected employees of the plan's participating employers elected by the plan's participating employees within thirty days after the retirement system becomes operative, and two of whom shall be registered electors of the county chosen by the board of county commissioners of such county. The county board of retirement shall establish, by its own rules, staggered four-year terms for its board members.

(5) On and after July 1, 2006, the management of a retirement plan or system

comprised of one or more counties, one or more municipalities, and one or more political subdivisions shall be vested in a joint board of retirement consisting of seven members. The joint board shall by its own rules establish staggered four-year terms for its board members and procedures for the election of future board members. Successors of the joint board shall be selected as provided in this subsection (5). The joint board shall be comprised of the following members:

(a) One member shall be the county treasurer of the county in the retirement plan or system with the largest population.

(b) Two members shall be nonelected employees of a county participating in the retirement plan or system, elected to serve on the joint board by the participating county employees of the plan or system for staggered four-year terms. Of the two members of the joint board elected pursuant to this paragraph (b), one shall reside west of the continental divide and one shall reside east of the continental divide.

(c) Two members shall be representatives of a municipal or political subdivision employer in the retirement plan or system and shall be elected by the municipal and political subdivision employers participating in the retirement plan or system.

(d) (I) Two members shall be registered electors of the county in the retirement plan or system who are elected by the board of county commissioners. One of the registered electors of the county shall be from the financial or business community with experience in investments, and one shall be from the financial or business community with experience in personnel or corporate administration. The members shall be elected by the boards of county commissioners of all of the counties that participate in the plan or system.

(II) Each of the two registered electors from the financial or business community who are first elected to the joint board for a term commencing on or after July 1, 2006, shall serve staggered four-year terms.

(6) The management of a retirement plan or system comprised of any county and municipality, any county and political subdivision, or any municipality and political subdivision shall be vested in a joint board of retirement consisting of seven members; except that this subsection (6) shall not apply to any retirement plan or system that is described in section 24-54-101 (2.5) and that is managed pursuant to subsection (4) of this section. The joint board shall by its own rules establish staggered four-year terms for its board members and procedures for the election of future board members. Successors of the joint board shall be selected as provided in this subsection (6). The joint board shall be comprised of the following members:

(a) One member shall be the treasurer of the county in the retirement plan or system with the largest population if there is a county in the plan or system or the treasurer of the municipality in the retirement plan or system with the largest population if there is not a county in the plan or system.

(b) Two members shall be nonelected employees of a county, municipality, or

political subdivision in the retirement plan or system elected by employees participating in the plan or system. Of the two members of the joint board elected pursuant to this paragraph (b), one member shall be an employee of a county and one member shall be an employee of a municipality if the plan is comprised of a county and municipality, one member shall be an employee of a county and one member shall be an employee of a political subdivision if the plan is comprised of a county and political subdivision, or one member shall be an employee of a municipality and one member shall be an employee of a political subdivision if the plan is comprised of a municipality and political subdivision.

(c) Two members shall be representatives of a municipal or political subdivision employer in the retirement plan or system and shall be elected by the municipal and political subdivision employers participating in the retirement plan or system.

(d) Two members shall be registered electors of a county, municipality, or political subdivision in the retirement plan or system who are elected by all of the governing bodies of the counties, municipalities, or political subdivisions that participate in the plan or system. One of the registered electors shall be from the financial or business community with experience in investments, and one shall be from the financial or business community with experience in personnel or corporate administration.

24-54-107.5. Boards of retirement - requirements - plans or systems comprised of one or more counties, one or more municipalities, and one or more political subdivisions. (1) A person who has been adjudicated of violating any provision of this article or who has been convicted of a felony or any crime involving the misappropriation of funds shall not be elected or continue to serve as a member of a joint board of retirement created pursuant to section 24-54-107 (5).

(2) Members of a joint board of retirement created pursuant to section 24-54-107 (5) shall be entitled to one hundred dollars compensation for each meeting attended and may be reimbursed by the retirement plan or system for any actual and necessary expenses incurred in the conduct of their official duties on the joint board.

(3) A joint board of retirement created pursuant to section 24-54-107 (5) shall obtain insurance or self-insure against liability that arises out of, or in connection with, the performance of duties by any joint board member or employee of the retirement plan or system.

(4) A joint board of retirement created pursuant to section 24-54-107 (5) shall set the time and place of meetings, conduct the meetings in accordance with the provisions of part 4 of article 6 of this title, and maintain a record of its proceedings.

(5) A joint board of retirement created pursuant to section 24-54-107 (5) may hold discussions in executive session pursuant to section 24-6-402 (4), which shall be closed to the public.

(6) A vote of a joint board of retirement created pursuant to section 24-54-107 (5)

shall occur only when a quorum is present.

(7) A member of a joint board of retirement created pursuant to section 24-54-107 (5) shall not engage in any activity that might result in a conflict of interest with the member's functions as a fiduciary for the retirement plan or system.

24-54-108. Control and management of plan or system. (1) The retirement board of any association formed pursuant to the provisions of section 24-54-106 shall have full and complete control and management of any retirement plan provided for and authorized by this article, other than matters relating to participation in the public employees' retirement association. Such retirement board shall make all necessary rules and regulations for managing and discharging its duties, for its own government and procedure in so doing, and for the preservation and protection of any fund or annuity contract.

(2) Such retirement board shall determine what type of retirement plan in which to participate and shall select, on the basis of the most sound proposal:

(a) An insurance company qualified under section 24-54-105 (1); or

(b) A noninsured trust retirement plan, with a bank or trust company authorized to exercise trust powers in this state as trustee, invested by the trustee pursuant to the provisions of part 3 of article 1 of title 15, C.R.S., but of the initial and subsequent sums of money available for investment, the trustee shall invest only in such investments as are specified in section 24-54-112; or

(c) A noninsured trust retirement plan, invested by the treasurer of the plan in such securities as are specified in section 24-54-112; or

(d) Participation in the public employees' retirement association, pursuant to article 51 of this title.

(3) The retirement board shall hear and decide all applications for relief, pensions, annuities, retirement, or other benefits pursuant to the plan or system adopted. A record of such action and all other matters properly coming before said retirement board shall be kept and preserved.

(4) The treasurer of the most populous county, municipality, or political subdivision shall be ex officio the treasurer of any association formed pursuant to the provisions of section 24-54-106 and establishing a noninsured trustee retirement plan or system. If any municipality or political subdivision alone adopts such a plan or system, the treasurer thereof shall serve as the treasurer of such plan or system. No fee therefor shall be charged by the treasurer pursuant to the provisions of section 30-1-102, C.R.S., or any other provision of law.

24-54-108.5. Control and management of individual county plan. (1) The

retirement board of any individual county retirement plan shall have full and complete control and management of any retirement plan provided for and authorized by this article, other than matters relating to participation in the public employees' retirement association. Such retirement board shall make all necessary rules for managing and discharging its duties, for its own government and procedure in so doing, and for the preservation and protection of any fund or annuity contract.

(2) The retirement board of any individual county retirement plan shall determine what type of retirement plan in which to participate and shall select, on the basis of the most sound proposal:

(a) An insurance company qualified under section 24-54-105 (1); or

(b) A noninsured trust retirement plan, with a bank or trust company authorized to exercise trust powers in this state as trustee, invested by the trustee pursuant to the provisions of part 3 of article 1 of title 15, C.R.S., but, of the initial and subsequent sums of money available for investment, the trustee shall invest only in such investments as are specified in section 24-54-112; or

(c) A noninsured trust retirement plan, invested by the treasurer of the plan in such securities as are specified in section 24-54-112; or

(d) Participation in the public employees' retirement association, pursuant to article 51 of this title.

(3) The retirement board of any individual county retirement plan shall hear and decide all applications for relief, pensions, annuities, retirement, or other benefits pursuant to the plan or system adopted. A record of such action and all other matters properly coming before said retirement board shall be kept and preserved.

(4) The county treasurer shall serve as the treasurer of the individual county retirement plan. No fee therefor shall be charged by the treasurer pursuant to the provisions of section 30-1-102, C.R.S., or any other provision of law.

24-54-109. County, municipal, or political subdivision retirement fund - tax. (1) Any county adopting a retirement plan as authorized by this article shall establish a county officials' and employees' retirement fund, which fund is hereby authorized. The board of county commissioners may levy a retirement fund tax, in addition to any other tax authorized by law, on all of the taxable property within said county, the proceeds of which shall be deposited to the credit of said fund for appropriation to pay the costs and expenses of and the employer contributions pursuant to said retirement plan.

(2) Any municipality adopting a retirement plan as authorized by this article shall establish a municipal officials' and employees' retirement fund. The city council or board of trustees, in addition to any other tax authorized by law, may levy a retirement fund tax on all the taxable property within said municipality, the proceeds of which shall be deposited to the credit of said fund for appropriation to pay the costs and expenses of and

the employer contributions pursuant to said retirement plan.

(3) Any political subdivision adopting a retirement plan or system as authorized by this article shall establish a political subdivision employees' retirement fund, which fund is hereby authorized. The board of directors may levy a retirement fund tax, in addition to any other tax authorized by law, on all of the taxable property within the political subdivision, the proceeds of which shall be deposited to the credit of said fund for appropriation to pay the costs and expenses of and the employer contributions pursuant to said retirement plan or system. Such tax, when added to other taxes levied by the political subdivision, shall not exceed any limitation on taxation established by law.

24-54-110. Exemption authorized - conditions. Any municipality is authorized to exempt the city manager and key management staff who report directly to the city manager or directly to the city council from the provisions of this article.

24-54-111. Funds not subject to process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, none of the moneys, funds, annuities, individual accounts, or other benefits specified in this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

24-54-112. Investments. (1) The retirement board shall have complete control and authority to invest the funds of the plan.

(2) and (3) (Deleted by amendment, L. 2000, p. 752, § 1, effective August 2, 2000.)

(4) Funds of the plan shall be managed and invested by the retirement board of such plan in accordance with the prudent investor rule and the other standards and provisions for trustees set forth in the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S.

(5) The limitations specified in subsection (4) of this section shall not apply to

investments self-directed by participants in the plan.

24-54-113. Direct rollovers. Notwithstanding any other provision of this article, an employee or official who has terminated contributions to a plan established pursuant to this article, or a surviving spouse, may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover in accordance with section 401 (a) (31) of the federal "Internal Revenue Code of 1986", as amended. If a direct rollover is elected, such distribution shall be made by the distributing plan not later than ninety days after the later of the date the last contribution is received or the date a direct rollover election is received by the plan.

24-54-114. Audit. Every three years, the state auditor may conduct or cause to be conducted an audit of any retirement plan or system of retirement benefits established and maintained by any county in conjunction with any other county pursuant to the provisions of this article. The audit shall review the financial transactions and accounts of the plan or system, investigate the qualified status of the plan or system with the internal revenue service, and determine whether the plan or system otherwise complies with the provisions of this article. The results of the audit shall be reported to the legislative audit committee created in section 2-3-101, C.R.S., the speaker of the house of representatives, the president of the senate, and the boards of county commissioners of each county that participates in the plan or system that is the subject of the audit. The audit shall not replace the annual audit prescribed in section 29-1-603, C.R.S.

24-54-115. Confidentiality. All information contained in records of members of a retirement plan or system of retirement benefits established and maintained pursuant to the provisions of this article, former members, inactive members, or benefit recipients and their dependents shall be kept confidential by a retirement plan or system established pursuant to this article.

24-54-116. Modification of a defined benefit plan or system - legislative declaration - repeal. (1) The general assembly declares that ensuring the sustainability of defined benefit plans or systems adopted pursuant to the provisions of this article serves a significant and legitimate public purpose justifying a modification of the benefits and the age and service requirements for any such plan or system by its board.

(2) The board of a defined benefit plan or system adopted pursuant to the provisions of this article may modify the benefits and the age and service requirements

for the plan or system if the board determines that the modification is required to ensure the sustainability of the plan or system.

(3) Any modification pursuant to subsection (2) of this section shall not adversely affect vested benefits already accrued by members of such defined benefit plan or system, including, but not limited to, the pension benefits of retired members or members eligible to retire as of the effective date of the modification, unless otherwise permitted under or required by Colorado or federal law. This subsection (3) is not intended to limit the ability of the board of any defined benefit plan or system to modify future benefit accruals.

(4) This section is not intended to limit the ability of the board of any defined benefit plan or system to modify the provisions of such plan or system as permitted under or required by Colorado or federal law.

(5) This section is repealed, effective July 1, 2017.

24-54-117. Notice of possible change in benefits - ensuring sustainability. The board of any defined benefit plan or system adopted pursuant to the provisions of this article shall provide written notice to each member, inactive member, and beneficiary that the possibility of a reduction of benefits to ensure the sustainability of the defined benefit plan or system could occur in the future.

ARTICLE 54.5

Educational Employees' Optional Retirement Plan

24-54.5-101. Legislative declaration. The general assembly of Colorado hereby finds and declares that it is essential for the state colleges and universities of Colorado to be able to attract and retain the most qualified faculty and administrators in order to preserve and enhance the ability of such colleges and universities to fulfill their educational, service, and research responsibilities. Accordingly, in order to attract and retain such employees, the general assembly hereby finds and declares that it is imperative that the governing boards of the state colleges and universities, except the university of Colorado, which currently has authority to provide an optional retirement plan, should have the maximum flexibility to provide alternative optional retirement plans.

24-54.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Association" means the public employees' retirement association established pursuant to section 24-51-201.

(2) "Eligible employee" means any employee of a state college or university who is:

(a) Exempt from the state personnel system under section 13 (2) of article XII of the state constitution as a faculty member of an educational institution or department not reformatory or charitable in character; or

(b) Exempt from the state personnel system pursuant to the provisions of section 24-50-135.

(3) "Eligible position" means a position at a state college or university for which an optional retirement plan is available.

(4) "Employing institution" means any state college or university which employs eligible employees.

(5) "Governing board" means any governing board of state colleges and universities.

(6) "Optional retirement plan" means any defined contribution plan established pursuant to the provisions of this article for the benefit of eligible employees.

(7) "State college or university" means any postsecondary educational institution, including community and junior colleges, established and existing pursuant to title 23, C.R.S., as an agency of the state of Colorado and supported wholly or in part by tax revenues; except that such term shall not include the university of Colorado.

24-54.5-103. Authority of governing boards - establishment of optional retirement plans. Any governing board is authorized to establish one or more optional retirement plans pursuant to the provisions of this article at any state college or university under the jurisdiction of such governing board as an alternative to membership in the association.

24-54.5-104. Requirements for optional retirement plans - contributions and purchases of contracts. (1) Each governing board that makes a determination to establish one or more optional retirement plans at a state college or university which is under such governing board's jurisdiction shall set the terms and conditions of such optional retirement plan or plans. Benefits under any such optional retirement plans may be provided through annuity contracts, certificates, a combination of annuity contracts or certificates, or similar instruments or contracts and may be fixed or variable in nature. Any such optional retirement plans may provide retirement and death benefits.

(2) Each governing board that establishes one or more optional retirement plans at any state college or university shall:

(a) Provide for the administration of such optional retirement plans; and

(b) Designate from time to time the company or companies from which contracts for such optional retirement plans shall be purchased. In designating such company or companies, the governing boards shall take into consideration:

(I) The nature and extent of the rights and benefits to be provided by such contracts for the eligible employees electing to participate in such optional retirement plans and for the beneficiaries of such eligible employees;

(II) The relation of such rights and benefits to the amount of contributions to be made;

(III) The suitability of such rights and benefits to the needs and interests of eligible employees electing to participate in such optional retirement plans and to the interests of such state college or university in the employment and retention of eligible employees;

(IV) The ability of the designated company or companies to provide the required rights and benefits under the contract or contracts for such optional retirement plans; and

(V) The efficacy of such contracts in the recruitment and retention of faculty and administrators at such state college or university.

24-54.5-104.5. Selection of fund sponsors - responsibilities and fiduciary duties of a governing board. (1) Each governing board that establishes an optional retirement plan pursuant to this article shall establish a formal process for selecting companies to act as fund sponsors from which participants in the plan may select investment alternatives. The selection process shall include the following requirements:

(a) Participants in the plan shall have access to investment alternatives having a range of risk, benefits, and cost.

(b) The governing body shall have the ability to monitor the fund sponsor's performance of obligations under any contract related to the plan, including but not limited to the returns earned on each investment alternative or pool and the total fees and expenses charged.

(c) The governing board shall conduct a periodic review of the financial viability and attractiveness of combining any optional retirement plan established by the governing board with the plans of other governing boards established pursuant to this article.

(d) The governing board shall periodically review each fund sponsor from which participants may select investment alternatives and compare the sponsor's performance to other sponsors of optional retirement plans available to public employees in the state. Periodic reviews of a fund sponsor may be conducted by a standing committee of a governing board, institutional committee or personnel, or external auditors or benefits consultants as determined by each governing board. A full report by any such committee shall be provided to each member of the governing board. Nothing in this subsection (1)

shall prohibit a periodic review from being conducted independently or in cooperation with others.

(2) As long as a governing board complies with the requirements set forth in subsection (1) of this section, it shall be deemed to have met its responsibilities and fiduciary duties with respect to any optional retirement plan it has established, and the governing board, its members, agents, employees, and plan administrators shall have no liability whatsoever to participants in the plan.

(3) The requirements set forth in this section shall constitute the appropriate standard for each governing board that establishes an optional retirement plan for purposes of section 15-1.1-115, C.R.S., and shall supersede the provisions of article 1.1 of title 15, C.R.S.

24-54.5-105. Participation. (1) Only eligible employees of a state college or university for which an optional retirement plan is offered may elect to participate in an optional retirement plan.

(2) (a) Any eligible employee who is not a member, inactive member, or retiree of the association and who is initially appointed to an eligible position on or after the effective date of the establishment of one or more optional retirement plans at such eligible employee's employing institution shall participate in an optional retirement plan established by the eligible employee's employing institution pursuant to the provisions of this article.

(b) Any eligible employee who is a member or inactive member of the association with at least one year of service credit or who is a retiree of the association, and is initially appointed to an eligible position on or after the effective date of the establishment of one or more optional retirement plans at such eligible employee's employing institution shall elect, within thirty days after such appointment, either:

(I) To join the association in accordance with the provisions of the laws applicable thereto; or

(II) To participate in an optional retirement plan established by the eligible employee's employing institution pursuant to the provisions of this article.

(b.5) Repealed.

(c) Any eligible employee who elects to participate in an optional retirement plan established by such eligible employee's employing institution pursuant to the provisions of paragraph (b) of this subsection (2) shall specify one of the following options:

(I) To terminate future association contributions beginning on the date of election while maintaining rights as provided by the laws applicable to the association relative to any contributions or benefits accrued prior to such election;

(II) To terminate membership in the association and to require payment by the association of all employee contributions and any accrued interest on such contributions. Such election shall constitute a waiver of all rights and benefits provided by the

association except as otherwise provided by the provisions of this article. Within ninety days after receipt of notice of an election to terminate membership pursuant to the provisions of this subparagraph (II), the association shall pay to the employing institution's retirement plan on behalf of the eligible employee an amount equal to the employee's member contributions plus accrued interest on such contributions at the rate specified in section 24-51-101 (28) (a) through June 30, 1991, and at the rate specified in section 24-51-101 (28) (c) after June 30, 1991. This subparagraph (II) is not applicable to retirees of the association.

(d) Any eligible employee who is a member or inactive member of the association with less than one year of service credit and who is initially appointed to an eligible position on or after the effective date of the establishment of one or more optional retirement plans at such eligible employee's employing institution shall participate in an optional retirement plan established by the eligible employee's employing institution pursuant to the provisions of this article. Within ninety days after such appointment, the association shall pay to the employing institution's retirement plan on behalf of such eligible employee an amount equal to such eligible employee's member contributions, if any, plus interest on such contributions from the date of contribution to the date of payment at the rate specified for members in section 24-51-101 (28) (a) through June 30, 1991, and at the rate specified in section 24-51-101 (28) (c) after June 30, 1991.

(3) (a) Any eligible employee who was initially appointed to an eligible position prior to the effective date of an optional retirement plan at such eligible employee's employing institution shall elect, within sixty days after such effective date, either:

(I) To join the association in accordance with the provisions of the laws applicable thereto; or

(II) To participate in an optional retirement plan established by the eligible employee's employing institution pursuant to the provisions of this article.

(b) Any eligible employee who elects to participate in an optional retirement plan established by such eligible employee's employing institution pursuant to the provisions of paragraph (a) of this subsection (3) shall specify one of the following options:

(I) To terminate future association contributions beginning on the date of election, but maintaining rights as provided by the laws applicable to the association relative to any contributions or benefits accrued prior to such election;

(II) To terminate membership in the association and to require payment by the association of all employee contributions and any accrued interest on such contributions. Such election shall constitute a waiver of all rights and benefits provided by the association except as otherwise provided by the provisions of this article. Within ninety days after receipt of notice of an election to terminate membership pursuant to the provisions of this subparagraph (II), the association shall pay to the employing institution's retirement plan on behalf of the eligible employee an amount equal to the employee's retirement contributions plus accrued interest on such contributions at the rate

specified in section 24-51-101 (28) (a) through June 30, 1991, and at the rate specified in section 24-51-101 (28) (c) after June 30, 1991. This subparagraph (II) is not applicable to retirees of the association.

(4) An election to participate in an optional retirement plan pursuant to the provisions of this section shall be in writing and shall be filed with the association and with such eligible employee's employing institution in the manner in which such employing institution prescribes.

(5) An election by an eligible employee to participate in an optional retirement plan of the employing institution shall be irrevocable and shall be accompanied by an appropriate application, where required, for the issuance of a contract or contracts under such optional retirement plan. Notwithstanding the provisions of this subsection (5), a retiree will have the choice pursuant to this subsection (5) each time the retiree is employed by the employing institution.

(6) An election to join the association pursuant to the provisions of paragraph (b) of subsection (2) or paragraph (a) of subsection (3) of this section shall be in writing in the manner prescribed by the association and shall be filed with the association within thirty days after such election.

24-54.5-106. Public employees' retirement association - ineligibility. (1) Eligible employees of state colleges and universities for which no optional retirement plan has been established and eligible employees who do not participate in their employing institution's optional retirement plans shall participate in the association.

(2) Any eligible employee who participates in an optional retirement plan established for such eligible employee's employing institution shall be ineligible for membership in the association so long as such eligible employee is employed in any eligible position by a state college or university. In the event an optional retirement plan participant accepts a government position for which an optional retirement plan is not available, such participant shall cease participation in the optional retirement plan at the time of termination of employment in an eligible position and shall begin participation in the association to the extent that participation in the association is otherwise required by law.

(3) (Deleted by amendment, L. 2007, p. 2014, § 9, effective January 1, 2008.)

24-54.5-107. Moneys not subject to legal process. Except for assignments for child support purposes as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments

made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no annuity contract or certificate purchased under an optional retirement plan established pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

ARTICLE 54.6

Student Employees' Retirement Plan

24-54.6-101. Legislative declaration. The general assembly hereby finds and declares that it is essential for the governing boards of the state colleges and universities and the affiliated agencies thereof, the Auraria higher education center, and the local district junior colleges to comply with federal legislation regarding retirement plan coverage of student employees in the most cost efficient manner. The general assembly therefore declares that it is imperative that the department of higher education have the maximum flexibility to provide retirement plans for student employees.

24-54.6-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Association" means the public employees' retirement association established pursuant to section 24-51-201.

(2) "Department" means the department of higher education.

(3) "Eligible student employee" means:

(a) Any student employee of a governing board, state college or university, or affiliated agency of a state college or university, or the Auraria higher education center who is exempt from the state personnel system under section 13 (2) of article XII of the Colorado constitution as a student and who is required by federal law to be covered by a retirement plan; and

(b) Any student employee of a local district junior college who is required by federal law to be covered by a retirement plan.

(4) "Governing board" means any governing board of a state college or university.

(5) "State college or university" means any postsecondary educational institution,

including local district junior colleges, established and existing pursuant to title 23, C.R.S., as an agency of the state of Colorado and supported wholly or in part by tax revenues and includes the Auraria higher education center. For purposes of this subsection (5), "local district junior college" shall include Aims community college, Colorado mountain college, northeastern junior college, and Colorado Northwestern community college.

(6) "Student employee retirement plan" or "plan" means any benefit plan established pursuant to the provisions of this article for the benefit of eligible student employees.

24-54.6-103. Authority of department and governing boards - establishment of student employee retirement plan. The department or any governing board is authorized to establish a student employee retirement plan pursuant to the provisions of this article.

24-54.6-104. Requirements for student employee retirement plan - contributions and purchase of contracts. (1) The department or any governing board shall, upon making a determination to establish a student employee retirement plan at a state college or university, set the terms and conditions of such plan.

(2) Upon establishing a student employee retirement plan, the department or any governing board shall:

(a) Provide for the administration of such plan; and

(b) Designate from time to time the organization or organizations from which contracts for such student employee retirement plan shall be purchased. In designating such an organization or organizations, the department or governing board shall take into consideration:

(I) The nature and extent of the rights and benefits to be provided by such contracts for eligible student employees participating in such plan and for the beneficiaries of such eligible student employees;

(II) The relation of such rights and benefits to the amount of contributions to be made;

(III) The suitability of such rights and benefits to the needs and interests of eligible student employees participating in such plan and to the interests of the department or such state college or university; and

(IV) The ability of the designated organization or organizations to provide the required rights and benefits under the contract or contracts for such student employee retirement plan.

24-54.6-105. Participation. All eligible student employees of a state college or university for which a student employee retirement plan is offered shall participate in such plan.

24-54.6-106. Moneys not subject to legal process. Except for assignments for child support as provided for in sections 14-10-118 (1) and 14-14-107, C.R.S., as they existed prior to July 1, 1996, for income assignments for child support purposes pursuant to section 14-14-111.5, C.R.S., for writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to section 14-10-113 (6), C.R.S., and for restitution that is required to be paid for the theft, embezzlement, misappropriation, or wrongful conversion of public property or in the event of a judgment for a willful and intentional violation of fiduciary duties pursuant to this article where the offender or a related party received direct financial gain, no annuity contract or certificate purchased under a student employee retirement plan established pursuant to the provisions of this article shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process.

ARTICLE 54.7

Public Officials' and Employees'
Defined Contribution Plans

24-54.7-101 to 24-54.7-108. (Repealed)

ARTICLE 54.8

Sudan Divestment by Public Pension Plans

24-54.8-101. Legislative declaration - post-enactment review. (1) The general assembly hereby finds and declares that:

(a) On July 23, 2004, the United States congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide".

(b) On September 9, 2004, United States secretary of state Colin L. Powell told

the United States senate foreign relations committee that "genocide has occurred and may still be occurring in Darfur" and that "the Government of Sudan and the Janjaweed bear responsibility".

(c) On September 21, 2004, addressing the United Nations general assembly, president George W. Bush affirmed the secretary of state's finding and stated, "At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide".

(d) On December 7, 2004, the United States congress found that the genocidal policy in Darfur has led to reports of the "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves".

(e) On December 7, 2004, congress also found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter".

(f) On September 25, 2006, congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan".

(g) On September 26, 2006, the United States house of representatives stated that an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the Darfur crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad.

(h) The Darfur crisis represents the first time the United States government has labeled ongoing atrocities as genocide.

(i) The federal government has imposed sanctions against the government of Sudan since 1997. These sanctions are monitored through the United States treasury department's office of foreign assets control, also known as "OFAC".

(j) According to a former chair of the United States securities and exchange commission, the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company.

(k) Since 1993, the United States secretary of state has determined that Sudan is a country whose government has repeatedly provided support for acts of international terrorism and thereby restricted United States assistance, defense exports and sales, and

financial and other transactions with the government of Sudan.

(l) A 2006 United States house of representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment".

(m) In response to the financial risk posed by investments in companies doing business with a terrorist-sponsoring state, the federal securities and exchange commission established its office of global security risk to provide for enhanced disclosure of material information regarding such companies.

(n) The current Sudan divestment movement encompasses nearly one hundred universities, cities, states, and private pension plans.

(o) Companies facing such widespread divestment present further material risk to remaining investors.

(p) It is a fundamental responsibility of the Colorado general assembly to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors.

(q) It is the prerogative and desire of the state of Colorado, in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain foreign companies presently doing business in Sudan.

(r) It is the judgment of the general assembly that this article should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the federal government.

(s) It is the judgment of the general assembly that mandatory divestment of public funds from certain companies is a measure that should be employed only under extraordinary circumstances with each case considered on its own merits, and that in the case of Sudan, a congressional and presidential declaration of genocide satisfies this high threshold.

(2) The general assembly further finds and declares that state and local entities that are not subject to the requirements of this article are encouraged to take voluntary action to divest from the companies specified in this article.

(3) The general assembly further finds and declares that the desired result of this article for the purpose of post-enactment review is that all public funds sell, redeem, divest, or withdraw investments in scrutinized companies with active business operations in Sudan and maintain communication with scrutinized companies with inactive business operations in Sudan, in accordance with the provisions of this article.

24-54.8-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Active business operations" means all business operations that are not inactive business operations.

(2) "Business operations" means engaging in commerce in any form in Sudan, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) "Company" means any entity that has publicly traded securities and is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(4) "Complicit" means taking actions during any preceding twenty-month period that have directly supported or promoted the genocidal campaign in Darfur, including but not limited to preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(5) "Direct holdings" means all publicly traded securities of a company held directly by a public fund or in an account or fund in which a public fund owns all shares or interests.

(6) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the national congress party, formerly known as the national Islamic front, or any successor government formed on or after October 13, 2006, including the coalition national unity government agreed upon in the comprehensive peace agreement for Sudan, and does not include the regional government of southern Sudan.

(7) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.

(8) "Indirect holdings" means all publicly traded securities of a company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this article.

(9) "Marginalized populations of Sudan" means populations including but not limited to the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern

Blue Nile, and Nuba mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including but not limited to radar systems or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) "Mineral extraction activities" means activities including exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as the facilitation of such activities, including the provision of supplies or services in support of such activities.

(12) "Oil-related activities" means, but need not be limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oilfield infrastructure; and the facilitation of such activities, including the provision of supplies or services in support of such activities. "Oil-related activities" does not include the mere retail sale of gasoline and related consumer products.

(13) "Power production activities" means any business operation that involves a project commissioned by the national electricity corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including but not limited to establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as the facilitation of such activities, including the provision of supplies or services in support of such activities.

(14) "Public fund" means the state treasurer, the board of directors of the public employees' retirement association created in article 51 of this title, the Colorado county officials and employees retirement association created pursuant to article 54 of this title, the board of directors of the fire and police pension association created in article 31 of title 31, C.R.S., and the board of directors of the regional transportation district created in article 9 of title 32, C.R.S.

(15) "Publicly traded securities" means ownership interest or debt instruments that are currently traded on a securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located or currently traded through the United States over-the-counter market that is reflected by the existence of an interdealer quotation system.

(16) "Scrutinized company" means a company that meets any of the following criteria:

(a) (I) The company has business operations that involve contracts with or provision of supplies or services to: The government of Sudan; companies in which the

government of Sudan has any direct or indirect equity share; projects or consortiums commissioned by the government of Sudan; or companies involved in projects or consortiums commissioned by the government of Sudan; and

(II) (A) More than ten percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities; less than seventy-five percent of the company's revenues or assets linked to Sudan involve contracts with or the provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

(B) More than ten percent of the company's revenues or assets linked to Sudan involve power production activities; less than seventy-five percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action;

(b) The company is complicit in the Darfur genocide; or

(c) The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, such as through post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization. Notwithstanding any provision of this article to the contrary, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(17) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(18) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan; or materially improving conditions for the genocidally victimized population in Darfur through engagement with the government of Sudan.

24-54.8-103. Identification of companies. (1) Within ninety days of April 19, 2007, a public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts may include, as appropriate in the public fund's judgment:

(a) Reviewing and relying on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(b) Contacting asset managers contracted by the public fund that invest in companies with business operations in Sudan; and

(c) Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(2) By the first meeting of a public fund following the ninety-day period described in subsection (1) of this section, the public fund shall assemble all identified scrutinized companies into a scrutinized companies list.

(3) A public fund shall update the scrutinized companies list every six months based on evolving information from, among other sources, those listed in subsection (1) of this section.

(4) A public fund may engage a research firm or organization that offers services related to the screening of companies that have business operations in Sudan to perform all or part of the tasks required in this section. It shall be reasonable and sufficient for a public fund to rely on information and work product obtained from such research firm or organization.

24-54.8-104. Required actions. (1) **Engagement.** A public fund shall adhere to the following procedures for companies on the scrutinized companies list:

(a) The public fund shall immediately determine the companies on the scrutinized companies list in which the public fund owns direct or indirect holdings.

(b) For each company identified pursuant to paragraph (a) of this subsection (1) with only inactive business operations, the public fund shall send a written notice informing the company of this article and encouraging it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence on a semi-annual basis.

(c) For each company newly identified pursuant to paragraph (a) of this subsection (1) with active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within ninety days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.

(d) If, within ninety days following the public fund's first engagement with a company pursuant to paragraph (c) of this subsection (1), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within ninety days following the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to the provisions of paragraph (b) of this subsection (1).

(2) **Divestment.** (a) If, after ninety days following a public fund's first engagement with a company pursuant to paragraph (c) of subsection (1) of this section, the company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in subsections (4) and (5) of this section, according to the following schedule:

(I) At least fifty percent of such assets shall be removed from the public fund's assets under management by nine months after the company's most recent appearance on the scrutinized companies list.

(II) One hundred percent of such assets shall be removed from the public fund's assets under management within fifteen months after the company's most recent appearance on the scrutinized companies list.

(b) If a company that ceased scrutinized active business operations following engagement pursuant to paragraph (c) of subsection (1) of this section resumes such operations, paragraph (a) of this subsection (2) shall immediately apply, and a public fund shall send a written notice to the company. The company shall also be immediately placed on the scrutinized companies list again.

(3) **Prohibition.** At no time shall a public fund acquire direct holdings in securities of companies on the scrutinized companies list that have active business operations, except as provided for in subsections (4) and (5) of this section. Public funds shall not undertake investments in an indirect passively managed fund that is not held in the public fund's portfolio as of April 19, 2007, where the passively managed fund contains publicly traded securities of a scrutinized company with active business operations in Sudan.

(4) **Exclusion.** No company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subsections (2) and (3) of this section.

(5) **Excluded securities.** Notwithstanding any other provision of this article, subsections (2) and (3) of this section do not apply to indirect holdings in actively managed investment funds. A public fund shall, however, submit letters to the managers

of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund with indirect holdings devoid of such companies. If the manager creates a similar fund and if the public fund determines investment in the similar fund is consistent with prudent investment standards, the public fund shall replace all applicable investments with investments in the similar fund in an expedited time. In addition, notwithstanding any other provision of this article, for passively managed indirect holdings, if the manager does not remove such companies or create a similar fund consistent with prudent investment standards by October 1, 2008, or nine months after the date the public fund first requests the manager to act, whichever is later, then the scrutinized companies with active business operations shall be removed from the indirect passively managed assets of the public fund.

(6) **Defined contribution plans.** Notwithstanding any other provision of this article, public funds, when discharging their responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed consistent with prudent investor standards by the public fund, the public fund shall consider including such investment offering in the plan.

(7) **Private equity.** Public funds shall annually notify managers of private equity assets of the public fund that public policy in Colorado is to avoid participation in scrutinized companies with active business operations in Sudan and request the managers not undertake any investments that would constitute such operations. Prior to investing in a new private equity fund that is not in the public fund's portfolio as of April 19, 2007, the public fund shall perform due diligence to prevent investment in any private equity fund where the offering memorandum or prospectus identifies the purpose of the private equity fund as investing in scrutinized companies with active business operations in Sudan.

24-54.8-105. Reporting. (1) A public fund shall file a publicly available report to the general assembly and the office of the attorney general that includes the scrutinized companies list within thirty days after the list is created.

(2) Annually thereafter, a public fund shall file a publicly available report to the general assembly and the office of the attorney general and send a copy of that report to the United States presidential special envoy to Sudan, or any successor thereto, that includes:

(a) A summary of correspondence with companies engaged by the public fund pursuant to section 24-54.8-104 (1) (b) and (1) (c);

(b) All investments sold, redeemed, divested, or withdrawn in compliance with

section 24-54.8-104 (2);

(c) All prohibited investments under section 24-54.8-104 (3); and

(d) Any progress made under section 24-54.8-104 (5).

24-54.8-106. Provisions for repeal. (1) This article is repealed upon the occurrence of any one of the following:

(a) The congress or president of the United States declares that the Darfur genocide has been halted for at least twelve months;

(b) The United States revokes all sanctions imposed against the government of Sudan; or

(c) The congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this article interferes with the conduct of United States foreign policy.

(2) The state treasurer shall notify the revisor of statutes of the occurrence of any of the actions specified in subsection (1) of this section.

24-54.8-107. Other legal obligations - immunity. (1) With respect to actions taken in compliance with this article, including all good faith determinations regarding companies as required by this article, a public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

(2) With respect to all actions taken in good faith compliance with this article, a public fund, its board of directors, individual board members, agents, trustees, officers, employees, custodians, and fiduciaries shall be immune from any liability.

24-54.8-108. Reinvestment in certain companies with scrutinized active business operations. Notwithstanding any other provision of this article, a public fund may cease divesting from certain scrutinized companies pursuant to section 24-54.8-104 (2) or reinvest in certain scrutinized companies from which it divested pursuant to section 24-54.8-104 (2) if clear and convincing evidence shows that the value for all assets under management by the public fund becomes equal to or less than ninety-nine and one-half percent, or fifty basis points, of the hypothetical value of all assets under management by the public fund assuming no divestment for any company had occurred under section 24-54.8-104 (2). Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in this section. For any cessation of

divestment, reinvestment, or subsequent ongoing investment authorized by this section, the public fund shall provide a written report to the general assembly and the office of the attorney general in advance of initial reinvestment, updated semi-annually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies with scrutinized active business operations. This section has no application to reinvestment in companies on the ground that they have ceased to have scrutinized active business operations.

24-54.8-109. Costs - responsibility of public fund. Each public fund shall be responsible for bearing the costs of complying with the provisions of this article, and the general assembly shall not appropriate or expend any moneys to assist a public fund in bearing such costs.

24-54.8-110. Enforcement. The attorney general is charged with enforcing the provisions of this article and, through any lawful designee, may bring such actions in court as are necessary to do so.

24-54.8-111. Severability. If any section, subsection, paragraph, subparagraph, sub-subparagraph, sentence, clause, phrase, word, or other provision of this article or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the provision is hereby declared to be severable and the remainder of this article shall remain effective and functional notwithstanding the invalidity, illegality, unenforceability, or unconstitutionality. The Colorado general assembly hereby declares that it would have passed this article, including each section, subsection, paragraph, subparagraph, sub-subparagraph, sentence, clause, phrase, word, and other provision irrespective of the fact that any such provision would be declared invalid, illegal, unenforceable, or unconstitutional, including, but not limited to, the engagement, divestment, and prohibition provisions of this article.

FEDERAL PROGRAMS - HOUSING - RELOCATION

ARTICLE 55

Cooperation with Federal Government

24-55-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "City" means any city or incorporated town.

(2) "Community facilities" includes real and personal property, buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes, and necessary utilities, when designed primarily for the benefit and use of the occupants of the dwelling accommodations.

(3) "Federal government" means the United States of America, the federal emergency administrator of public works, or any agency or instrumentality of the United States.

(4) "Government" means the state or federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(5) "Housing authority" or "authority" means any housing authority created pursuant to the housing authorities law of this state.

(6) "Housing project" or "project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to demolish, clear, remove, alter, or repair unsafe, unsanitary, or substandard housing or to provide dwelling accommodations at rentals within the means of persons of low income. "Housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other works in connection therewith.

24-55-102. Conveyance by city in aid of project. (1) A city or government, upon such terms and for such consideration as it may determine, may grant, sell, convey, or lease any of its property to an authority or the federal government, or render the usual municipal services, or provide and maintain parks or other facilities adjacent to or in connection with a project. A city may enter into an agreement with an authority or the federal government to open, close, pave, or change the grade of streets, roads, roadways, alleys, or other places, to install sidewalks, to change the city map, and to plan, replan, zone, or rezone any section of the city. In connection with this power, a city is empowered to incur the entire expense, subject to such reimbursement as it shall determine, of street improvements without assessment against abutting property owners. Any statute, charter, local law, or ordinance to the contrary notwithstanding, any gift, grant, sale, conveyance, or lease may be made by a city or government to an authority or the federal government without appraisal, public notice, advertisement, or public bidding for such price and, in the case of a lease, for such rental or term as may be deemed advisable.

(2) In connection with any housing project located wholly or partly within the area

in which it is authorized to act, any city may contract with a housing authority or the federal government with respect to the sum, if any, which the housing authority or the federal government may agree to pay during any year or period of years to the city for the improvements, services, and facilities to be furnished by it for the benefit of said housing project, but in no event shall the amount of such payments exceed the estimated cost to the city of the improvements, services, or facilities to be so furnished; except that the absence of a contract for such payments shall in no way relieve any city from the duty to furnish, for the benefit of said housing project, all such services and facilities as such city usually furnishes without a service fee.

(3) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no city shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

(4) For the purpose of aiding and cooperating in the planning, construction, or operation of housing projects located wholly or partly within the area in which it is authorized to act, a city or government may, upon such terms as it may determine, do any and all things necessary or convenient and may enter into agreements, which may extend over any period, notwithstanding any provision of law to the contrary, with a housing authority or government respecting action to be taken pursuant to any of the powers granted by this article.

24-55-103. Cooperation between authorities. Any two or more housing authorities created under article 4 of title 29, C.R.S., for cities and counties may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes, or other obligations and giving security therefor, planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project located within the area of operation of any one or more of said housing authorities. For such purposes, a housing authority may by resolution prescribe and authorize any other housing authority so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the housing authority so joining or cooperating or in its own name.

ARTICLE 56

Relocation Assistance and Land Acquisition Policies

24-56-101. Legislative declaration - relocation assistance. The general assembly finds and declares that the purpose of sections 24-56-102 to 24-56-113 is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by state agencies and political subdivisions of the state for federally assisted programs and projects and to comply with the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", as amended, and the federal "Surface Transportation and Uniform Relocation Assistance Act of 1987", as amended. The general assembly also recognizes that the federally assisted acquisition of real property by the department of transportation and by municipalities and counties for highway programs and projects is requiring citizens to relocate their residences, farms, and businesses. The general assembly finds and declares that the authority of the department of transportation concerning the equitable relocation and implementation of relocation payments and advisory assistance for highway projects on the state highway system contained in part 3 of article 1 of title 43, C.R.S., prior to March 31, 1989, and as amended, are included in this article to assure the consistent and uniform application of relocation policy for all federally assisted programs, to promote the efficient operation of the highway right-of-way acquisition program, and to define the authority and responsibility of the department of transportation and of municipalities and counties for all acquisitions and relocation for federally assisted highway programs and projects within their respective jurisdictions. Such policy shall be uniform as to relocation payments, advisory assistance, assurance of availability of standard housing, and state reimbursement for local relocation payments where state assistance may be authorized by law.

24-56-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Business" means any lawful activity, except a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of section 24-56-103 (1), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the activities described in this paragraph (d) are conducted.

(1.2) "Comparable replacement dwelling" means any dwelling that is:

(a) Decent, safe, and sanitary;

(b) Adequate in size to accommodate the occupants;

(c) Within the financial means of the displaced person;

(d) Functionally equivalent;

(e) In an area not subject to unreasonably adverse environmental conditions; and

(f) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, and services and the displaced person's place of employment.

(2) (a) "Displaced person" means, except as provided in paragraph (b) of this subsection (2):

(I) Any person who moves from real property or moves his personal property from real property:

(A) As a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a displacing agency; or

(B) On which such person is a residential tenant or conducts a small business, a farm operation, as defined in subsection (3) of this section, or a business, as defined in subsection (1) of this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the department of transportation may prescribe under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that such displacement is permanent; and

(II) Solely for the purposes of sections 24-56-103 (1) and (2) and 24-56-106, any person who moves from real property or moves his personal property from real property:

(A) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(B) As a direct result of rehabilitation, demolition, or such other displacing activity as the department of transportation may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that such displacement is permanent.

(b) "Displaced person" does not include:

(I) A person who has been determined, according to criteria established by the department of transportation, to be either unlawfully occupying the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this article.

(II) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period

subject to termination when the property is needed for the program or project.

(2.3) "Displacing agency" means the state or a state agency carrying out a program or project or any person carrying out a program or project with federal financial assistance which causes a person to be a displaced person.

(3) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(4) "Nonprofit organization" means any organization which is exempt from the income tax imposed under article 22 of title 39, C.R.S.

(5) "Person" means any individual, limited liability company, partnership, corporation, or association.

(6) "State agency" means any department, agency, or instrumentality of the state or of a political subdivision of the state or any department, agency, or instrumentality of two or more states, or two or more political subdivisions of the state or states and also means any person who has authority to acquire property by eminent domain under state law.

24-56-103. Moving and related expenses. (1) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment of:

(a) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the displacing agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site in accordance with criteria to be established by the department of transportation, but no more than:

(I) For a project administered or overseen by the department of transportation, fifty thousand dollars;

(II) For any other project, ten thousand dollars.

(2) Any displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection (2) in lieu of the payments authorized by subsection (1) of this section may receive a moving expense allowance determined according to a schedule established by

the displacing agency.

(3) Any displaced person eligible for payments under subsection (1) of this section who is displaced from the person's place of business or farm operation and who is eligible under regulations established by the department of transportation may elect to accept the payment authorized by this subsection (3) in lieu of the payment authorized by subsection (1) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to regulations established by the department of transportation; except that such payment shall not be less than one thousand dollars nor more than twenty thousand dollars. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection (3).

24-56-104. Replacement housing for homeowners. (1) In addition to payments otherwise authorized by this article, the displacing agency shall make an additional payment not in excess of twenty-two thousand five hundred dollars to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(a) The amount, if any, which when added to the acquisition cost of the dwelling acquired equals the reasonable cost of a comparable replacement dwelling. All determinations required to carry out this paragraph (a) shall be determined by regulations issued pursuant to section 24-56-108.

(b) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage or deed of trust which was a valid lien on such dwelling for not less than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(c) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on the date on which he receives final payment of all costs of the acquired dwelling or on the date on which he moves from the acquired dwelling, whichever is the later date; except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a

comparable replacement dwelling within one year of such date.

24-56-105. Replacement housing for tenants and certain others. (1) In addition to amounts otherwise authorized by this article, a displacing agency shall make a payment to or for any displaced person displaced from any dwelling who is not eligible to receive a payment under section 24-56-104, which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling, or, in any case in which displacement is not a direct result of acquisition, such other event as the department of transportation may, within the purpose of this article, prescribe. Payment authorized by this section shall be made only to such a displaced person who leases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date that such displaced person vacates the acquired dwelling. The payment shall consist of the amount necessary to enable the person to lease or rent, for a period of no longer than forty-two months, a comparable replacement dwelling, but no more than five thousand two hundred fifty dollars. At the discretion of the displacing agency, a payment under this subsection (1) may be made in periodic installments. Computation of a payment under this subsection (1) to or for a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

(2) Any person eligible for a payment under subsection (1) of this section may elect to apply such payment to a down payment on, and other incidental expenses for, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the displacing agency, be eligible under this subsection (2) for the maximum amount allowed under subsection (1) of this section; except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days but not more than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not be greater than the payment such person would otherwise have received under section 24-56-104 (1) had the person owned and occupied the displacement dwelling one hundred eighty days immediately prior to the initiation of such negotiations.

24-56-106. Relocation assistance advisory programs. (1) Whenever a displacing agency acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project and such acquisition will result in the displacement of any person, the acquiring agency shall provide a relocation assistance advisory program for displaced persons which offers the services prescribed in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is

caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services under such program.

(2) Each relocation assistance program required by subsection (1) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons, business concerns, and nonprofit organizations for relocation assistance; to assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms; to supply information concerning programs of the federal, state, and local governments offering assistance to displaced persons and business concerns and technical assistance to such persons in applying for assistance under such programs; to provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations; to assist in minimizing hardships to displaced persons in adjusting to relocation; and to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

(3) Notwithstanding the provisions of section 24-56-102 (2) (b) (II), in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

24-56-107. Assurance of availability of standard housing. (1) Whenever a displacing agency acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project and such acquisition will result in the displacement of any person, upon recommendation or approval of the displacing agency, such agency shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling; except that regulations issued pursuant to section 24-56-108 may prescribe situations when these assurances may be waived.

(2) If a program or project for which federal financial assistance is available cannot proceed to actual construction because comparable replacement sale or rental housing is not available and the state agency determines that such housing cannot otherwise be made available, upon recommendation or approval of the displacing agency, the state agency may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project. The displacing agency may use this

section to exceed the maximum amounts which can be paid by a displacing agency under sections 24-56-104 and 24-56-105 on a case-by-case basis for good cause shown as determined in accordance with regulations issued pursuant to section 24-56-108.

24-56-108. Authority of the department of local affairs. (1) The department of local affairs shall administer and implement the uniform policy for all relocation assistance for all nonhighway federally assisted programs and projects.

(2) (a) Notwithstanding any provision of this article to the contrary, the department of transportation has the primary authority to administer acquisition and relocation assistance for all highway and highway-related programs or projects on the state highway system. The department of transportation also has authority to coordinate and administer acquisition and relocation assistance for all highway and highway-related programs or projects which are not on the state highway system to the extent provided in paragraph (b) of this subsection (2).

(b) Each state agency has the primary authority to perform acquisition and relocation assistance within its jurisdiction for federally assisted highway and highway-related programs and projects for streets and roads which are not on the state highway system. In the event that the department of transportation, as the state agency responsible for monitoring and administering the use of federal highway funds, determines that such performance by another state agency will jeopardize distribution of federal highway assistance funds to the state or that such action is necessary to comply with federal highway administration policy or procedures, then the department of transportation has the authority to perform the acquisition and relocation assistance for any federally assisted highway or highway-related program or project for streets and roads which are not on the state highway system or to require that the state agency with jurisdiction for that highway program or project perform such acquisition and relocation assistance under the supervision and direction of the department of transportation. Prior to exercising the authority of this paragraph (b), the department of transportation will comply with procedures previously agreed to with the affected state agency, including, but not limited to, setting a contact person for the project, providing written notice of the basis of such determination or action, and meeting with the affected agency to discuss possible remedial measures.

(3) The executive director of the department of transportation shall adopt such rules and regulations as may be necessary to assure:

(a) That the payments and assistance authorized by this article are administered in a manner which is fair and reasonable and as uniform as practicable;

(b) That a displaced person who makes proper application for a payment authorized for such person by this article is paid promptly after a move or, in hardship cases, paid in advance; and

(c) That any person aggrieved by a determination as to eligibility for a payment authorized by this article or the amount of a payment may have his application reviewed by the head of the acquiring agency.

(4) The department of transportation may use the provisions of this article for programs or projects on the state highway system funded from the state highway fund.

24-56-109. Administration. In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the executive director of the department of transportation may authorize any state agency to enter into contracts with any individual, firm, association, or corporation for services in connection with such programs or may carry out its functions under this article through any federal or state agency or instrumentality having an established organization for conducting relocation assistance programs.

24-56-110. Fund availability. Funds appropriated or otherwise available to any state agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this article as applied to that program or project.

24-56-111. State participation in cost of local relocation payments and services. If any political subdivision of the state acquires real property and state financial assistance is available pursuant to law to pay the cost, in whole or part, of the acquisition of such real property or of the improvement for which such property is acquired, the cost to the political subdivision of the state of providing the payments and services prescribed by this article shall be included as part of the costs of the project for which state financial assistance is available to such political subdivision, and the political subdivision shall be eligible for state financial assistance in the same manner and to the same extent as other project costs.

24-56-112. Payments not to be considered as income or resources. No payment received by a displaced person under this article shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the Colorado income tax law or any other tax law of this state. Such payments shall not be considered as income or resources of any recipient of public assistance, and such payments shall not be deducted

from the amount of aid to which the recipient would otherwise be entitled.

24-56-113. Appeal procedure. Any person or business concern aggrieved by a final administrative determination concerning eligibility for relocation payments authorized by this article may have such determination reviewed by the district court for the county in which the land taken for public use is located, in accordance with the provisions of section 24-4-106.

24-56-114. Expenses incidental to transfer of title. Any state agency or political subdivision of the state acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency deems fair and reasonable for expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency; penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

24-56-115. Litigation expenses. Where a condemnation proceeding is instituted by a state agency or a political subdivision of the state to acquire real property for a purpose as set forth in section 24-56-114 and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of such sums will be paid by the state agency or political subdivision of the state which sought to condemn the property.

24-56-116. Inverse condemnation proceedings. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the

court rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property or the attorney for the acquiring agency effecting a settlement of any such proceeding shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of such proceeding.

24-56-117. Real property acquisition policies. (1) Any acquiring agency or political subdivision of the state which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(a) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; except that the department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(c) Before the initiation of negotiations for acquisition of real property, an amount shall be established which it is reasonably believed is just compensation therefor, and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and summary of the basis for the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(d) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(e) The construction or development of a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully

occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety days' written notice of the date by which such move is required.

(f) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(g) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(h) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

(j) A person whose real property is being acquired in accordance with this article may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor to an agency, as such person shall determine.

(k) As used in this section, "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(2) For the purposes of this section, "acquiring agency" means a state agency which has the authority to acquire property by eminent domain under state law and a state agency or person which does not have such authority to the extent provided by the department of transportation by regulation.

(3) The requirements of this section shall not apply to any acquiring agency or political subdivision of the state that acquires real property for a program or project for which federal financial assistance will be available from the rural utilities service of the United States department of agriculture for all or any part of the cost of such program or project.

24-56-118. Buildings, structures, and improvements. (1) Where any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located

upon the real property so acquired which are required to be removed from such real property or which the head of the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) (a) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of such building, structure, or improvement for removal from the real property, whichever is greater, shall be paid to the tenant therefor.

(b) Payment for such buildings, structures, or improvements as set forth in this subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

24-56-119. No duplication of payments. No payment or assistance provided for in this article shall be required to be made by a state agency or political subdivision of the state if the displaced person receives a payment required by the laws of eminent domain which is determined by the state agency or political subdivision of the state to have substantially the same purpose and effect as such payment under this article.

24-56-120. No new value or damage element created. (1) The provisions of section 24-56-117 create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(2) Nothing in this article shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to May 6, 1971.

24-56-121. Applicability. This article shall apply to all acquisitions of real property by a state agency or a political subdivision of the state for a program or project for which federal financial assistance will be available to pay all or any part of the cost of

the program or project; except that, if any other provision of state law is applicable to such acquisitions and such provision of state law requires relocation payments and assistance or prescribes land acquisition policies which are equivalent to or are greater or more stringent than the payments, assistance, or policies specified by this article, such other provision of state law shall apply to such acquisitions.

INTERSTATE COMPACTS AND AGREEMENTS

ARTICLE 60

Interstate Compacts and Agreements

PART 1

COMPACT FOR PREVENTION OF CRIME - AUTHORIZATION

24-60-101. Compacts recognized and declared to exist. The congress of the United States, under and pursuant to the provisions of section 10 of article 1 of the constitution of the United States, having granted its consent by that certain act (Public Law No. 293, H. R. 7353), approved June 6, 1934, to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and for the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective any such agreements or compacts, the practical need and utility of such agreements or compacts, between or among the state of Colorado and any other states of the United States, and particularly between or among the state of Colorado and those states adjoining the state of Colorado, are recognized and declared to exist.

24-60-102. Attorney general commissioner for Colorado. The governor of the state of Colorado shall appoint the attorney general of the state of Colorado as the commissioner who shall represent the state of Colorado upon any joint commission representing the state of Colorado and any other state, to be constituted by the state of Colorado and any such other state, and particularly by the state of Colorado and any state adjoining it, for the purpose of negotiating and entering into any agreements or compacts, with the consent of congress heretofore granted as aforesaid, for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of the respective criminal laws and policies of the state of Colorado and such other state and for the establishment of such agencies, joint or otherwise, as they may mutually deem to be

desirable for making effective such agreements or compacts.

24-60-103. Compacts designed to suppress crime and enforce the criminal laws, etc. (1) The agreements or compacts so authorized to be negotiated and entered into under the provisions of this part 1 shall be designed to suppress crime, to circumvent the activities of criminals and to expedite their apprehension and trial, and to enforce generally the respective criminal laws and policies of the state of Colorado and any other state entering thereinto at any time with the state of Colorado; and, in order to effectuate those purposes, such agreements or compacts may contain specific provisions for the accomplishment of the following objects, or any of them, in respect to which a mutual understanding may be had, namely:

(a) The arrest of any person who may have fled from any one of such compacting states into another by any pursuing officer of the compacting state from which such person has fled;

(b) The return of any witness deemed essential in the prosecution of any criminal case who may have gone or fled from the compacting state in which his presence may be required into any other compacting state;

(c) The establishment and maintenance by any two or more of such compacting states of facilities for the investigation of crime and the discovery of criminals, such as crime detection agencies, bureaus of registration and identification, crime laboratories, and like agencies; and

(d) The proper supervision of any person who, having been paroled or granted probation in one of such compacting states, may have become a resident of any of such compacting states.

(2) Any agreements or compacts so authorized to be negotiated and entered into as aforesaid shall in all respects conform with the purposes for which the consent of the congress has been granted for their execution; but any agreements or compacts so entered into on behalf of the state of Colorado and any other state shall not be binding upon either of said states, or upon the respective citizens thereof, unless and until such agreements or compacts have been ratified and approved by the respective legislatures of the several states entering into the same.

24-60-104. Commissioner to be furnished legal and clerical assistance. When the commissioner of the state of Colorado is called upon to enter into the performance of his duties, as provided under the terms of this part 1, he shall be furnished such legal, clerical, and stenographic assistance as the governor and he may deem advisable and necessary.

24-60-105. When commissioner to perform duties. The commissioner for the state of Colorado shall not commence the performance of his duties or be authorized to incur any expenses for traveling or for legal, clerical, or stenographic assistance until the governor of the state of Colorado has been notified by the governor of some other state that such other state has appointed a commissioner for the other state to serve upon a joint commission for the purpose of negotiating and entering into any agreements or compacts authorized to be made on behalf of the state of Colorado under the terms of this part 1.

24-60-106. Powers of commissioner. The commissioner for the state of Colorado has full authority to make any and all investigations of conditions, obtaining in the state of Colorado or in any other state, which become necessary in order sufficiently to advise the commissioner in negotiating any agreements or compacts on behalf of the state of Colorado as authorized under the terms of this part 1.

24-60-107. Compensation - traveling expenses. The commissioner for the state of Colorado shall receive no compensation for his services as such, but he and his assistants shall be entitled to receive their traveling and other necessary expenses incurred in the performance of their duties, and such expenses, together with all other necessary costs, charges, and expenditures, including an equitable portion of the costs and expenses of any joint commission, shall be paid upon vouchers approved by the governor and warrants drawn for the payment thereof upon the state treasurer by the controller.

PART 2

COMPACT WITH KANSAS, NEW MEXICO, AND WYOMING

24-60-201. Compact approved and ratified. The general assembly hereby approves and ratifies the compact, designated as "interstate compact entered into by and between the state of Kansas, the state of New Mexico, the state of Wyoming, and the state of Colorado", for cooperative effort and mutual assistance in the prevention of crime, authorized by and entered into, within the provisions of part 1 of this article.

24-60-202. Compact. Desiring to take advantage of the consent of the congress of the United States of America, granted by an act - Public Law No. 293, H. R. 7353 - the states of Kansas, New Mexico, Wyoming, and Colorado solemnly agree to the following provisions.

24-60-203. Peace officers enter other states without interference. (1) It shall be competent for any member of a duly organized state, county or municipal peace unit of a state, party to this compact, to enter any and all other states, parties to this compact, without interference:

(a) While in pursuit of any person who has committed a felony in said state; or

(b) While in pursuit of any person who has been charged with the commission of a felony in said state; or

(c) While in pursuit of any person who has escaped from the custody of any penitentiary, jail or other penal institution, sheriff or other peace officer in said state.

(2) Any member of a duly organized state, county or municipal peace unit of said state may at any time enter another state, party to this compact, and there apprehend and take into custody any person who has committed a felony in said state, or who is a fugitive from justice as herein designated, and for that purpose no formalities shall be required other than establishing the authority of the arresting officer.

24-60-204. Legal requirements to obtain extradition waived. All legal requirements to obtain extradition of any person who has committed a felony in said state, or who is a fugitive from justice as herein designated, arrested under conditions herein specified, are hereby expressly waived by the compacting states, and said duly constituted officer shall be permitted to transport said prisoner through any and all states, parties to this compact, without interference whatsoever.

24-60-205. Use of jails for temporary lodging recognized. When any officer within compacting states, in conformity with a valid writ, order of court or the provisions of this compact, arrests a person in or transports a person through a compacting state, the right of said officer to the custody of a person and to use the state penal institutions or county jails for temporary lodging of such person shall be recognized by the compacting states, their courts, and their court officials, as though the person were in custody of the sheriff or proper officer of the compacting state where the arrest is made or through which he is transported.

24-60-206. Subpoenas, summons and court orders recognized as valid. On the trial in any of the above-named compacting states of one charged with a crime therein committed, if any person within any compacting state is wanted by either party as a witness in such trial, said compacting states, their courts, and their court officials will recognize as valid any subpoena, summons, or court order issued or made in accordance with the law of the compacting state where trial is to be had for the appearance of the

person in said state where trial is to be had as a witness at such trial, the same as though such subpoena, summons, or court order had been duly issued or made by a court of the state where said witness is found; but a resident of a state so called upon to attend as a witness in another compacting state shall not be required to attend unless and until there is paid to him compensation, including mileage, equal to that provided by law of the state requiring attendance, for the time he necessarily would be gone from home; and further, he shall be immune from the service of civil or criminal process upon him while in attendance at said trial and when en route to and from the place where he is to testify, as to all matters occurring prior thereto.

24-60-207. When person on probation or parole may be permitted to reside in other states. (1) It shall be competent for the duly constituted judicial and administrative authorities of a state, party to this compact, to permit any person convicted of any offense within such state and placed on probation or released on parole or under suspended sentence, to reside in any other state, party to this compact, while on probation or parole or under suspended sentence, if:

(a) Such person is in fact a resident of or has his family residing within another compacting state and can obtain employment there;

(b) Though not a resident of another compacting state and not having his family residing there, the receiving state consents to such person being sent there.

(2) Before granting permission, an opportunity shall be granted to the other compacting state to investigate the home and prospective employment of such person.

(3) A resident of a compacting state, within the meaning of this section, is one who has been an actual inhabitant of a state continuously for more than one year prior to his going to another compacting state and has not resided continuously within the other compacting state more than six months immediately preceding the commission of the offense for which he has been convicted.

24-60-208. Supervision over probationers or parolees. That each compacting state assume the duties of visitation and of supervision over probationers or parolees or those under suspended sentence from any other compacting state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees and those under suspended sentence.

24-60-209. Probationers or parolees may be retaken. Duly constituted officers of compacting states may at all times enter another compacting state and there apprehend and retake any person on probation or parole or under suspended sentence. For these

purposes no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All former legal requirements to obtain extradition of a person on probation or parole or under suspended sentence are hereby expressly waived. The decision of a compacting state to retake a person on probation or parole or under suspended sentence shall be conclusive upon and not reviewable by any other compacting state; but if, at the time when a state seeks to retake a probationer or parolee or one under suspended sentence, there is pending against him, within the other compacting state, any criminal charge or he is suspected of having committed a criminal offense within such state, he shall not be retaken without the consent of the other compacting state until discharged from prosecution or from imprisonment for such offense.

24-60-210. Officer shall transport without interference. The duly constituted officers of a compacting state shall be permitted, without interference, to transport persons being retaken through any and all states, parties to this compact.

24-60-211. Attorney generals make rules and regulations. The governor of each compacting state shall appoint the attorney general of said state to promulgate, acting jointly with like officers of other compacting states, such rules and regulations as may be deemed necessary to more effectively carry out the purposes of this compact. The necessary expenses incurred by the attorney general in effecting the purposes of this compact shall be payable from any existing appropriations for the effecting of interstate crime compacts, or from any other fund provided by law.

24-60-212. Compact operative upon ratification. This compact shall become operative immediately upon its ratification by any state, as between it and any other state or states so ratifying. When ratified, it shall have the full force and effect of law within such state. The form of ratification shall be in accordance with the laws of the ratifying state.

24-60-213. Remain in effect until renounced. This compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of any renouncing state shall continue as to probationers and parolees and those under suspended sentence residing therein at the time of withdrawal until retaken or finally discharged by the other compacting states. Renunciation of this compact or any part thereof shall be by the same authority that ratified it and shall be by

sending a ninety-day notice in writing to the governor of each compacting state of intention to withdraw from the compact.

PART 3

COMPACT FOR PAROLEE SUPERVISION

24-60-301 to 24-60-309. (Repealed)

PART 4

COMPACT FOR CARE OF FELONS - AUTHORIZATION

24-60-401. Authority to enter into compacts. (1) Pursuant to the consent of the congress of the United States heretofore granted by Section 112, Title 4, United States Code, being Section 129, Public Law 72, 81st Congress, First Session of 1949, entitled "Compacts between States for Cooperation in Prevention of Crime", and wherein the consent of congress is given "to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts", the governor of the state of Colorado is authorized to:

(a) Enter into an agreement with one or more other states for the safekeeping, care, and subsistence of persons convicted of a felony in such other compacting states, in a penal institution of the state of Colorado; and

(b) Enter into an agreement with one or more other states for the safekeeping, care, and subsistence of persons convicted of a felony in the state of Colorado, in a penal institution of such other compacting states.

24-60-402. Compacts to provide rates. Such compacts shall provide the rates to be paid for the care and custody for such convicted persons, taking into consideration the character and quarters furnished and the quality of subsistence.

24-60-403. Prior compacts ratified. All compacts entered into prior to March 22, 1951, for purposes set forth in section 24-60-401 are ratified and confirmed.

PART 5

AGREEMENT ON DETAINERS

24-60-501. Disposal of detainers against prisoner based on untried charges. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The Agreement on Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to article III or article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the

prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of

imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he had lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V (e) hereof, such indictment, information, or complaint shall not be of

any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to

the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect

thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provisions of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-502. Appropriate court - definitions. The phrase "appropriate court", as used in the agreement on detainers with reference to the courts of this state, means the court in which the indictment, information, or criminal complaint is filed.

24-60-503. Enforcement - cooperation. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are directed to enforce the agreement on detainers and to cooperate with one another and with other states in enforcing the agreement and effectuating its purpose.

24-60-504. Habitual criminals - application of part 5. Nothing in this part 5 or in the agreement on detainers shall be construed to require the application of the provisions of article 13 of title 16, C.R.S., to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

24-60-505. Escapes. Every person who has been imprisoned in a prison or institution in this state and who escapes in another state while in the custody of an officer of this or another state, pursuant to the agreement on detainers, is deemed to have violated section 18-8-208 (1) and (2), C.R.S.

24-60-506. Surrender of inmates. It is lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on

detainers. Such official shall inform such inmate of his rights provided in paragraph (a) of article IV of the agreement on detainers.

24-60-507. Administration. The executive director of the department of corrections shall administer this part 5.

PART 6

REGIONAL HIGHER EDUCATION COMPACTS - AUTHORIZATION

24-60-601. Compact. The governor of the state of Colorado, for and in behalf of the state of Colorado, is hereby authorized to enter into compacts for western regional cooperation in higher education with the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming or any one or more of said states. Under such compacts, the following covenants may be agreed to:

ARTICLE I

WHEREAS, the future of this Nation and of the Western States is dependent upon the quality of the education of its youth; and

WHEREAS, many of the Western States individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the States have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the Western States, or groups of such states within the Region, co-operatively can provide acceptable and efficient educational facilities to meet the needs of the Region and of the students thereof;

NOW, THEREFORE, The States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the Territories of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful co-operation in carrying out all the purposes of this Compact.

ARTICLE III

The compacting states and territories hereby create the Western Interstate Commission for Higher Education, hereinafter called the Commission. Said Commission shall be a body corporate of each compacting state and territory and an agency thereof. The Commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The Commission shall consist of three resident members from each compacting state or territory. At all times one Commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The Commissioners from each state and territory shall be appointed by the Governor thereof as provided by law in such state or territory. Any Commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each Commissioner shall be four years, provided however that the first three Commissioners shall be appointed as follows: one for two years, one for three years, and one for four years. Each Commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the Governor shall appoint a Commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the Commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more Commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the Commission is entitled to one vote.

ARTICLE VI

The Commission shall elect from its number a chairman and a vice chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of this Compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The Commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the Commission.

ARTICLE VII

The Commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The Commission may elect such committees as it deems necessary for the carrying out of its functions.

The Commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The Chairman may call such additional meetings and upon the request of a majority of the Commissioners of three or more compacting states or territories shall call additional meetings.

The Commission shall submit a budget to the Governor of each compacting state and territory at such time and for such period as may be required.

The Commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the Region.

On or before the fifteenth day of January of each year, the Commission shall submit to the Governors and Legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The Commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the Governor of any compacting state or territory or his designated representative. The Commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The Commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the Commission to enter into such contractual agreements with any institutions in the Region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the Commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The Commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the Commission may enter into contractual agreements --

(a) With the governing authority of any educational institution in the Region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and

(b) With the governing authority of any educational institutions in the Region or

with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the Region providing the desired services and facilities, upon such terms and conditions as the Commission may prescribe.

It shall be the duty of the Commission to undertake studies of needs for professional and graduate educational facilities in the Region, the resources for meeting such needs, and the long-range effects of the Compact on higher education; and from time to time prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territories. In conducting such studies, the Commission may confer with any national or regional planning body which may be established. The Commission shall draft and recommend to the Governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the Region.

For the purposes of this Compact the word "Region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the Commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This Compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This Compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This Compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and Governor of such terminating state. Any state or territory may at any time withdraw from this Compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the Governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the Commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the Commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this Compact, all rights, privileges and benefits conferred by this Compact or agreements hereunder, shall be suspended from the effective date of such default as fixed by the Commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this Compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all Acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the Commission.

PART 7

INTERSTATE COMPACT ON JUVENILES

24-60-701. Definitions. The term "delinquent juvenile" as used in the interstate compact on juveniles includes those persons subject to the jurisdiction of district or juvenile courts within the meaning of title 19, C.R.S.

24-60-702. Execution of compact. The governor is hereby authorized to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I - PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II - DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "By-laws" means: those by-laws established by the Interstate Commission for

its governance, or for directing or controlling its actions or conduct.

B. "Compact Administrator" means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. "Compacting State" means: any state which has enacted the enabling legislation for this compact.

D. "Commissioner" means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy Compact Administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. "Interstate Commission" means: the Interstate Commission for Juveniles created by Article III of this compact.

H. "Juvenile" means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. "Non-Compacting state" means: any state which has not enacted the enabling legislation for this compact.

J. "Probation or Parole" means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of

statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. "State" means: a state of the United States, the District of Columbia (or its designee), the commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III - INTERSTATE COMMISSION

FOR JUVENILES

A. The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall

include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime, or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV - POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

ARTICLE V - ORGANIZATION AND OPERATION

OF THE INTERSTATE COMMISSION

Section A. By-laws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be

necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

g. Providing "start-up" rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the

intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI - RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final

version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII - OVERSIGHT, ENFORCEMENT AND DISPUTE

RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its by-laws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII - FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the

compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX - THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X - COMPACTING STATES,

EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI - WITHDRAWAL, DEFAULT, TERMINATION

AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the Majority and Minority Leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and

the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII - SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause,

sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII - BINDING EFFECT OF COMPACT

AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

24-60-703. Administrator. The executive director of the department of human services is designated as and shall be the compact administrator who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and

in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state thereunder.

24-60-704. Supplementary agreements. The compact administrator is authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement requires or contemplates the use of any institution or facility of this state or requires or contemplates the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

24-60-705. Financial arrangements. The compact administrator, subject to the approval of the controller, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder within the limits of appropriations made therefor.

24-60-705.5. Assessments or fees - prohibition prior to July 1, 2006 - repeal. (Repealed)

24-60-706. Responsibility of parents. The compact administrator is authorized to take appropriate action to recover from parents or guardians any and all costs expended by the state or any of its subdivisions to return a delinquent or nondelinquent juvenile to this state for care provided pursuant to any supplementary agreement authorized in this part 7 or for care pending the return of such juvenile to this state.

24-60-707. Fee - counsel or guardian ad litem. Any judge who appoints counsel or a guardian ad litem pursuant to the provisions of the compact may fix a fee in a reasonable amount, to be paid out of funds available for disposition by the court.

24-60-708. Enforcement. The courts, departments, agencies, and officers of this state and its political subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their

respective jurisdictions.

PART 8

WESTERN INTERSTATE CORRECTIONS COMPACT

24-60-801. Execution of compact. The governor is hereby authorized to execute a compact on behalf of this state with any other contiguous state or states joining therein in the form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I

PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders.

Article II

DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III

CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefore, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care, or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the

sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V

ACTS NOT REVIEWABLE IN RECEIVING STATE; EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any

contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Article VII

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Article VIII

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for

the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-802. Transfer of inmates. Any court or other agency or officer of this state having power to commit or transfer an inmate, as defined in Article II (d) of the Western Interstate Corrections Compact, to any institution for confinement may commit or transfer such inmate to any institution within or without this state if this state has entered into a contract for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

24-60-803. Enforcement of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

24-60-804. Hearings. The governor or the Colorado state board of parole, at the request of the governor, is authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV (f) of the Western Interstate Corrections Compact.

24-60-805. Contracts. The governor is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the

Western Interstate Corrections Compact pursuant to Article III thereof; but, if the contract would require expenditure of Colorado funds for capital construction purposes, no such contract shall be of any force or effect until approved by the general assembly.

PART 9

VEHICLE EQUIPMENT SAFETY COMPACT

24-60-901. Legislative declaration. (1) The general assembly finds that:

(a) The public safety necessitates the continuous development, modernization, and implementation of standards and requirements of law relating to vehicle equipment in accordance with expert knowledge and opinion;

(b) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation;

(c) The executive director of the department of revenue, acting upon recommendations of the vehicle equipment safety commission and pursuant to the vehicle equipment safety compact, provides a just, equitable, and orderly means of promoting the public safety in the manner and within the scope contemplated by this part 9.

24-60-902. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Findings and Purpose

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation

and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II

Definitions

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III

The Commission

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of

the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and

hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

Research and Testing

The commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V

Vehicular Equipment

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes

embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI

Finance

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One-third in equal shares; and the

remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

Conflict of Interest

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the

commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII

Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining

party states and in full force and effect as to the state affected as to all severable matters.

24-60-903. Approval of compact. Pursuant to article V (e) of the vehicle equipment safety compact, it is the intention of this state and it is provided that no rule, regulation, or code issued by the vehicle equipment safety commission in accordance with article V of the compact shall take effect until approved by act of the general assembly.

24-60-904. Commissioner appointed - alternate. The commissioner of this state serving on the vehicle equipment safety commission shall be appointed by the governor from among the members of the legislative council, consistent with the provisions of section 2-3-311, C.R.S. The commissioner of this state, appointed pursuant to this section, may designate the executive director of the department of revenue to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate shall be as determined by the commissioner designating such alternate.

24-60-905. Retirement benefits. The public employees' retirement association may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

24-60-906. Other agencies cooperate. Within appropriations available therefor, the departments, agencies, and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by article III (h) of the compact. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said commission.

24-60-907. State contribution limited. In no event shall the contribution of the state of Colorado exceed two thousand dollars as its share of the commission's budget.

24-60-908. Compact effective - when. Notwithstanding the provisions of article

IX (a) of the compact, the participation of the state of Colorado in the compact shall not become effective until twenty-four or more states have enacted this compact into law; except that if twelve or more states have enacted this compact into law, then, upon request of the commissioner of the state vehicle equipment safety commission, the governor may enter into this compact on behalf of the state of Colorado.

24-60-909. Filing of documents. Filing of documents as required by article III (j) of the compact shall be with the executive director of the department of revenue.

24-60-910. Budget submitted. Pursuant to article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the executive director of the department of revenue for recommendation and submission to the office of state planning and budgeting pursuant to part 3 of article 37 of this title.

24-60-911. Inspection of accounts. Pursuant to article VI (e) of the compact, the executive director of the department of revenue may inspect the accounts of the vehicle equipment safety commission.

24-60-912. Governor executive head. The term "executive head" as used in article IX (b) of the compact shall, with reference to this state, mean the governor.

PART 10

INTERSTATE COMPACT ON MENTAL HEALTH

24-60-1001. Execution of compact. The governor is hereby authorized to enter into a compact on behalf of this state with any other state or states joining therein in the form substantially as follows:

Interstate Compact on Mental Health

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary

relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors

based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the

terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way

impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to

promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-1002. Compact administrator. The executive director of the department of human services, referred to in this part 10 as the "director", shall be the compact administrator and shall have the power to make any rules and regulations necessary for the administration of this part 10. The director shall cooperate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the interstate compact on mental health or of any supplementary agreement or agreements entered into by this state thereunder.

24-60-1003. Supplementary agreements. The director may enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact.

24-60-1004. Annual budget. The department of human services in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the interstate compact on mental health, and the general assembly shall appropriate such sums necessary therefor.

24-60-1005. Court review. The compact administrator is directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval, the court shall hold such hearings as it deems appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

24-60-1006. Authenticated copies of compact. Duly authenticated copies of this compact shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the secretary of state of the United States, and the council of state governments.

PART 11

DRIVER LICENSE COMPACT

24-60-1101. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which

conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the offense reported, pursuant to Article III of this compact, as it would if such offense had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the offense as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V

Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a conviction for a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a conviction for a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by Colorado law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-1102. Definition of "licensing authority". (1) As used in the compact, the term "licensing authority", with reference to this state, means the executive director of the department of revenue. Said executive director shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of articles III, IV, and V of the compact.

(2) The executive director of the department of revenue is authorized to administer the provisions of any driver license compact entered into between the state of Colorado and any other state and shall enforce any provisions thereof relative to licenses to operate motor vehicles issued by the department of revenue.

24-60-1103. Compact administrator - expenses. The compact administrator provided for in article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or

responsibilities of his office or employment.

24-60-1104. Executive head - definition. As used in the compact, with reference to this state, the term "executive head" means the governor.

24-60-1105. Offenses - assessment of points. (1) Those offenses described in article IV (a) of the compact refer only to the following: As specified in sections 42-2-128, 42-4-1301, and 42-4-1603, C.R.S. "Felony" as used in article IV (a) (3) means only an offense which if committed in this state would constitute a felony. No conviction in another state for an offense described in article IV (a) of the compact shall be considered in this state unless the executive director of the department of revenue has made a finding with respect thereto that the prerequisites to such conviction in such other state with respect to trial by jury, burden of proof, and elements of the offense are not less stringent than such prerequisites to conviction for such offense in this state.

(2) The executive director of the department of revenue shall not assess points against the operator's license of any driver because of convictions reported from other states under article IV (b) of the compact.

24-60-1106. Operator's license under compact. The provisions of sections 42-1-102 (81), 42-2-101 (1), and 42-2-102 (1) (d) and (1) (e), C.R.S., requiring residents of other states to secure an operator's license from this state shall not apply to persons licensed to drive by other states party to the driver license compact. This state shall require a resident to secure an operator's license from the department of revenue and to surrender any outstanding license to drive issued by another state; except that, if the laws of such other state require the person to be licensed to drive thereby in order to engage in such person's regular trade or profession, no license shall be issued by this state so long as such other license to drive is in force, nor shall this state issue any license to drive in contravention of the driver license compact.

24-60-1107. Review by district court. Any act or omission of any official or employee of this state done or omitted pursuant to or in enforcing the provisions of the driver license compact shall be subject to review by the district court in accordance with sections 24-4-106 and 42-2-135, C.R.S., and the Colorado rules of civil procedure.

PART 12

INTERSTATE COMPACT FOR EDUCATION

24-60-1201. Execution of compact. The governor is hereby authorized to enter into a compact on behalf of this state with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR EDUCATION

ARTICLE I

Purpose and Policy

(a) It is the purpose of this compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

(b) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

(c) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II

State Defined

As used in this compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

The Commission

(a) (1) The education commission of the states, hereinafter called the commission is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and, except as provided in subparagraph (2) of this paragraph (a), serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The terms of the members of the state legislature who are selected pursuant to subparagraph (1) of this paragraph (a) and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and president shall each appoint or reappoint one member. Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president 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 and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(b) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to article IV and adoption of the annual report pursuant to article III (j).

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(f) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(g) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(h) The commission may establish and maintain such facilities as may be

necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

Powers

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V

Cooperation With Federal Government

(a) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be

represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

(b) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI

Committees

(a) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: Sixteen for one year and sixteen for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

(b) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

(c) The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII

Finance

(a) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

(c) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to article III (g) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to article III (g) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII

Eligible Parties;

Entry Into and Withdrawal

(a) This compact shall have as eligible parties all states, territories, and possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor", as used in this compact, shall mean the closest equivalent official of such jurisdiction.

(b) Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided, that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

(c) Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided, that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

(d) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (c) of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

24-60-1202. State education council created. There is hereby created the Colorado education council, composed of the members of the education commission of the states representing this state and such other persons as may be appointed by the governor for terms not to exceed three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this state having the responsibilities for, knowledge with respect to, and interest in educational matters. The chairman shall be designated by the governor from among the council's members. The council shall meet on the call of its chairman or at the request of a majority of its

members, but in any event the council shall meet not less than three times in each calendar year. The council may consider any and all matters relating to recommendations of the education committee of the states and the activities of the members in representing this state thereon.

24-60-1203. Commission to file bylaws. Pursuant to article III (i) of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the chairman of the Colorado education council.

24-60-1204. Membership on commission. Of the two Colorado legislative members of the commission, there shall be one from each major political party, to be divided between the house of representatives and the senate. Of the four other members appointed by the governor, no more than three shall be members of any one major political party.

PART 13

MULTISTATE TAX COMPACT

24-60-1301. Execution of compact. The governor is hereby authorized to enter into a compact on behalf of this state with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

Article I.

Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

Article II.

Definitions.

As used in this compact:

1. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States.

2. "Subdivision" means any governmental unit or special district of a State.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one State.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by State or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III.

Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

1. Repealed.

Taxpayer Option, Short Form.

2. Each party State or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the State or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the Commission, shall replace the $100,000 figure specifically provided herein. Each party State and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

Article IV.

Division of Income.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission,

sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country or political subdivision thereof.

(i) "This State" means the State in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another State if (1) in that State he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that State has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the State does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State: (1) if and to the extent that the property is utilized in this State, or (2) in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the State in which the property is utilized.

(c) The extent of utilization of tangible personal property in a State is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the State during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or

unascertainable by the taxpayer, tangible personal property is utilized in the State in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if (1) the property had a situs in this State at the time of the sale, or (2) the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the State in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

7. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

8. (a) Patent and copyright royalties are allocable to this State: (1) if and to the extent that the patent or copyright is utilized by the payer in this State, or (2) if and to the extent that the patent copyright is utilized by the payer in a State in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(b) A patent is utilized in a State to the extent that it is employed in production, fabrication, manufacturing, or other processing in the State or to the extent that a patented product is produced in the State. If the basis of receipts from patent royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the patent is utilized in the State in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a State to the extent that printing or other publication originates in the State. If the basis of receipts from copyright royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the copyright is utilized in the State in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the

averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this State if:

(a) the individual's service is performed entirely within the State;

(b) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this State if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

17. Sales, other than sales of tangible personal property, are in this State if:

(a) the income-producing activity is performed in this State; or

(b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V.

Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate State or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI.

The Commission.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party State who shall be the head of the State agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the State shall provide by law for the selection of the Commission member from the heads of the relevant agencies. State law may provide that a member of the Commission be represented by an alternate but only if there is on file with the Commission written notification of the designation and identity of the alternate. The Attorney General of each party State or his designee, or other counsel if the laws of the party State specifically provide, shall be entitled to attend the meetings of the Commission, but shall not vote. Such Attorneys General, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party State shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the Commission member from that State.

(c) Each member shall be entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless

approved by a majority of the total number of members.

(d) The Commission shall adopt an official seal to be used as it may provide.

(e) The Commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its Executive Committee may determine. The Commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The Commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The Commission shall appoint an Executive Director who shall serve at its pleasure, and it shall fix his duties and compensation. The Executive Director shall be Secretary of the Commission. The Commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party State, the Executive Director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the Commission and shall fix their duties and compensation. The Commission bylaws shall provide for personnel policies and programs.

(h) The Commission may borrow, accept or contract for the services of personnel from any State, the United States, or any other governmental entity.

(i) The Commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The Commission may establish one or more offices for the transacting of its business.

(k) The Commission shall adopt bylaws for the conduct of its business. The Commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party States.

(l) The Commission annually shall make to the Governor and legislature of each party State a report covering its activities for the preceding year. Any donation or grant accepted by the Commission or services borrowed shall be reported in the annual report of the Commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The Commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full Commission is not meeting, the Commission shall have an Executive Committee of seven members, including the Chairman, Vice Chairman, Treasurer and four other members elected

annually by the Commission. The Executive Committee, subject to the provisions of this compact and consistent with the policies of the Commission, shall function as provided in the bylaws of the Commission.

(b) The Commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the Commission, including problems of special interest to any party State and problems dealing with particular types of taxes.

(c) The Commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the Commission shall have power to:

(a) Study State and local tax systems and particular types of State and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of State and local tax laws with a view toward encouraging the simplification and improvement of State and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party States in implementation of the compact and taxpayers in complying with State and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for such period as may be required by the laws of that State for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party States as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the Commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The Commission shall not pledge the credit of any party State. The

Commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under paragraph 1 (i), the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained in this Article shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article VII.

Uniform Regulations and Forms.

1. Whenever any two or more party States, or subdivisions of party States, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the Commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The Commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the Commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party States and subdivisions thereof and to all taxpayers and other persons who have made timely request of the Commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party States and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the Commission.

3. The Commission shall submit any regulations adopted by it to the appropriate officials of all party States and subdivisions to which they might apply. Each such State and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII.

Interstate Audits.

1. This Article shall be in force only in those party States that specifically provide therefor by statute.

2. Any party State or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the Commission to perform the audit on its behalf. In responding to the request, the Commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The Commission may enter into agreements with party States or their subdivisions for assistance in performance of the audit. The Commission shall make charges, to be paid by the State or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The Commission may require the attendance of any person within the State where it is conducting an audit or part thereof at a time and place fixed by it within such State for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the Commission within the State of which he is a resident: provided that such State has adopted this Article.

4. The Commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the Commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the State or subdivision on behalf of which the audit is being made or a court in the State in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a State that has adopted this Article.

5. The Commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the Commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party States or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the Commission.

6. Information obtained by any audit pursuant to this Article shall be confidential

and available only for tax purposes to party States, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the States or subdivisions on whose account the Commission performs the audit, and only through the appropriate agencies or officers of such States or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party States or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the Commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax", in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX.

Arbitration.

1. Whenever the Commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The Commission shall select and maintain an Arbitration Panel composed of officers and employees of State and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party State or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the Commission and to each party State or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the State or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party States or subdivisions thereof. Each party State and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The Arbitration Board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the Commission's Arbitration Panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the Arbitration Panel. The two persons selected for the Board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the Board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the Arbitration Panel. No member of a Board selected by

lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The Board may sit in any State or subdivision party to the proceeding, in the State of the taxpayer's incorporation, residence or domicile, in any State where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The Board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The Board shall act by majority vote.

7. The Board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the Board. In case of failure to obey a subpoena, and upon application by the Board, any judge of a court of competent jurisdiction of the State in which the Board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in States that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the Board in such manner as it may determine. The Commission shall fix a schedule of compensation for members of Arbitration Boards and of other allowable expenses and costs. No officer or employee of a State or local government who serves as a member of a Board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such Board member shall be entitled to expenses.

9. The Board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the Board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The Board shall file with the Commission and with each tax agency represented in the proceeding: the determination of the Board; the Board's written statement of its reasons therefor; the record of the Board's proceedings; and any other documents required by the arbitration rules of the Commission to be filed.

11. The Commission shall publish the determinations of Boards together with the statements of the reasons therefor.

12. The Commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party States.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X.

Entry Into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof. The Commission shall arrange for notification of all party States whenever there is a new enactment of the compact.

2. Any party State may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

3. No proceeding commenced before an Arbitration Board prior to the withdrawal of a State and to which the withdrawing State or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the Board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI.

Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any State or subdivision thereof to fix rates of taxation, except that a party State shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the Commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any State or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII.

Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof.

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

24-60-1302. Article XX of state constitution not modified. No provision of the multistate tax compact shall modify article XX of the constitution of the state of Colorado.

24-60-1303. Executive director to represent state - alternate. (1) The executive director of the department of revenue shall represent this state on the multistate tax commission.

(2) The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by the executive director.

24-60-1304. Consulting committee. The governor shall appoint a consulting committee consisting of three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact, none of whom shall be members of the general assembly. The member of the commission representing this state, and any alternate designated by him, shall consult regularly with such committee, in accordance with article VI, 1. (b) of the compact.

24-60-1305. Advisory committee created. There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state any alternate designated by him or her; the attorney general or his or her designee; the members of the consulting committee; and two members of the senate, appointed by the president; and two members of the house of representatives, appointed by the speaker. The chair shall be the member of the commission representing this state. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in

representing this state thereon.

24-60-1306. Interstate audits. Article VIII of the compact relating to interstate audits shall be in force in and with respect to this state.

24-60-1307. Effective dates. (1) All provisions of this part 13, including membership in the multistate tax commission, shall be effective upon execution of the compact by the governor; except that:

(a) Provisions of articles III, IV, V, VIII, and IX of the compact shall apply to all taxable years beginning on and after July 1, 1968; and

(b) In no case shall the provisions of this part 13 apply to taxable years commencing on or before June 30, 1968.

24-60-1308. Applicability of article IV of compact. For income tax years commencing on or after January 1, 2009, a taxpayer may not use the provisions of article IV of the multistate tax compact to apportion and allocate income to Colorado.

PART 14

WESTERN INTERSTATE NUCLEAR COMPACT

24-60-1401. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

Article I.

Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields, and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the West and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a

cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the West and contribute to the individual and community well-being of the region's people.

Article II.

The Board

(a) There is hereby created an agency of the party states to be known as the Western Interstate Nuclear Board, hereinafter called the "Board". The Board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents, and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The Board members of the party states shall each be entitled to one vote on the Board. No action of the Board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present, and unless a majority of the total number of votes on the Board are cast in favor thereof.

(c) The Board shall have a seal.

(d) The Board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Board shall appoint and fix the compensation of an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, and such other personnel as the Board may direct, shall be bonded in such amounts as the Board may require.

(e) The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions, irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(f) The Board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance, provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this Article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Board.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

Article III.

Finances

(a) The Board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the Board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II (h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II (h) hereof, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the Board in attending Board meetings shall be met by the Board.

(e) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the Board.

(f) The Accounts of the Board shall be open at any reasonable time for inspection to persons authorized by the Board, and duly designated representatives of governments contributing to the Board's support.

Article IV.

Advisory Committees

The Board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, State and Federal Government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V.

Powers

The Board shall have power to:

(a) Encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the West with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in

nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological, or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the West.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions, in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity, but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Cooperate with the Atomic Energy Commission, the National Aeronautics and Space Administration, the Office of Science and Technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor, or subcontractor of the United States Government or any party state with respect to the conduct of any research activity requiring such license or contract, and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the Board by this compact.

(p) Prepare, publish, and distribute, with or without charge, such reports, bulletins, newsletters, or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states, and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the Board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

However, the plan or plans of the Board in force pursuant to this paragraph shall provide for reports to the Board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the Board shall analyze the information gathered from reports of aid pursuant to Article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the Board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are

useful in connection with the fields covered by this compact.

Article VI.

Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of officers, employees, and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees, in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article VII.

Supplementary Agreements

(a) To the extent that the Board has not undertaken an activity or project which

would be within its power under the provisions of Article V of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration, the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto, but the Board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions of this Article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article VIII.

Other Laws and Relations

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to, and in conformity with, any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between, and respective internal responsibilities of, the government of a party state and its subdivisions.

(d) Permit or authorize the Board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

Article IX.

Eligible Parties, Entry into Force and Withdrawal

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by five states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the Board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article VI, unless that Article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the Board, unless it has become a full party to the compact.

Article X.

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be

liberally construed to effectuate the purposes thereof.

24-60-1402. Governor to appoint member of the board - alternate. (1) The governor shall appoint this state's member of the western interstate nuclear board, and such member shall serve at the pleasure of the governor.

(2) Such member may, with the approval of the governor, designate an alternate to represent this state when such member is unable to do so.

(3) The member or his alternate, if any, shall receive no compensation for his services as such but shall be reimbursed for his actual and necessary expenses incurred in the performance of his duties.

24-60-1403. Bylaws to be filed with secretary of state. Pursuant to article II (j) of this compact, the board shall file copies of its bylaws and any amendments thereto with the secretary of state.

24-60-1404. Workers' compensation act and related acts - applicability. The provisions of articles 40 to 47 of title 8, C.R.S., and any benefits payable thereunder, shall apply and be payable to any persons dispatched to another state pursuant to article VI of this compact. If the aiding personnel are officers or employees of subdivisions of this state, they shall be entitled to the same benefits under articles 40 to 47 of title 8, C.R.S., in case of injury or death, to which they would have been entitled if injured or killed while engaged in coping with a nuclear incident in the course of their regular employment.

PART 15

INTERSTATE LIBRARY COMPACT

24-60-1501. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE LIBRARY COMPACT

ARTICLE I

Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

ARTICLE II

Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

ARTICLE III

Interstate Library Districts

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information from libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the inservice training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

ARTICLE IV

Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

ARTICLE V

State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

ARTICLE VI

Library Agreements

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

ARTICLE VII

Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a

condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

ARTICLE VIII

Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

ARTICLE IX

Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

ARTICLE X

Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

ARTICLE XI

Entry Into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

ARTICLE XII

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-1502. Limitations on interstate library districts. (1) No interstate library district agreement shall be entered into by any public library agency in this state pursuant

to article III (a) of the compact without first obtaining the approval thereof by any county library or library district included in whole or in part in such proposed interstate library district, so as to eliminate duplication of library services.

(2) In lieu of an interstate library district, any county library or library district in this state may enter into a contract with one or more similar public library agencies or governmental entities in one or more other party states for the furnishing of library services by or for such county library or library district in this state.

24-60-1503. State political subdivisions to comply with laws. No political subdivision of this state shall be party to a library agreement which provides for the construction or maintenance of a library pursuant to article III (c) 7. of the compact, or pledge its credit in support of such a library, or contribute to the capital financing thereof except after compliance with any laws applicable to such political subdivision, including but not limited to those relating to or governing capital expenditures, the pledging of credit, and the appropriation of public moneys to nonpublic persons and organizations.

24-60-1504. State library agency. As used in the compact, "state library agency", with reference to this state, means the commissioner of education.

24-60-1505. State aid to library district located partly within state. An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within the state. For the purposes of computing and apportioning state aid to an interstate library district, this state shall consider that portion of the area of the interstate library district which lies within this state as an independent entity for the performance of the function to be aided, as well as the proportion of services rendered this state and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be eligible to receive any federal aid for which it may be eligible.

24-60-1506. Commissioner of education to administer compact. The commissioner of education shall be the compact administrator pursuant to article X of the compact, and the deputy compact administrator shall be the deputy state librarian.

24-60-1507. Withdrawal from compact. In the event of withdrawal from the

compact, the governor shall send and receive any notices required by article XI (b) of the compact.

PART 16

INTERSTATE CORRECTIONS COMPACT

24-60-1601. Short title. This part 16 shall be known and may be cited as the "Interstate Corrections Compact".

24-60-1602. Compact approved and ratified. The general assembly approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

ARTICLE I

Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II

Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

ARTICLE III

Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access,

at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such

return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or

activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII

Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency,

person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-1603. Administration. The executive director of the department of corrections shall administer this part 16.

PART 17

CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

24-60-1701. Execution of compact. The general assembly hereby approves and the governor is authorized to enter into a compact on behalf of this state with the state of New Mexico in the form substantially as follows:

"CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

Article I

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

Article II

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

Article III

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970, agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the

control, operation or disposition of the said railroad.

Article IV

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

Article V

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations."

24-60-1702. When compact effective. The compact approved by this part 17 shall not become effective unless and until the same shall have been consented to by the congress of the United States.

PART 18

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

24-60-1801. Short title. This part 18 shall be known and may be cited as the "Interstate Compact on Placement of Children".

24-60-1802. Execution of compact. The governor is hereby authorized to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I

Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(b) The appropriate authorities in a state where a child is to be placed may have

full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II

Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control;

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons;

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III

Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of the children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date, and place of birth of the child;

(2) The identity and address or addresses of the parents or legal guardian;

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV

Penalty for Illegal Placement

(a) The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws.

(b) In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V

Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall

continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI

Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII

Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII

Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX

Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X

Construction and Severability

(a) The provisions of this compact shall be liberally construed to effectuate the purposes thereof;

(b) The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby;

(c) If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

24-60-1803. Additional provisions and definitions. (1) Financial responsibility

for any child placed pursuant to the provisions of the compact shall be determined in accordance with the provisions of article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other applicable laws may be invoked.

(2) As used in article III of the compact, "appropriate public authorities" means the department of human services, and said department shall receive and act with reference to notices required by said article III.

(3) As used in article V (a) of the compact, "appropriate authority in the receiving state" means the department of human services.

(4) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers of agencies of or in other party states pursuant to article V (b) of the compact. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision, or any agency thereof, shall not be binding unless it has the approval in writing of the controller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(5) Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to article VI of the compact and shall retain jurisdiction as provided in article V thereof.

(6) As used in article VII of the compact, "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article VII.

(7) Notwithstanding the provisions of article VI of the compact, notice of the proceeding set forth therein shall also be given to the legal custodian of the child and to any other person by law entitled to such notice.

(8) Nothing in the compact shall be construed to terminate the jurisdiction of the courts and agencies of Colorado over children at an earlier age than is otherwise provided by the applicable laws of this state. Except where an applicable statute fixes another age for the termination of minority, such age, for purposes of application of the compact, shall be twenty-one years.

PART 19

RATIFICATION OF THE CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

24-60-1901. Ratification of compact. The general assembly hereby ratifies the compact designated as the "Cumbres and Toltec Scenic Railroad Compact" signed at the city and county of Denver, state of Colorado, on the 26th day of December, A.D. 1974, by John D. Vanderhoof, as governor of the state of Colorado, under authority of and in

conformity with the provisions of an act of the general assembly of the state of Colorado, approved May 4, 1973, entitled "An Act Providing for the Adoption of the Cumbres and Toltec Scenic Railroad Compact.", the same being chapter 254 of the Session Laws of Colorado 1973, and signed at Santa Fe, state of New Mexico, on the 11th day of December, A.D. 1974, by Bruce King, as governor of the state of New Mexico, under legislative authority. The consent of congress was given by Public Law 93-467, approved October 24, A.D. 1974, by the senate and house of representatives of the United States of America. Said compact is as follows:

CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

Article I

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

Article II

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

Article III

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970, agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the control, operation or disposition of the said railroad.

Article IV

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

Article V

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations.

24-60-1902. Interstate agency created. It is hereby recognized, found, and determined that said compact creates an interstate agency known as the Cumbres and Toltec scenic railroad commission, an independent entity whose members and employees are not officers and employees of either of the states signatory to the compact.

24-60-1903. Appointment of members of compact commission. After said compact becomes effective, the two Colorado members of the four-member Cumbres and Toltec scenic railroad commission shall be appointed by the governor and shall serve until revocation of their appointment by the governor, and, on behalf of the Cumbres and Toltec scenic railroad commission, the state of Colorado shall pay the necessary expenses and also compensation of said members in an amount which shall be fixed by the governor and when so fixed shall be changed only by action of the governor.

24-60-1904. Payment of expenses of compact commission. The Colorado share of the expenses of the Cumbres and Toltec scenic railroad commission and the expenses and compensation of the Colorado members shall be paid out of funds appropriated by the general assembly.

24-60-1905. Commissioners exempt from civil liability. No person appointed as a Colorado member of the Cumbres and Toltec scenic railroad commission pursuant to section 24-60-1903 shall be liable for any civil damages for acts or omissions in good faith occurring or carried out during the performance of his duties.

24-60-1906. Commission - authority to borrow money - authority to accept funds. (1) The Cumbres and Toltec scenic railroad commission may borrow money for the following purposes:

(a) To make emergency repairs, replacements, or additions to the railroad or to any equipment or facilities related to the operation of the railroad; and

(b) To make capital expenditures for the development or improvement of the

railroad.

(2) The Cumbres and Toltec scenic railroad commission shall not enter into an agreement to borrow money unless a majority of the members approve a resolution which:

(a) Specifies the amount of the loan;

(b) Specifies the purposes of the loan; and

(c) Authorizes the chairman of the commission to execute all documents on behalf of the commission which may be necessary to negotiate and execute a loan from a financial institution.

(3) At no time shall the amount of the money borrowed by the Cumbres and Toltec scenic railroad commission pursuant to the provisions of this section exceed two hundred fifty thousand dollars.

(4) No loan made to the Cumbres and Toltec scenic railroad commission pursuant to the provisions of this section shall create a debt of the state, nor shall such loan constitute a pledge of the general credit of the state or the commission. Such loan shall not constitute personal indebtedness of any member of the commission. No indebtedness entered into by the commission shall be secured by any type of security interest in the real or personal property of the railroad, nor shall such property be subject to any legal process to satisfy a judgment for the indebtedness in the event of nonpayment of the indebtedness.

(5) The Cumbres and Toltec scenic railroad commission may pledge as security for the repayment of any indebtedness incurred and outstanding under the authority of this section all of the railroad user fees authorized to be charged pursuant to section 24-60-1907.

(6) The commission may accept gifts, grants, contributions, or other funds from any source for the repayment of any indebtedness incurred pursuant to this section.

24-60-1907. Railroad loan retirement fund - fees. (1) The Cumbres and Toltec scenic railroad commission may establish user fees to be charged to passengers on the railroad. The fee schedule may provide for different fees for different classes of passengers.

(2) All railroad fees collected pursuant to subsection (1) of this section shall be deposited into a railroad loan retirement fund, which fund shall be established in an appropriate financial institution. The commission may authorize the investment of moneys in the fund, and any income earned from such investment shall be retained in the fund. The moneys in the fund shall be used to repay any debts incurred by the commission pursuant to section 24-60-1906. While such debts are outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the debt was incurred.

24-60-1908. Loans - tax-exempt. Any interest charged and collected by a financial institution on any loan made to the Cumbres and Toltec scenic railroad commission is exempt from all taxes imposed by the state and its political subdivisions.

PART 20

INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING

24-60-2001. Short title. This part 20 shall be known and may be cited as the "Interstate Compact on Agricultural Grain Marketing".

24-60-2002. Execution of compact. The general assembly hereby approves and the governor is authorized to enter into a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

Article I.

Purpose.

It is the purpose of this compact to protect, preserve and enhance:

(a) The economic and general welfare of citizens of the joining states engaged in the production and sale of agricultural grains;

(b) The economies and very existence of local communities in such states, the economies of which are dependent upon the production and sale of agricultural grains; and

(c) The continued production of agricultural grains in such states in quantities necessary to feed the increasing population of the United States and the world.

Article II.

Definitions.

As used in this compact:

(a) "State" means any state of the United States in which agricultural grains are produced for the markets of the nation and world.

(b) "Agricultural grains" means wheat, durum, spelt, triticale, oats, rye, corn, barley, buckwheat, flaxseed, safflower, sunflower seed, soybeans, sorghum grains, peas and beans.

Article III.

Commission.

(a) Organization and Management

(1) **Membership.** There is hereby created an agency of the member states to be known as the Interstate Agricultural Grain Marketing Commission, hereinafter called the commission. The commission shall consist of three residents of each member state who shall have an agricultural background and who shall be appointed as follows: (1) One member appointed by the governor, who shall serve at the pleasure of the governor; (2) one senator appointed in the manner prescribed by the senate of such state, except that two senators may be appointed from the unicameral legislature of the state of Nebraska; and (3) one member of the house of representatives appointed in the manner prescribed by the house of representatives of such state. The member first appointed by the governor shall serve for a term of one year and the senator and representative first appointed shall each serve for a term of two years; thereafter all members appointed shall serve for two-year terms. The attorneys general of member states or assistants designated thereby shall be nonvoting members of the commission.

(2) **Voting; binding action.** Each member shall be entitled to one vote. A member must be present to vote and no voting by proxy shall be permitted. The commission shall not act unless a majority of the voting members are present, and no action shall be binding unless approved by a majority of the total number of voting members present.

(3) **Body corporate; seal.** The commission shall be a body corporate of each member state and shall adopt an official seal to be used as it may provide.

(4) **Meetings.** The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(5) **Officers.** The commission shall elect annually, from among its voting members, a chairperson, a vice-chairperson and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and shall fix the duties and compensation of such director. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(6) **Personnel.** Irrespective of the civil service, personnel or other merit system laws of any member state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix, with the approval of the commission, their duties and compensation. The commission bylaws shall provide for personnel policies and programs. The commission may establish and maintain, independently of or in conjunction with any one or more of

the member states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivors insurance provided that the commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate. The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(7) **Donations and grants.** The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(8) **Offices.** The commission may establish one or more offices for the transacting of its business.

(9) **Bylaws.** The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the member states.

(10) **Reports to member states.** The commission annually shall make to the governor and legislature of each member state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

(b) Committees

(1) The commission may establish such committees from its membership as its bylaws may provide for the carrying out of its functions.

Article IV.

Powers and Duties of Commission.

(a) The commission shall conduct comprehensive and continuing studies and investigations of agricultural grain marketing practices, procedures and controls and their relationship to and effect upon the citizens and economies of the member states.

(b) The commission shall make recommendations for the correction of weaknesses and solutions to problems in the present system of agricultural grain marketing or the development of alternatives thereto, including the development, drafting, and recommendation of proposed state or federal legislation.

(c) The commission may apply by a majority vote of all of the members of such commission to any state or federal court having power to issue compulsory process for an order to require by subpoena the attendance of any person or by subpoena duces tecum the production of any records in addition to orders in aid of its powers and responsibilities, pursuant to this compact, and any and all such courts shall have jurisdiction to issue such orders upon a finding by the court that there is reasonable cause to believe the person to whom the subpoena is to be directed had information relevant and material to the subject matter of an inquiry being conducted by the commission. All testimony required by subpoena shall be under oath. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in a state in which the commission maintains an office or a court in the state in which the person or object of the order being sought is situated. The chairperson or vice-chairman of the commission (or any member thereof so authorized by such commission) may administer oaths or affirmations for the purpose of receiving testimony. Whenever testimony is given by any person subpoenaed under the provisions of this paragraph (c), a verbatim record shall be made thereof by a certified shorthand reporter, and the transcript of such record shall be filed with the commission.

(d) The commission is hereby authorized to do all things necessary and incidental to the administration of its functions, except the buying, selling, trading, or receiving of any agricultural grains, under this compact.

Article V.

Finance.

(a) **Budget.** The commission shall submit to the governor of each member state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) **Funding for the commission.** No general fund appropriations will be used to pay the expenses of the commission.

(c) **Incurring obligations and pledge of credit.** The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) **Accounts; audits.** The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and

become part of the annual report of the commission.

(e) **Accounts; examination.** The accounts of the commission shall be open for inspection at any reasonable time.

Article VI.

Eligible Parties, Entry

Into Force, Withdrawal and Termination.

(a) **Eligible parties.** Any agricultural grain marketing state may become a member of this compact.

(b) **Entry into force.** This compact shall become effective initially when enacted into law by any five states prior to July 1, 1981, and in additional states upon their enactment of the same into law.

(c) **Withdrawal.** Any member state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until one year after the enactment of such statute and the notification of the commission thereof by the governor of the withdrawing state. A withdrawing state shall be liable for any obligations which it incurred on account of its membership up to the effective date of withdrawal, and if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.

(d) **Termination.** This compact shall terminate one year after the notification of withdrawal by the governor of any member state which reduces the total membership in the compact to less than five states.

24-60-2003. Interstate agency created. It is hereby recognized, found, and determined that said compact creates an interstate agency known as the interstate agricultural grain marketing commission, an independent entity whose members and employees are not officers and employees of any of the states signatory to the compact.

24-60-2004. Members of compact commission. (1) Colorado members of the commission shall be as set forth in article III (a) (1) of the compact. In addition:

(a) The appointee of the governor shall be familiar with the marketing of agricultural grains. The initial appointee shall serve from the date of his appointment (whether before or after the date the commission becomes effective), until one year after the date the commission becomes effective. Gubernatorial appointees thereafter shall serve for two-year terms. A gubernatorial appointee may be reappointed as many times as

the governor deems appropriate.

(b) The senate and house of representatives shall each, by appropriate resolution, appoint one of their members as commission members. The initial appointees shall serve from the date of appointment (whether before or after the date the commission becomes effective), until two years after the date the commission becomes effective. Appointees may be reappointed as many times as the particular chamber deems appropriate.

24-60-2005. Commissioners exempt from civil liability. No person appointed as a Colorado member of the interstate agricultural grain marketing commission pursuant to section 24-60-2004 shall be liable for any civil damages for acts or omissions in good faith occurring or carried out during the performance of his duties.

24-60-2006. Administration. The commissioner of agriculture shall administer this part 20.

PART 21

NONRESIDENT VIOLATOR COMPACT

24-60-2101. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Findings, Declaration of Policy, and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(i) Must post collateral or bond to secure appearance for trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to

continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

ARTICLE II

Definitions

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(c) "Compliance" means the act of answering a citation, summons or subpoena through appearance at court, a tribunal, and/or payment of fines and costs.

(d) "Court" means a court of law or traffic tribunal.

(e) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(f) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(g) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(h) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(i) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(j) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(k) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(l) "Terms of the citation" means those options expressly stated upon the citation.

ARTICLE III

Procedure for Issuing Jurisdiction

(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist, the information in a form and content as contained in the compact manual.

(e) The licensing authority of the issuing jurisdiction need not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

ARTICLE IV

Procedure for Home Jurisdiction

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

ARTICLE V

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangements between a party jurisdiction and a nonparty jurisdiction.

ARTICLE VI

Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed

of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with, or accept services or personnel from any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VII

Entry into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b) (1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(ii) Agreement to comply with the terms and provisions of the compact.

(iii) That compact entry is with all jurisdictions then party to the compact and with

any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

ARTICLE VIII

Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

ARTICLE IX

Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in

full force and effect as to the jurisdiction affected as to all severable matters.

ARTICLE XI

Title

This compact shall be known as the Nonresident Violator Compact of 1977.

24-60-2102. Licensing authority - definition. As used in the compact, the term "licensing authority", with reference to this state, means the executive director of the department of revenue. Said executive director shall furnish to the appropriate authorities of any other party jurisdiction any information or documents reasonably necessary to facilitate the administration of articles III and IV of the compact.

24-60-2103. Compact administrator - expenses. The compact administrator provided for in article VI of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

24-60-2104. Jurisdiction executive - definition. As used in the compact, with reference to this state, the term "jurisdiction executive" means the governor.

PART 22

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

24-60-2201. Short title. This part 22 shall be known and may be cited as the "Low-level Radioactive Waste Act".

24-60-2202. Execution of compact. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado, which shall be known as the "Rocky Mountain Low-level Radioactive Waste Compact", with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE 1

FINDINGS AND PURPOSE

A. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States Congress, by enacting the "Low-level Radioactive Waste Policy Act" (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

B. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

ARTICLE 2

DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise:

A. "Board" means the Rocky Mountain low-level radioactive waste board;

B. "Carrier" means a person who transports low-level waste;

C. "Disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

D. "Facility" means any property, equipment or structure used or to be used for the management of low-level waste;

E. "Generate" means to produce low-level waste;

F. "Host state" means a party state in which a regional facility is located or being developed;

G. "Low-level waste" or "waste" means radioactive waste, other than:

(1) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(2) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(3) Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(4) Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or

(5) Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium;

H. "Management" means collection, consolidation, storage, treatment, incineration or disposal;

I. "Operator" means a person who operates a regional facility;

J. "Person" means an individual, corporation, partnership or other legal entity, whether public or private;

K. "Region" means the combined geographical area within the boundaries of the party states; and

L. "Regional facility" means a facility within any party state which either:

(1) Has been approved as a regional facility by the board; or

(2) Is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE 3

RIGHTS, RESPONSIBILITIES AND OBLIGATIONS

A. There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one regional facility shall be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

B. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

C. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet except as otherwise determined by the board of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection D of this article.

D. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(1) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article 4 before allowing site preparation or physical construction to begin;

(2) Ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of

the regional facilities within the state;

(3) Subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(4) Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

(5) Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

(6) Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

E. Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under subsection C of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

F. Each party state:

(1) Agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(a) Periodic inspections of packaging and shipping practices;

(b) Periodic inspections of waste containers while in the custody of carriers; and

(c) Appropriate enforcement actions with respect to violations;

(2) Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(3) May impose fees to recover the cost of the practices provided for in paragraphs (1) and (2) of this subsection;

(4) Shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

(5) May impose requirements or regulations more stringent than those required by this subsection.

ARTICLE 4

BOARD APPROVAL OF REGIONAL FACILITIES

A. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

B. A regional facility shall be approved by the board if and only if the board determines that:

(1) There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(2) The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE 5

SURCHARGES

A. The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

B. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

ARTICLE 6

THE BOARD

A. The "Rocky Mountain low-level radioactive waste board", which shall not be an agency or instrumentality of any party state, is created.

B. The board shall consist of one member from each party state. Each party state shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

C. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

D. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to

be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline, or termination of any of its employees.

E. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates and advisory committee members.

F. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty days. Any action taken by telephone shall be noted in the minutes of the board.

G. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

H. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

I. Consistent with available funds, the board may contract for necessary personnel services and may employ such staff as it deems necessary to carry out its duties. Staff shall be employed without regard for the personnel, civil service or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

J. The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

K. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

L. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

M. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars ($70,000) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection A of article 5 of this compact.

N. The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the

annual report of the board.

O. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

(1) Shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(2) May assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(3) Shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(4) Shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(5) May keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(6) Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(7) May develop a regional low-level waste management plan;

(8) May establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

(9) May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(10) Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(11) Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

(12) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(13) Shall have the power to sue; and

(14) When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

ARTICLE 7

PROHIBITED ACTS AND PENALTIES

A. It shall be unlawful for any person to dispose of low-level waste within the

region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

B. After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) The economic impact of the export of the waste on the regional facilities;

(2) The economic impact on the generator of refusing to permit the export of the waste; and

(3) The availability of a regional facility appropriate for the disposal of the waste involved.

C. After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) The impact of importing waste on the available capacity and projected life of the regional facilities;

(2) The economic impact on the regional facilities; and

(3) The availability of a regional facility appropriate for the disposal of the type of waste involved.

D. It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) The impact of allowing such management on the available capacity and projected life of the regional facilities;

(2) The availability of a facility appropriate for the disposal of the type of waste involved;

(3) The existence of transuranic elements in the waste; and

(4) The economic impact on the regional facilities.

E. Any person who violates subsection A or B of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which would have been charged for disposal of the waste at a regional facility.

F. Any person who violates subsection C or D of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which were charged for management of the waste at a regional facility.

G. The civil penalties provided for in subsections E and F of this article may be

enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

H. Out of any civil penalty collected for a violation of subsection A or B of this article, the board shall pay to the appropriate operator a sum sufficient in the judgement of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

I. Any civil penalty collected for a violation of subsection C or D of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

J. Violations of subsection A, B, C, or D of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

K. No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

ARTICLE 8

ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

A. Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

B. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

C. This compact shall take effect when it has been enacted by the legislatures of two eligible states. However, subsections B and C of article 7 shall not take effect until Congress has by law consented to this compact. Every five years after such consent has

been given, Congress may by law withdraw its consent.

D. A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no such repeal shall take effect until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

E. A party state may be excluded from this compact by a two-thirds' vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. Such an exclusion may be terminated upon a two-thirds' vote of the members acting in a meeting.

ARTICLE 9

CONSTRUCTION AND SEVERABILITY

A. The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

B. Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

C. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

24-60-2203. Legislative declaration. The general assembly hereby finds and declares that the provisions of this part 22 are necessary for the state to fulfill its responsibilities under the "Rocky Mountain Low-level Radioactive Waste Compact" set forth in section 24-60-2202.

24-60-2204. Definitions. As used in sections 24-60-2205 to 24-60-2212, unless the context otherwise requires:

(1) "Department" means the department of public health and environment.

(2) "Facility" means a low-level radioactive waste facility capable of serving as a regional disposal or management site for low-level radioactive waste and which complies with the provisions of the "Rocky Mountain Low-level Radioactive Waste Compact" set forth in section 24-60-2202.

(3) "Low-level radioactive waste" means radioactive waste, other than:

(a) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(b) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(c) Waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(d) Byproduct material as defined in Section 11 e. (2) of the "Atomic Energy Act of 1954", as amended on November 8, 1978; or

(e) Wastes from mining, milling, smelting, or similar processing of ores and mineral-bearing material primarily for minerals other than radium.

24-60-2205. Administration - application of other laws. (1) Except as otherwise provided in this part 22, the department shall be the agency responsible for administration of this part 22 on behalf of the state.

(2) Except as otherwise provided in this part 22, all facilities shall be subject to the provisions on radiation control set forth in part 1 of article 11 of title 25, C.R.S., and the provisions on solid wastes disposal sites and facilities set forth in part 1 of article 20 of title 30, C.R.S. The disposal of low-level radioactive waste made pursuant to this part 22 is not subject to the provisions of part 2 of article 11 of title 25, C.R.S.

24-60-2206. Site recommendation by counties. (1) Prior to any action by the department for the assessment and evaluation of potential areas for a facility under section 24-60-2207, the department shall first cooperate with and provide counties in this state the opportunity to recommend facility sites within their boundaries. In making such recommendation, the board of county commissioners shall consider the factors set forth in section 24-60-2207 (1) (b) and shall provide reasonable opportunity for public comment.

(2) In making such recommendation, the board of county commissioners shall also consider comments from the department and the Rocky Mountain low-level radioactive waste board; except that the board of county commissioners shall make the final determination as to the designation of a facility site pursuant to part 1 of article 20 of title 30, C.R.S.

(3) Any person who proposes to operate a facility shall first apply, pursuant to part 1 of article 20 of title 30, C.R.S., for a certificate of designation to the board of county commissioners of the county in which the proposed facility site is located. Such site and facility shall be reviewed and approved by such board of county commissioners prior to the issuance of any license pursuant to part 1 of article 11 of title 25, C.R.S.

(4) If no board of county commissioners in this state recommends a facility site by January 1, 1984, the department may proceed to prepare its statewide assessment and evaluation and its alternative plan pursuant to section 24-60-2207.

24-60-2207. Statewide assessment of facility sites. (1) For the protection of the public health and safety and without limiting or qualifying other applicable laws, rules, regulations, standards, or limitations pertaining to the control of radiation in this state, the department shall be granted the following additional authority concerning low-level radioactive waste:

(a) The department may acquire by gift, transfer, or purchase any and all lands, buildings, and grounds reasonably necessary for a regional low-level radioactive waste facility.

(b) To ensure that a suitable regional low-level radioactive waste facility is established, the department shall conduct a statewide assessment and evaluation of potential areas for the location of a facility. The assessment and evaluation shall consider all applicable federal and state laws and regulations and shall consider but need not be limited to the following factors:

(I) Physical and chemical characteristics of strata;

(II) Surface and subsurface hydrology;

(III) Topography and drainage;

(IV) Meteorology and climatology;

(V) Demography (including population density near the site);

(VI) Access routes and affected public roads;

(VII) Ecological impact;

(VIII) Relationship to local land use plans;

(IX) Ownership of real property.

(c) The department shall provide reasonable opportunity for public comment during the assessment and evaluation and shall afford interested persons an opportunity, at public hearing, to submit data and views orally or in writing on the potentially suitable areas. Subsequent to having conducted the assessment and evaluation, the department shall identify those areas determined as potentially suitable for a facility.

(d) The department shall not approve any facility for the disposal of low-level radioactive waste outside of the areas identified pursuant to this subsection (1) or an area recommended by a board of county commissioners under section 24-60-2206 unless the site applicant demonstrates to the satisfaction of the department that the proposed site is at least as technically suitable as the areas identified pursuant to this subsection (1).

(e) The department may, by lease or license, provide for the operation of facilities for the implementation of the purposes of this part 22. No facility may be licensed until designated pursuant to part 1 of article 20 of title 30, C.R.S., by the board of county commissioners of the county in which the proposed facility is to be located. In the event that no county has recommended a facility site or an application for such site has not been submitted by January 1, 1985, the department shall prepare an alternative plan for facility development. Said alternative plan shall be submitted to the general assembly no later

than January 1, 1986, for review and approval. In the submission of an alternative plan to the general assembly, the department shall also request authority to acquire a site for a facility.

(f) The department shall require the posting of a bond or other surety by each licensee to assure the availability of funds to the state in the event of accident, abandonment, discontinuance of an operation, insolvency, or other inability of a lessee or licensee to meet the requirements of the department pursuant to article 11 of title 25, C.R.S., in providing for the safe operation, decommissioning, decontamination, and reclamation of a facility, or any circumstance which results in a potential radiation hazard.

24-60-2208. State surcharge. (1) In addition to the fees authorized by section 25-11-103, C.R.S., the following surcharges shall be imposed on each licensed facility:

(a) The licensee shall be required to pay an annual fee to the county or municipality in which the facility is located, unless waived by the county or municipality. The amount of the fee shall be established by mutual agreement of the county or municipality and the licensee and may include, but not be limited to, the actual direct costs of increased burden on county or municipal services created by the facility, including the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by county or municipal health officials, and emergency preparation and response. The amount of the annual fee shall not exceed two percent of the annual gross revenue received by the facility and shall be reduced by the amount paid by the facility as a payment in lieu of taxes to county government pursuant to section 25-11-103 (7) (c), C.R.S. No licensee shall commence operations at a facility until the agreement for the annual fee is executed by the county or municipality and the licensee or such fee is waived by the county or municipality. In the event that the licensee fails to comply with the terms of the executed agreement, the board of county commissioners or the governing body of the municipality may petition the department to suspend the facility's license in the manner provided in article 4 of this title until the agreement has been fully complied with.

(b) Each licensee shall pay an additional surcharge of one percent of gross revenue received by the facility. The surcharge shall be paid quarterly, as accrued, to the department, which shall credit all such receipts in the general fund of the state.

24-60-2209. Governor to appoint member to compact board. The governor shall appoint, with the consent of the senate, the Colorado member of the Rocky Mountain low-level radioactive waste board, and such member shall serve at the pleasure of the governor. The member shall receive no compensation for his services but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

24-60-2210. Colorado low-level radioactive waste advisory committee. (Repealed)

24-60-2211. Coordination with other programs and agencies. The department shall coordinate the low-level radioactive waste program with all other programs within the department and with other local, state, or federal agencies as appropriate. For the purpose of administration and enforcement of matters pertaining to transportation and packaging as provided in this part 22, the department shall coordinate its activities with those of the public utilities commission.

24-60-2212. Regulation of fees. (1) All rates, charges, and classifications made, demanded, or received in the operation of a licensed facility located in the state of Colorado shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received with respect to such operation is prohibited.

(2) The power and authority is hereby vested in the state board of health and it is hereby made the duty of the board in promoting public health and safety to adopt necessary rules and regulations to govern and regulate the rates, charges, and classifications of every facility in this state and to prevent unjust, unreasonable, and discriminatory rates, charges, and classifications of every such facility.

(3) (a) Under such rules and regulations as the state board of health may prescribe, any person operating a facility in this state shall file with the state board of health, at least sixty days prior to the proposed effective date and in such form and with such filing fee as the state board of health may designate, proposed schedules showing all rates, charges, and classifications collected or enforced or to be collected or enforced. Such rates, when effective, shall be posted and open to public inspection at the facility.

(b) The board shall make available for public inspection the filing and supporting information and provide reasonable public notice thereof.

(4) (a) Unless the board otherwise orders, no change shall be made in any rate, charge, or classification collected or enforced or to be collected or enforced by a facility except after sixty days of filing with the board. All filings shall be kept open for public inspection with new schedules stating plainly the changes to be made in the schedules then in force and the time when the changes will go into effect.

(b) The board shall not approve or disapprove a filing without a public hearing. If the board does not disapprove or schedule a hearing on a filing within sixty days of receipt by the board, the filing shall automatically become effective.

(c) During the sixty-day review period, the board may conclude that it is in the public interest to hold a public hearing, or an interested person may request a public

hearing by so petitioning the board. Such hearings shall be held in the manner provided in article 4 of this title.

(5) (a) Whenever the board after a hearing upon its own motion or upon petition finds, based upon the record and investigation by the board, that the rates, charges, or classifications collected or enforced or to be collected or enforced by any facility are unjust, unreasonable, discriminatory, or violative of any provision of law or that such rates, charges, or classifications are insufficient, the board shall determine the just, reasonable, or sufficient rates, charges, classifications, rules, regulations, or practices to be thereafter observed and in force and shall fix the same by order of the board.

(b) The board has the power, after a hearing upon its own motion or upon complaint, to investigate a single rate, charge, classification, or practice or the entire schedule of rates, charges, classifications, or practices of any facility and to establish new rates, charges, classifications, or practices in lieu thereof.

PART 23

TRANSFER OR EXCHANGE OF FOREIGN NATIONALS CONVICTED OF A CRIME

24-60-2301. Transfer or exchange of foreign nationals convicted of a crime - authorization by governor. If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the executive director of the department of corrections to consent to the transfer or exchange of offenders and take any other action necessary to initiate the participation of this state in the treaty. Such transfer will not occur until the convicted offender is informed in his native language of his rights and of the procedures being followed.

PART 24

COMPACT FOR ADOPTION ASSISTANCE AND INTERSTATE MEDICAL AND ADOPTION SUBSIDY PAYMENTS - AUTHORIZATION

24-60-2401. Legislative declaration. The general assembly hereby finds that it is desirable to find adoptive parents for children with special needs as specified in article 7 of title 26, C.R.S., to make payments in subsidization of the adoption of such children, and to protect the interests of such children throughout their minority. Pursuant to authorization contained in Title IV-E and Title XIX of the federal "Social Security Act", as amended, it is the intent of the general assembly to authorize the department of human

services to enter into interstate compacts to address the problems arising for special needs children and their parents when they move to other states, or are residents of another state, and to facilitate the provision of medical and other necessary services for special needs children when the provision of services takes place in another state.

24-60-2402. Definitions. As used in this part 24, unless the context otherwise requires:

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance or adoption subsidy agreement in a particular case.

(2) "Residence state" means the state in which the child is a resident by virtue of the residence of his adoptive parents.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

24-60-2403. Compacts authorized. (1) Pursuant to authorization contained in Title IV-E and Title XIX of the federal "Social Security Act", as amended, the department of human services is hereby authorized to develop, participate in the development of, negotiate for, and enter into one or more interstate compacts on behalf of the state of Colorado with other states to implement the following purposes:

(a) The protection of children on behalf of whom adoption subsidy payments are being provided by the department of human services pursuant to article 7 of title 26, C.R.S.;

(b) The implementation of procedures for interstate payments in subsidization of adoption, including medical payments.

(2) When so entered into by the department of human services, any such compact shall have the force and effect of a law for so long as it shall remain in effect.

24-60-2404. Contents of compact. (1) Any compact entered into by the department of human services pursuant to this part 24 shall contain the following general provisions:

(a) A provision making it available for joinder by all states;

(b) A provision or provisions for withdrawal from the compact upon written notice to the parties, with the effective date of withdrawal one year after the date of notice of withdrawal;

(c) A requirement that, upon withdrawal from the compact, the protections

afforded by or pursuant to the compact by the withdrawing residence state continue in force for the duration of the adoption assistance for all special needs children and their adoptive parents who, on the effective date of withdrawal, are receiving adoption assistance or payments in subsidization of adoption from an adoption assistance state which is a party to the compact;

(d) (I) A requirement that each instance of adoption assistance or payments in subsidization of adoption to which the compact applies be authorized by a written adoption assistance agreement between the adoptive parents and the state child welfare agency of the adoption assistance state; and

(II) A requirement that any adoption assistance agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the adoption assistance state;

(e) Such other provisions as may be necessary to implement the administration of the compact.

(2) Any compact entered into by the department of human services pursuant to this part 24 shall contain and implement the following provisions regarding medical assistance:

(a) That a child with special needs who is residing in this state, who is the subject of an adoption assistance agreement with another state which is a party to the compact, shall be entitled to receive a medical assistance identification from this state upon filing with the department of health care policy and financing a certified copy of the adoption assistance agreement obtained from the adoption assistance state. The adoptive parents of such child shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) That the department of health care policy and financing shall consider the holder of a medical assistance identification specified in paragraph (a) of this subsection (2) as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of such holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance pursuant to articles 4, 5, and 6 of title 25.5, C.R.S.;

(c) That the department of human services shall provide coverage and benefits for a child with special needs, who is in another state, and who is covered by an agreement to make payments in subsidization of adoption entered into by the department of human services pursuant to article 7 of title 26, C.R.S., which coverage and benefits are not provided by the residence state, if any. In addition, that the adoptive parents of such special needs child, acting for the child, may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor by the department of human services. However, the department of human services shall not make reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or his adoptive

parents. The additional coverages and benefit amounts specified in this paragraph (c) shall be for services for which no federal contribution is available, or which, if federally aided, are not provided by the residence state.

(d) That the submission of any claim for payment or reimbursement for services or benefits specified in this subsection (2), or the making of any statement in connection therewith, which claim or statement the maker knows or should know to be false, misleading, or fraudulent shall be subject to the provisions of section 26-1-127, C.R.S.;

(e) That a child with special needs who is the subject of an adoption assistance agreement with this state, who is residing in another state which is a party to the compact, shall receive medical assistance from the residence state under the conditions specified in paragraphs (a) and (b) of this subsection (2).

24-60-2405. Rules and regulations. The department of human services and the department of health care policy and financing shall promulgate such rules and regulations, pursuant to section 24-4-103, as are necessary to implement the provisions of this part 24.

24-60-2406. Report to general assembly. (Repealed)

PART 25

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

24-60-2501. Short title. This part 25 shall be known and may be cited as the "Multistate Highway Transportation Agreement".

24-60-2502. Execution of agreement. The general assembly hereby approves and the governor is authorized to enter into an agreement on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE 1

Findings and Purposes

SECTION 1. **Finding.** The participating jurisdictions find that:

(1) The expanding regional economy depends on expanding transportation capacity;

(2) Highway transportation is the major mode for movement of people and goods

in the western states;

(3) Uniform application in the west of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption and related transportation costs which are necessary to permit increased productivity;

(4) Improvements in the highway operating environment, in vehicular safety, and in cooperative state administration and enforcement of state laws will each encourage a smoother flow of interstate commerce to the benefit of the regional economy;

(5) Repealed.

(6) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety. The participating jurisdictions are most capable of developing programs for cooperative state administration, commercial vehicle safety inspections and enforcement of state laws.

SECTION 2. **Purposes.** The purposes of this agreement are to:

(1) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(2) Establish a system authorizing the operation of vehicles traveling between two (2) or more participating jurisdictions at more adequate size and weight standards.

(3) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(4) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(5) Facilitate improvements in the highway operating environment, in vehicular safety, and in cooperative state administration and enforcement of state laws.

(6) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in Section 1 of this Article.

(7) Facilitate communication between legislators, state transportation administrators, and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE 2

Definitions

SECTION 1. As used in this agreement:

(1) "Cooperating committee" means a body composed of the designated representatives from the participating jurisdictions.

(1.5) "Designated representative" means a legislator, state agency official, or other person authorized under article 11 to represent the jurisdiction.

(2) "Jurisdiction" means a state of the United States or the District of Columbia.

(3) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE 3

General Provisions

SECTION 1. **Qualifications for membership.** Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

SECTION 2. **Cooperation.** The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

SECTION 3. **Effect of headings.** Article and Section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

SECTION 4. **Vehicle laws and regulations.** This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

SECTION 5. **Interpretation.** The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

SECTION 6. **Amendment.** This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of Section 4, Article 3. Any amendment shall be placed in writing and become a part hereof.

SECTION 7. **Restrictions, conditions or limitations.** Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

SECTION 8. **Additional jurisdictions.** Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE 4

Cooperating Committee

SECTION 1. Each participating jurisdiction shall have two designated representatives. Pursuant to Section 2, Article 3, the designated representatives of the participating jurisdictions shall constitute the cooperating committee which shall have the power to:

(1) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight, safety, enforcement and related matters.

(2) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight, safety, enforcement and related matters when, in its collective judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight, safety, enforcement and related matters.

(4) Recommend improvements in highway operation, in vehicular safety, and in state administration of highway transportation laws.

(5) Perform functions necessary to facilitate the purposes of this agreement.

SECTION 2. Each designated representative of a participating jurisdiction shall be entitled to one (1) vote only. No action of the committee shall be approved unless a majority of the total number of votes cast by the designated representatives of the participating jurisdictions are in favor thereof.

SECTION 3. The committee shall meet at least once annually. It shall elect, from its members, a chairman, a vice-chairman and a secretary. The committee may adopt bylaws to govern its activities.

SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable.

ARTICLE 5

Objectives of the Participating Jurisdictions

SECTION 1. **Objectives.** The participating jurisdictions hereby declare that:

(1) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight of that resulting from application of the formula:

$$W = 500[(LN/N - 1) + 12N + 36]$$

where

W = maximum weight in pounds carried on any group of two or more consecutive axles

computed to nearest 500 pounds.
L = distance in feet between the extremes of any group of two or more axles.
N = number of axles in group under consideration.

(2) It is the further objective of the participating jurisdictions that the operation of a vehicle or combination of vehicles in interstate commerce according to the provisions of subsection (1) of this Section be authorized under special permit authority by each participating jurisdiction for vehicle combinations in excess of statutory weight of eighty thousand pounds or statutory lengths.

(3) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (1) or (2) of this Section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: Uniform enforcement procedures; additional vehicle size and weight standards; uniform safety inspection standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(4) The cooperating committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement, and specifically of the vehicle size and weight standards set forth in subsection (1) of this section.

(5) It is the further objective of the participating jurisdictions to:

(a) Establish transportation laws and rules to meet regional and economic needs and to promote an efficient, safe, and compatible transportation network;

(b) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety; and

(c) Establish programs to increase productivity and reduce congestion, fuel consumption, and related transportation costs and enhance air quality through the uniform application of state vehicle rules and laws.

(6) (Deleted by amendment, L. 2001, p. 710, § 6, effective August 8, 2001.)

ARTICLE 6

Entry Into Force and Withdrawal

SECTION 1. This agreement shall enter into force when enacted into law by any two (2) or more jurisdictions. Thereafter, this agreement shall become effective as to any

other jurisdiction upon its enactment thereof, except as otherwise provided in Section 8, Article 3.

SECTION 2. Any participating jurisdiction may withdraw from this agreement by cancelling the same but no such withdrawal shall take effect until thirty (30) days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE 7

Construction and Severability

SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE 8

Filing of Documents

SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE 9

Existing Statutes Not Repealed

SECTION 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE 10

State Government Departments
Authorized to Cooperate with Cooperating Committees

SECTION 1. Within appropriations available therefor, the departments, agencies

and officers of the government of this State shall cooperate with and assist the cooperating committee within the scope contemplated by Article 4, Section 1 (1) and (2) of the agreement. The departments, agencies and officers of the government of this State are authorized generally to cooperate with said cooperating committee.

ARTICLE 11

Selection of Designated Representatives

SECTION 1. The process for selecting the designated representatives to the cooperating committee shall be established by law under this section.

SECTION 2. The persons authorized to represent the state of Colorado as the designated representatives to the committee shall be the chairperson of the senate transportation committee and the chairperson of the house transportation committee, or a legislator or state agency official that the chairperson assigns.

SECTION 3. The transportation committee chairpersons in each house shall also designate one alternate designated representative, who shall also be a legislator or state agency official, to serve in their absence.

ARTICLE 12

Funding

SECTION 1. Funds for the administration of this agreement, including participation in the cooperating committee and the actual expenses of the designated representatives, shall be provided from the funds available to the Colorado state patrol for operating expenses and motor carrier safety and assistance program grants and shall be budgeted or expensed to the Colorado state patrol in furtherance of the administration of this agreement as determined appropriate.

PART 26

WILDLIFE VIOLATOR COMPACT

24-60-2601. Short title. This part 26 shall be known and may be cited as the "Wildlife Violator Compact".

24-60-2602. Execution of compact. The general assembly hereby approves and the governor is authorized to enter into a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I

Findings, Declaration of Policy, and Purpose

(a) The participating states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances, and administrative rules relating to the management of such resources.

(3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(4) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than his home state:

(i) Is required to post collateral or a bond to secure appearance for a trial at a later date; or

(ii) Is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices set forth in paragraph (7) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation.

(10) The practices described in paragraph (7) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(11) The enforcement practices described in paragraph (7) of this article consume

an undue amount of law enforcement time.

(b) It is the policy of the participating states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state.

(3) Allow a violator, except as provided in paragraph (b) of article III, to accept a wildlife citation and, without delay, proceed on his way, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in paragraph (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

Definitions

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an

appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(d) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, and such conviction shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.

(i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(m) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation,

ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(q) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

Procedures for Issuing State

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in paragraph (b) of this article, if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(b) Personal recognizance is acceptable (1) if not prohibited by local law or the compact manual and (2) if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance pursuant to paragraph (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV

Procedure for Home State

(a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing

authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V

Reciprocal Recognition of Suspension

(a) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI

Applicability of Other Laws

(a) Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in

accordance with the laws of the state he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(c) The board shall elect annually from its membership a chairman and vice-chairman.

(d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize and dispose of same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII

Entry into Compact and Withdrawal

(a) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.

(2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) A citation of the authority from which the state is empowered to become a party to this compact;

(ii) An agreement of compliance with the terms and provisions of this compact; and

(iii) An agreement that compact entry is with all states participating in the

compact and with all additional states legally becoming a party to the compact.

(3) The effective date of entry shall be specified by the applying state but shall not be less than sixty days after notice has been given (a) by the chairman of the board of the compact administrators or (b) by the secretariat of the board to each participating state that the resolution from the applying state has been received.

(c) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX

Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a participating state to respond to the compact chairman within one hundred twenty days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

ARTICLE XI

Title

This compact shall be known as the "Wildlife Violator Compact".

24-60-2603. Licensing authority - definition. As used in the compact, the term "licensing authority", with reference to this state, means the division of parks and wildlife of the department of natural resources. The director of the division of parks and wildlife shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the compact.

24-60-2604. Compact administrator - expenses. The compact administrator provided for in article VII of the "Wildlife Violator Compact" shall not be entitled to any additional compensation for his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

PART 27

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT

24-60-2701. Short title. This part 27 shall be known and may be cited as the "National Crime Prevention and Privacy Compact".

24-60-2702. Execution of compact. The general assembly hereby approves and the governor is authorized to enter into a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:
The Contracting Parties agree to the following:

OVERVIEW

(a) **In General.** This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for noncriminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.

(b) **Obligations of Parties.** Under this Compact, the FBI and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. The FBI shall also manage the Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I -- DEFINITIONS

In this Compact:

(1) **Attorney general.** The term "Attorney General" means the Attorney General of the United States.

(2) **Compact officer.** The term "Compact officer" means:

(A) With respect to the Federal Government, an official so designated by the Director of the FBI; and

(B) With respect to a Party State, the chief administrator of the State's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) **Council.** The term "Council" means the Compact Council established under Article VI.

(4) **Criminal history records.** The term "criminal history records":

(A) Means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) Does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) **Criminal history record repository.** The term "criminal history record repository" means the state agency designated by the Governor or other appropriate executive official or the legislature of a State to perform centralized record-keeping functions for criminal history records and services in the State.

(6) **Criminal justice.** The term "criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) **Criminal justice agency.** The term "criminal justice agency":

(A) Means:

(i) Courts; and

(ii) A governmental agency or any subunit thereof that:

(I) Performs the administration of criminal justice pursuant to a statute or Executive order; and

(II) Allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) Includes Federal and State inspectors general offices.

(8) **Criminal justice services.** The term "criminal justice services" means

services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) **Criterion offense.** The term "criterion offense" means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) **Direct access.** The term "direct access" means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) **Executive order.** The term "Executive order" means an order of the President of the United States or the chief executive officer of a State that has the force of law and that is promulgated in accordance with applicable law.

(12) **FBI.** The term "FBI" means the Federal Bureau of Investigation.

(13) **Interstate identification system.** The term "Interstate Identification Index System" or "III System":

(A) Means the cooperative Federal-State system for the exchange of criminal history records; and

(B) Includes the National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

(14) **National fingerprint file.** The term "National Fingerprint File" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(15) **National identification index.** The term "National Identification Index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(16) **National indices.** The term "National indices" means the National Identification Index and the National Fingerprint File.

(17) **Nonparty state.** The term "Nonparty State" means a State that has not ratified this Compact.

(18) **Noncriminal justice purposes.** The term "noncriminal justice purposes" means uses of criminal history records for purposes authorized by Federal or State law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) **Party state.** The term "Party State" means a State that has ratified this Compact.

(20) **Positive identification.** The term "positive identification" means a

determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) **Sealed record information.** The term "sealed record information" means:

(A) With respect to adults, that portion of a record that is:

(i) Not available for criminal justice uses;

(ii) Not supported by fingerprints or other accepted means of positive identification; or

(iii) Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(B) With respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

(22) **State.** The term "State" means any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II -- PURPOSES

The purposes of this Compact are to:

(1) Provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the National Identification Index and the National Fingerprint File by each Party State, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(3) Require Party States to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(4) Provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(5) Require the FBI and each Party State to adhere to III System standards concerning record dissemination and use, response times, system security, data quality,

and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III -- RESPONSIBILITIES OF COMPACT PARTIES

(a) **FBI Responsibilities.** The Director of the FBI shall:

(1) Appoint an FBI Compact officer who shall:

(A) Administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V (c);

(B) Ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III (a) (1) (A); and

(C) Regulate the use of records received by means of the III System from Party States when such records are supplied by the FBI directly to other Federal agencies;

(2) Provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:

(A) Information from Nonparty States; and

(B) Information from Party States that is available from the FBI through the III System, but is not available from the Party State through the III System;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with Nonparty State criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) **State Responsibilities.** Each Party State shall:

(1) Appoint a Compact officer who shall:

(A) Administer this Compact within that State;

(B) Ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the State; and

(C) Regulate the in-State use of records received by means of the III System from the FBI or from other Party States;

(2) Establish and maintain a criminal history record repository, which shall provide:

(A) Information and records for the National Identification Index and the National Fingerprint File; and

(B) The State's III System-indexed criminal history records for noncriminal justice purposes described in Article IV;

(3) Participate in the National Fingerprint File; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.

(c) **Compliance With III System Standards.** In carrying out their responsibilities under this Compact, the FBI and each Party State shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.

(d) **Maintenance of Record Services.**

(1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV -- AUTHORIZED RECORD DISCLOSURES

(a) **State Criminal History Record Repositories.** To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) **Criminal Justice Agencies and Other Governmental or Nongovernmental Agencies.** The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and State criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a State statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) **Procedures.** Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall:

(1) Ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;

(2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

ARTICLE V -- RECORD REQUEST PROCEDURES

(a) **Positive Identification.** Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) **Submission of State Requests.** Each request for a criminal history record check utilizing the national indices made under any approved State statute shall be submitted through that State's criminal history record repository. A State criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another State criminal history record repository or the FBI.

(c) **Submission of Federal Requests.** Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the State criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and State criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) **Fees.** A State criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) **Additional Search.**

(1) If a State criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records:

(A) The FBI shall so advise the State criminal history record repository; and

(B) The State criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI -- ESTABLISHMENT OF COMPACT COUNCIL

(a) **Establishment.**

(1) **In General.** There is established a council to be known as the "Compact Council", which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) **Organization.** The Council shall:

(A) Continue in existence as long as this Compact remains in effect;

(B) Be located, for administrative purposes, within the FBI; and

(C) Be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) **Membership.** The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

(1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

(2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom:

(A) One shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and

(B) One shall be a representative of the noncriminal justice agencies of the Federal Government.

(3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI (c), each of whom shall serve a 3-year term, of whom:

(A) One shall be a representative of State or local criminal justice agencies; and

(B) One shall be a representative of State or local noncriminal justice agencies.

(4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) **Chairman and Vice Chairman.**

(1) **In General.** From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council:

(A) Shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and

(B) Shall serve a 2-year term and may be reelected to only 1 additional 2-year term.

(2) **Duties of Vice Chairman.** The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) **Meetings.**

(1) **In General.** The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.

(2) **Quorum.** A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) **Rules, Procedures, and Standards.** The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) **Assistance From FBI.** The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) **Committees.** The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII -- RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government. Upon subsequent entering into this Compact by additional States, it shall become effective among those States and the Federal Government and each Party State that has previously ratified it. When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing State.

ARTICLE VIII -- MISCELLANEOUS PROVISIONS

(a) **Relation of Compact to Certain FBI Activities.** Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) **No Authority for Nonappropriated Expenditures.** Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) **Relating to Public Law 92-544.** Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any State, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI (a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX -- RENUNCIATION

(a) **In General.** This Compact shall bind each Party State until renounced by the Party State.

(b) **Effect.** Any renunciation of this Compact by a Party State shall:

(1) Be effected in the same manner by which the Party State ratified this Compact; and

(2) Become effective 180 days after written notice of renunciation is provided by the Party State to each other Party State and to the Federal Government.

ARTICLE X -- SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating State, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any Party State, all other portions of this Compact shall remain in full force and effect as to the remaining Party States and in full force and effect as to the Party State affected, as to all other provisions.

ARTICLE XI -- ADJUDICATION OF DISPUTES

(a) **In General.** The Council shall:

(1) Have initial authority to make determinations with respect to any dispute regarding:

(A) Interpretation of this Compact;

(B) Any rule or standard established by the Council pursuant to Article V; and

(C) Any dispute or controversy between any parties to this Compact; and

(2) Hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI (e).

(b) **Duties of FBI.** The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) **Right of Appeal.** The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.

PART 28

COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS

24-60-2801. Short title. This part 28 shall be known and may be cited as the "Interstate Compact for Adult Offender Supervision".

24-60-2802. Execution of compact. The general assembly hereby approves and the governor is authorized to enter into a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I
PURPOSE

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the by-laws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the "Crime Control Act", 4 U.S.C. sec.112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states: To provide the framework for the promotion of public safety and protect the rights of

victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states.

(c) In addition, this compact will: Create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no right of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II
DEFINITIONS

(a) As used in this compact, unless the context clearly requires a different construction:

(1) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(2) "By-laws" means those by-laws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

(3) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

(4) "Compacting state" means any state that has enacted the enabling legislation for this compact.

(5) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(6) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(7) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(8) "Non-compacting state" means any state that has not enacted the enabling legislation for this compact.

(9) "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

(10) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(11) "Rules" means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

(12) "State" means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

(13) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under Article IV of this compact.

ARTICLE III
THE COMPACT COMMISSION

(a) The compacting states hereby create the interstate commission for adult offender supervision. The interstate commission shall be a body corporate and a joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. Such non-commissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All non-commissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate

commission may provide in its by-laws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven (27) or more compacting states, shall call additional meetings. Public notice shall be given of all meetings, and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the by-laws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact and its by-laws and as directed by the interstate commission; and performs other duties as directed by the interstate commission or set forth in the by-laws.

ARTICLE IV
THE STATE COUNCIL

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

ARTICLE V
POWERS AND DUTIES
OF THE INTERSTATE COMMISSION

(a) The interstate commission shall have the following powers:

(1) To adopt a seal and suitable by-laws governing the management and operation of the interstate commission;

(2) To promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(3) To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the interstate commission;

(4) To enforce compliance with compact provisions, interstate commission rules, and by-laws using all necessary and proper means, including but not limited to the use of the judicial process;

(5) To establish and maintain offices;

(6) To purchase and maintain insurance and bonds;

(7) To borrow, accept, or contract for services of personnel, including but not limited to members and their staffs;

(8) To establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions, including but not limited to an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same;

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact;

(14) To sue and be sued;

(15) To provide for dispute resolution among compacting states;

(16) To perform such functions as may be necessary or appropriate to achieve the

purposes of this compact;

(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity;

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI
ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) **By-laws.** The interstate commission, by a majority of the members, within twelve months of the first interstate commission meeting, shall adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary and providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

(b) **Officers and staff.** (1) The interstate commission, by a majority of the

members, shall elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the by-laws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission, through its executive committee, shall appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

(c) **Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the by-laws.

(d) **Qualified immunity, defense, and indemnification.** (1) The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided that nothing in this paragraph (d) shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees or the interstate commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from gross negligence or

intentional wrongdoing on the part of such person.

ARTICLE VII
ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's by-laws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the "Government in Sunshine Act", 5 U.S.C. sec. 552b, as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and

procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;

(9) Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall reference each relevant provision authorizing closure of the meeting. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its by-laws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VIII
RULEMAKING FUNCTIONS
OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform

to the principles of the federal "Administrative Procedure Act", 5 U.S.C.S. sec. 551 et seq., and the federal "Advisory Committee Act", 5 U.S.C.S. app. 2, sec. 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal District Court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the APA, in the rulemaking record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(i) Notice to victims and opportunity to be heard;

(ii) Offender registration and compliance;

(iii) Violations and returns;

(iv) Transfer procedures and forms;

(v) Eligibility for transfer;

(vi) Collection of restitution and fees from offenders;

(vii) Data collection and reporting;

(viii) The level of supervision to be provided by the receiving state;

(ix) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact;

(x) Mediation, arbitration, and dispute resolution.

(e) The existing rules governing the operation of the previous compact superceded by this act shall be null and void twelve (12) months after the first meeting of the interstate commission created hereunder.

(f) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption; provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than

ninety (90) days after the effective date of the rule.

ARTICLE IX
OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

(a) **Oversight.** (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) **Dispute resolution.** (1) The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and non-compacting states.

(3) The interstate commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(c) **Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII (b) of this compact.

ARTICLE X
FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual

assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same, nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI
COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

(a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth (35th) jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of non-member states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII
WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

(a) **Withdrawal.** (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state

may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the by-laws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(i) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(ii) Remedial training and technical assistance as directed by the interstate commission;

(iii) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission by-laws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall

notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

(c) **Judicial enforcement.** The interstate commission, by majority vote of the members, may initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules, and by-laws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

(d) **Dissolution of compact.** (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XIII
SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV
BINDING EFFECT
OF COMPACT AND OTHER LAWS

(a) **Other laws.** (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** (1) All lawful actions of the interstate commission, including all rules and by-laws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

24-60-2803. Limitation on assessment. Notwithstanding the provisions of section (b) of article (X) of section 24-60-2802, the state shall not pay an assessment or shall reduce the amount of its assessment so that the total collected from the annual assessment does not exceed two million five hundred thousand dollars for any single fiscal year, annually adjusted for inflation.

PART 29

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

24-60-2901. Short title. This part 29 shall be known and may be cited as the "Emergency Management Assistance Compact".

24-60-2902. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Purpose and Authorities

This compact is made and entered into by and between the participating member states that enact this compact, hereinafter called party states. For the purposes of this compact, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance among the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between or among states.

ARTICLE II

General Implementation

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management shall be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III

Party State Responsibilities

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans and in carrying them out, the party states, insofar as practical, shall:

1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

2. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

3. Develop interstate procedures to fill any identified gaps and resolve any identified inconsistencies or overlaps in existing or developed plans;

4. Assist in warning communities adjacent to or crossing the state boundaries;

5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance from another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be oral or in writing. If oral, the request shall be confirmed in writing within thirty days after the oral request. Requests shall provide the following information:

1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV

Limitations

Any party state that is asked to render mutual aid, or to conduct exercises and training for mutual aid, shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof, on the understanding that the state rendering aid may withhold resources to the extent reasonably necessary for its own protection.

Each party state shall afford to the emergency forces of any party state, while operating within its borders under the terms and conditions of this compact, the same powers, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services, except the power of arrest unless specifically authorized by the receiving state. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only after a declaration of a state of emergency or disaster by the Governor of the party state that is to receive assistance or after the commencement of exercises or training for mutual aid, and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V

Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact that evidences the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI

Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII

Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel and equipment and supplies.

ARTICLE VIII

Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX

Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; except that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost or may loan such equipment or donate such services to the receiving party state without charge or cost; and except that any two or more party states may enter into

supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses are not reimbursable under this article.

ARTICLE X

Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the provision of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI

Implementation

A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII

Validity

This act shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

ARTICLE XIII

Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would, in the absence of express statutory authorization, be prohibited under 18 U.S.C. sec. 1385.

PART 30

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

24-60-3001. Interstate insurance product regulation compact. The following Compact is intended to help States join together to establish an interstate Compact to regulate designated insurance products. Pursuant to terms and conditions of this Act, the State of Colorado seeks to join with other States and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. The insurance commissioner is hereby designated to serve as the representative of this State to the Commission.

ARTICLE I.

PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term insurance products;

2. To develop uniform standards for insurance products covered under the

Compact;

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;

6. To create the Interstate Insurance Product Regulation Commission; and

7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

ARTICLE II.

DEFINITIONS

For purposes of this Compact:

1. "Advertisement" means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.

2. "Bylaws" mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.

3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.

5. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.

6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.

7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.

8. "Member" means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.

9. "Non-compacting State" means any State which is not at the time a Compacting State.

10. "Operating Procedures" mean procedures promulgated by the Commission

implementing a Rule, Uniform Standard or a provision of this Compact.

11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.

12. "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of the Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.

13. "State" means any state, district or territory of the United States of America.

14. "Third-Party Filer" means an entity that submits a Product filing to the Commission on behalf of an Insurer.

15. "Uniform Standard" means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

ARTICLE III.

ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.

2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal

office of the Commission is located.

ARTICLE IV.

POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, provided, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of the Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

7. To bring and prosecute legal proceedings or actions in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;

17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

18. To provide for dispute resolution among Compacting States;

19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting states, consistent with the purposes of this Compact;

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

21. To establish a budget and make expenditures;

22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

ARTICLE V.

ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

i. establishing the fiscal year of the Commission;

ii. providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;

iii. providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv. providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each

such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

v. establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

vi. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

vii. promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

viii. providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

(i) One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

(ii) Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws, and;

(iii) Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support

functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

iii. overseeing the offices of the Commission; and

iv. planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.

b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

5. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for

believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

ARTICLE VI.

MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

ARTICLE VII.

RULES & OPERATING PROCEDURES:

RULEMAKING FUNCTIONS OF THE COMMISSION

AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable

protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt-out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt-out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt-out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt-out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or

Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

ARTICLE VIII.

COMMISSION RECORDS AND ENFORCEMENT

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is proved to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the

request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this Paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

ARTICLE IX.

DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

ARTICLE X.

PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an Insurer from filing its Product with the insurance department in any State wherein the Insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.

2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

ARTICLE XI.

REVIEW OF COMMISSION

DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third-Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the Product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

ARTICLE XII.

FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

2. The Commission shall collect a filing fee from each Insurer and Third-Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

4. The Commission shall be exempt from all taxation in and by the Compacting States.

5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control.

The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request, provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals' and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

ARTICLE XIII.

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

ARTICLE XIV.

WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon

each and every Compacting State; provided, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Subsection e. of this Section.

c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of Products or Advertisement previously approved under state law.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

a. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights,

privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such Product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Paragraph 1 of this Article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

ARTICLE XV.

SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

ARTICLE XVI.

BINDING EFFECT OF COMPACT AND OTHER LAWS

1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b. of this Article.

b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: i. the access of any person to state courts; ii. remedies available under state law related to breach of contract, tort, or other laws not specifically directed to

the content of the Product; iii. state law relating to the construction of insurance contracts; or iv. the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual States shall be subject to the laws of those States.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

PART 31

COMPACT FOR PORTABILITY OF HEALTH CARE PROFESSIONAL LICENSES - AUTHORIZATION

24-60-3101. Legislative declaration. The general assembly hereby finds that a lack of access to quality, affordable health care services is an increasing problem, both in Colorado and nationwide, and contributes to the spiraling costs of health care for individuals and businesses. This problem could be alleviated by greater interstate cooperation among, and mobility of, medical professionals through the use of telemedicine and other means. Therefore, it is desirable to authorize the executive director of the department of regulatory agencies, together with the Colorado medical board created in section 12-36-103, C.R.S., and the state board of nursing created in section 12-38-104, C.R.S., and in consultation with representatives of other relevant state agencies, to negotiate one or more interstate compacts endorsing model legislation to facilitate the efficient distribution of health care services across state lines.

24-60-3102. Definitions. As used in this part 31, unless the context otherwise requires:

(1) "Department" means the department of regulatory agencies, created in section 24-1-122.

(2) "Executive director" means the executive director of the department.

(3) "Medicine" or "medical practice" has the same meaning as "practice of medicine" as defined in section 12-36-106, C.R.S.

(4) "Nursing" or "nursing practice" includes both the practice of practical nursing and the practice of professional nursing as set forth in sections 12-38-103 (9) and 12-38-103 (10), C.R.S., respectively; except that nothing in this part 31 shall be construed to authorize nurses to deliver services outside their scope of practice.

(5) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

24-60-3103. Model legislation - compacts authorized. (1) The executive director, together with the Colorado medical board created in section 12-36-103, C.R.S., and the state board of nursing created in section 12-38-104, C.R.S., and in consultation with the executive director of the department of health care policy and financing or his or her designee, the executive director of the department of public health and environment or his or her designee, and representatives of other state agencies whose participation the executive director deems beneficial, is hereby authorized to develop, participate in the development of, and negotiate for one or more interstate compacts on behalf of the state of Colorado with other states and to recommend model legislation that, if adopted in the respective signatory states, would advance the following policy goals:

(a) The portability of medical and nursing licenses issued by signatory states, subject to appropriate professional standards, safeguards and reciprocal enforcement provisions; and

(b) The implementation of procedures for the delivery of health care services via telemedicine.

(2) The executive director shall keep the general assembly informed as to the progress of negotiations undertaken pursuant to this section, as events may warrant.

PART 32

NURSE LICENSURE COMPACT

24-60-3201. Short title. This part 32 shall be known and may be cited as the "Nurse Licensure Compact".

24-60-3202. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I

Declaration and Purpose

a. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

b. The general purposes of this Compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this Compact:

a. "Adverse action" means a home or remote state action.

b. "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

c. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

d. "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

e. "Home state" means the party state that is the nurse's primary state of residence.

f. "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws that is imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: Revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.

g. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

h. "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: Revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.

i. "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

j. "Party state" means any state that has adopted this Compact.

k. "Remote state" means a party state, other than the home state:

1. Where the patient is located at the time nursing care is provided; or

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

l. "Remote state action" means:

1. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws that is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to

practice in the remote state; and

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

m. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

n. "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline.

o. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

a. A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

b. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

c. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

d. This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for

qualifying for advanced practice registered nurse authorization.

e. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

a. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

b. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

c. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

d. When a nurse changes primary state of residence by:

1. Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

2. Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

3. Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the General Provisions described in Article III, the following provisions apply:

a. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system

shall promptly notify the home state of any such reports.

b. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

c. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

d. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

e. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

f. Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

a. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

b. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority

shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located;

c. Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

d. Promulgate uniform rules and regulations as provided for in Article VIII (c).

ARTICLE VII

Coordinated Licensure Information System

a. All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

b. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials to the coordinated licensure information system.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

d. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

e. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

g. The Compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this Compact.

ARTICLE VIII

Compact Administration and

Interchange of Information

a. The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this Compact for his or her state.

b. The Compact administrator of each party state shall furnish to the Compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this Compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI (d).

ARTICLE IX

Immunity

No party state or the officers, employees, or agents of a party state's nurse licensing board who act in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal and Amendment

a. This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

c. Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

d. This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

a. This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

b. In the event party states find a need for settling disputes arising under this Compact:

1. The party states may submit the issues in dispute to an arbitration panel that will be comprised of an individual appointed by the Compact administrator in the home state; an individual appointed by the Compact administrator in the remote state or states involved; and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

PART 33

INTERSTATE COMPACT FOR THE PREVENTION
AND CONTROL OF FOREST FIRES

24-60-3301. Execution of compact. The governor may enter into a compact on behalf of the state with any other state or states legally joining therein in the form substantially as follows:

ARTICLE I

The purpose of this compact is to promote effective prevention and control of forest fires in the great plains region of the United States by the maintenance of adequate forest fire fighting services by the member states, and by providing for reciprocal aid in fighting forest fires among the compacting states of the region, including South Dakota, North Dakota, Wyoming, Colorado, and any adjoining state of a current member state.

ARTICLE II

This compact is operative immediately as to those states ratifying it if any two or

more of the member states have ratified it.

ARTICLE III

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control may act as compact administrator for that state, consult with like officials of the other member states, and implement cooperation between the states in forest fire prevention and control. The compact administrators of the member states may organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact. Each member state may formulate and put in effect a forest fire plan for that state.

ARTICLE IV

If the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling, or preventing forest fires, the state forest fire control agency of that state may render all possible aid to the requesting agency, consonant with the maintenance of protection at home.

ARTICLE V

(1) If the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of the state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges, and immunities as comparable employees of the state to which they are rendering aid.

(2) No member state or its officers or employees rendering outside aid pursuant to this compact is liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection with rendering the outside aid.

(3) All liability, except as otherwise provided in this compact, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(4) Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving the aid for any loss or damage to, or expense incurred in the operation of, any equipment used in answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with the request. However, nothing in this compact prevents any assisting member state from assuming the loss, damage, expense, or other cost, from loaning the equipment, or from donating the services to the receiving member state without charge or cost.

(5) Each member state shall assure that workers compensation benefits in conformity with the minimum legal requirements of the state are available to all employees and contract firefighters sent to a requesting state pursuant to this compact.

(6) For the purposes of this compact, the term "employee" includes any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws of the aiding state.

(7) The compact administrators may formulate procedures for claims and reimbursement under the provisions of this article in accordance with the laws of the member states.

ARTICLE VI

(1) Ratification of this compact does not affect any existing statute so as to authorize or permit curtailment or diminution of the forest fighting forces, equipment, services, or facilities of any member state.

(2) Nothing in the compact authorizes or permits any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member state shall maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

(3) Nothing in this compact limits or restricts the powers of any state ratifying the compact to provide for the prevention, control, and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules, or regulations intended to aid in the prevention, control, and extinguishment in the state.

(4) Nothing in this compact affects any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

ARTICLE VII

Representatives of the United States forest service may attend meetings of the compact administrators.

ARTICLE VIII

The provisions of articles IV and V of this compact that relate to reciprocal aid in combating, controlling, or preventing forest fires are operative as between any state party to this compact and any other state which is party to this compact and any other state that is party to a regional forest fire protection compact in another region if the legislature of the other state has given its assent to the mutual aid provisions of this compact.

ARTICLE IX

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of the state takes action to withdraw from the

compact. Such action is not effective until six months after notice of the withdrawal has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

PART 34

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

24-60-3401. Legislative declaration. The general assembly finds and declares that, for purposes of section 17 of article IX of the state constitution, adopting an interstate compact concerning educational opportunities for military children is a critical element of accountable education reform and, therefore, may receive funding from the state education fund created in section 17 (4) of article IX of the state constitution.

24-60-3402. Compact approved and ratified. The general assembly hereby approves and ratifies and the governor shall enter into a compact on behalf of the state of Colorado with any of the United States or other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL

OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I - PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE II - DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.

B. "Children of military families" means: a school-aged child(ren), enrolled in Kindergarten through Twelfth (12th) grade, in the household of an active duty member.

C. "Compact commissioner" means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. "Deployment" means: the period one (1) month prior to the service members' departure from their home station on military orders through six (6) months after return to their home station.

E. "Education(al) records" means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate Commission on Educational Opportunity for Military Children" means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. "Local education agency" means: a public authority legally constituted by the state as an administrative agency to provide control of and direction for Kindergarten through Twelfth (12th) grade public educational institutions.

I. "Member state" means: a state that has enacted this compact.

J. "Military installation" means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Non-member state" means: a state that has not enacted this compact.

L. "Receiving state" means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. "Student" means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth (12th) grade.

Q. "Transition" means: 1) the formal and physical process of transferring from school to school or 2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed service(s)" means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. "Veteran" means: a person who served in the uniformed services and who was discharged or released from there under conditions other than dishonorable.

ARTICLE III - APPLICABILITY

A. Except as otherwise provided in Section C, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211;

2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one (1) year after medical discharge or retirement; and

3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the national guard and military reserves;

2. members of the uniformed services now retired, except as provided in Section A;

3. veterans of the uniformed services, except as provided in Section A; and

4. other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV - EDUCATIONAL RECORDS & ENROLLMENT

A. Unofficial or "hand-carried" education records - In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten (10) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations - Compacting states shall give thirty (30) days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty (30) days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and First grade entrance age - Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at

the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V - PLACEMENT & ATTENDANCE

A. Course placement - When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement - The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services - 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq, the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility - Local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for

placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities - A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI - ELIGIBILITY

A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII - GRADUATION

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements - Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams - States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm-referenced achievement tests or

3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during Senior year - Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

ARTICLE VIII - STATE COORDINATION

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the State Council, unless either is already a full voting member of the State Council.

ARTICLE IX - INTERSTATE COMMISSION ON EDUCATIONAL

OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex-officio, non-voting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S.

Dept. of Defense, shall serve as an ex-officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of

the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

ARTICLE X - POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI - ORGANIZATION AND OPERATION

OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee, and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

7. Providing "start up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without

compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

3. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal

counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII - RULEMAKING FUNCTIONS

OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a Rule by

enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII - OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law, and shall be reviewed annually by the state, veterans, and military affairs committees of the house of representatives and the senate, or any successor committees, and the department of education, beginning January 30, 2010.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

B. Default, Technical Assistance, Suspension and Termination - If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only

after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and non-member states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV - FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall by audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV - MEMBER STATES, EFFECTIVE

DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten (10) of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI - WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon

each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same and written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one (1) member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII - SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII - BINDING EFFECT OF

COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state

that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE 61

Taxation Compact Between the
Southern Ute Indian Tribe, La Plata County,
and the State of Colorado

PART 1

APPROVAL AND TEXT OF COMPACT

24-61-101. Compact as basis for payments - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the interest of the state of Colorado for the general assembly to act to assist in the resolution of a dispute between the state, the county of La Plata, and the Southern Ute Indian tribe concerning the imposition of taxes and charges on property and property interests owned or held by the Southern Ute Indian tribe within the exterior boundaries of the Southern Ute Indian reservation;

(b) It is within the authority of the general assembly pursuant to section 4 of the Enabling Act of Colorado to approve special provisions with respect to taxes and charges that the state could otherwise seek to impose upon property and property interests owned or held by the Southern Ute Indian tribe; and

(c) In approving the special provisions set forth in the taxation compact described in this article, the state does not waive its claims, concede its rights, or otherwise impair its position with respect to its authority to levy taxes and other charges on property and property interests owned or held by the Southern Ute Indian tribe except as specifically set forth in said taxation compact and acknowledges that the Southern Ute Indian tribe has similarly not impaired its position to challenge such authority except as specifically

set forth in said taxation compact.

(2) It is the intent of the general assembly that, for the duration of the taxation compact set forth in this article, with respect to the taxes and charges imposed pursuant to article 29 of title 39, C.R.S., concerning severance taxes, article 60 of title 34, C.R.S., concerning the conservation levy and environmental response fund surcharge, and article 1 of title 39, C.R.S., concerning ad valorem property taxes, the payments established pursuant to said taxation compact on property described in said taxation compact shall be made as an alternative to said taxes, charges, surcharges, and levies.

24-61-102. Taxation compact between the Southern Ute Indian tribe, La Plata county, and the state of Colorado. The general assembly hereby approves the taxation compact between the Southern Ute Indian tribe, La Plata county, and the state of Colorado, referred to in this section as the "Taxation Compact", dated March 18, 1996, and signed by Roy Romer, governor of the state of Colorado; Leonard C. Burch, chairman of the Southern Ute Indian tribal council; Fred W. Klatt, III, chairman of the La Plata county board of county commissioners; Craig Larson, La Plata county assessor; and Ed Murray, La Plata county treasurer. Said compact is as follows:

TAXATION COMPACT

between

THE SOUTHERN UTE INDIAN TRIBE, LA PLATA COUNTY and

THE STATE OF COLORADO

THIS AGREEMENT ("Taxation Compact") is entered into this 18th day of March, 1996, by, between and among the STATE OF COLORADO, on behalf of itself, its political subdivisions, offices, and officials ("the State"), the SOUTHERN UTE INDIAN TRIBE, by and through the Southern Ute Indian Tribal Council ("the Tribe"), and the COUNTY OF LA PLATA, by and through the Board of County Commissioners of La Plata county and the La Plata County Assessor and Treasurer ("County").

Article One

Recitals.

1.01. Litigation.

The parties to this Taxation Compact have been engaged in protracted litigation regarding the authority of the County and the State to tax the real or personal property owned or acquired by the Tribe within the exterior boundaries of the Southern Ute Indian

Reservation ("Reservation"). That litigation ("the Litigation") has not provided the parties with definitive answers regarding the scope of such taxing authority or the scope of tribal immunity from such taxation ("the Dispute"). In the absence of agreement, the parties will be compelled to reinstitute litigation and to incur substantial litigation costs and commitments of time and energy to such disputes.

1.02. Intergovernmental Agreement.

Prior to refiling the Litigation, the parties to this taxation Compact entered into good faith negotiations in an effort to resolve the Dispute amicably in a manner consistent with the respective interests of the parties. In furtherance of the negotiation efforts, the parties entered into an Intergovernmental Agreement Concerning Taxation Negotiations which addressed procedures for maintaining the status quo and preserving the legal positions of the parties pending negotiation.

1.03. Principal Individual Interests.

During the negotiations, the Tribe has requested recognition of its claimed immunity from State and County taxation with respect to any interests in real or personal property it owns or may acquire within the boundaries of the Reservation, regardless of whether such property is held in trust for its benefit by the United States of America. The County has taken the position that interests in real or personal property owned or acquired by the Tribe within the boundaries of the Reservation are subject to ad valorem property taxes in circumstances where those real or personal property interests within the Reservation have been previously taxed to or are taxable in non-Tribal ownership. The county has reiterated its concern that recognition of taxing immunity to the Tribe with respect to any interest in real or personal property owned or acquired by the Tribe when that property has been taxed or taxable under non-Tribal ownership will have an adverse economic impact on those governmental institutions which rely upon general ad valorem property tax revenue to carry out governmental functions, particularly if Tribal acquisition efforts continue to escalate. The State's position is that real property acquired by the Tribe and not placed or held in trust by the federal government for the benefit of the Tribe is subject to taxation. The State has attempted to assist in the identification of governmental mechanisms that could be employed by the parties to settle their Dispute reasonably in a manner that will minimize adverse economic consequences resulting from possible recognition of the Tribe's claimed immunity. As used herein, the words "tax" and "taxes" includes ad valorem and severance taxes as well as the oil and gas conservation levy and the environmental response fund surcharge.

1.04. Mutual Interests.

Each of the parties seeks to avoid further litigation in a manner consistent with the best interests of the respective constituents of each government. Further, in recognition of the fact that there are many substantive areas that require mutual cooperation of the parties, including social issues, economic development, land use and environmental protection, the parties seek to improve their government-to-government relationships for the present

and the future.

1.05. Educational Equalization.

The parties acknowledge that the State maintains as part of its system of public school financing a program which is intended to provide equalization in funding for students in the various public school districts throughout the State as reflected in, inter alia, "The Public School Finance Act of 1994" (article 54 of title 22, C.R.S.). The public school finance system also establishes a state public school fund which is available to provide relief to individual school districts in the event that unforeseen difficulties in maintaining assessment levels of property within any such district or in collecting property taxes is encountered. See section 22-54-117, C.R.S. Based on the status of public school financing, the parties acknowledge that the level of financing available for educating public school students within the boundaries of the Reservation will not be adversely affected in a material way so long as a system of State-wide equalization of student funding is maintained by the State.

1.06. Settlement.

Based upon the foregoing, the parties have agreed to settle the Dispute, subject to the fulfillment of certain conditions hereinafter set forth, and each party finds that the settlement reflected in this Taxation Compact is in furtherance of the individual and mutual interests of the parties.

Article Two

Conditions Precedent.

2.01. Legislative Ratification.

As a condition precedent to implementation of this Taxation Compact, the parties agree that the Colorado General Assembly and the Governor of the State of Colorado must approve, and the Office of the Colorado Attorney General must review, this Taxation Compact and permit the County and the State to perform the covenants herein contained. If such authorization is not obtained prior to the close of the 1996 legislative session, this Taxation Compact shall become null and void, unless otherwise agreed by the parties.

2.02. Statutory Amendment.

As an additional condition precedent, the parties agree that such amendments to existing State statutes needed to implement the terms of this Taxation Compact shall be enacted prior to the close of the 1996 legislative session. If such amendments are not so enacted, then this Taxation Compact shall become null and void.

2.03. Tribal Enactment.

As an additional condition precedent, the parties agree that the Tribe, prior to expiration of the 1996 legislative session of the Colorado General Assembly, through its Tribal Council, shall have enacted such resolutions or ordinances permitting the implementation of this Taxation Compact, including, but not limited to: Authorization for issuing annual

tribal declarations of real property acquired by the Tribe, as provided in Article Five, infra; authorization for issuing annual payments, as provided in Article Six, infra; a mechanism for requiring non-Indians constructing facilities on tribal land to report to the County Assessor notice of completion of such facilities, as provided in Article Eight, infra; and a system for the recognition of County liens validly obtained under State law against the property of non-Indians, as well as, a system for foreclosure of such liens, as provided in Article Ten, infra.

2.04. Federal Approval.

To the extent that the Taxation Compact constitutes an agreement with an Indian Tribe related to land owned by an Indian Tribe, it is arguable that the validity of such Taxation Compact is dependent upon obtaining the approval of the Secretary of the Interior of the United States or his authorized representative pursuant to 25 U.S.C. sec. 81. Accordingly, as an additional condition precedent, prior to the close of the 1996 legislative session of the Colorado General Assembly, the parties must obtain the written approval of the Secretary of the Interior, or his authorized representative, of this Taxation Compact, or, alternatively, a written statement from such duly authorized official indicating that such written approval is not necessary or required under federal law.

2.05. Intergovernmental Agreement Operative.

Until such time that each of the conditions set forth above in Paragraphs 2.01, 2.02, 2.03, and 2.04 has been satisfied, the parties agree to honor and carry out the provisions of the Intergovernmental Agreement Concerning Taxation Negotiations referenced in Paragraph 1.02, above, and the parties hereby expressly extend the duration of said Intergovernmental Agreement Concerning Taxation Negotiations until the earlier of:
(a) The close of the 1996 legislative session of the Colorado General Assembly; or
(b) The satisfaction of the referenced conditions. In the event that each of the aforementioned conditions is not satisfied in the time provided, then, upon the close of the legislative session, the Intergovernmental Agreement Concerning Taxation Negotiations shall terminate, unless otherwise extended by the parties in writing.

Article Three

Tribal Immunity From Taxation.

3.01. Trust Property.

The parties acknowledge that historically neither the State nor the County has attempted to tax real or personal property located within the Reservation when such property has been owned by the United States of America in trust for the benefit of the Tribe ("trust property"). Such exempt property has included: Surface estates; subsurface estates; tribal landowner royalty interests in mineral leases issued by the Tribe in accordance with federal laws and regulations; and any other interests acquired by the Tribe in trust property. The parties acknowledge that in the absence of express consent from the United

States Congress, the Tribe, or as otherwise determined by the courts, trust property is exempt from State and local taxation. This Taxation Compact is not intended to and does not address whether there is express consent from the United States Congress and the Tribe for the taxation of trust property; however, the State and County agree to treat such trust property as exempt from State and County taxation for the duration of this Taxation Compact.

3.02. Tribal Reacquisitions of Interests in Trust Property.

The parties acknowledge that a decline in the County's assessed value will occur when the Tribe reacquires interests in real or personal property on trust property under Article 3.01 in circumstances when those property interests have been previously held by and taxable to non-Tribal parties. While the County and State agree that interests so acquired by the Tribe will be treated as not subject to taxation under Article 3.01, the Tribe and State agree to assist the County in exploring future cooperative efforts to mitigate the negative revenue impacts that may result from these Tribal acquisitions on trust lands. Those cooperative efforts will include joint efforts at seeking federal or state assistance as required to mitigate those revenue impacts and other joint revenue raising efforts acceptable to the Tribe, the State and the County.

3.03. Non-Trust Tribal Property.

So long as this Taxation Compact remains in full force and effect, the State and County shall not seek to tax any property, real or personal, owned or acquired by the Tribe and held by the Tribe in non-federal-trust status; provided that said property is located within the exterior boundaries of the Reservation. Tribal property intended by this paragraph to be treated as non-taxable includes, but is not limited to the following:

a. Real Property Surface Estates;
b. Real Property Subsurface Estates;
c. Mineral Lease Working Interests;
d. Mineral Lease Royalty Interests;
e. Mineral Lease Production Payments;
f. Tribal Income;
g. Vehicles and Mobile Homes;
h. Buildings or Improvements;
i. Equipment;
j. Security Interests;
k. Other Real or Personal Property.

3.04. Tribal Activities.

So long as this Taxation Compact remains in full force and effect, the State and the County shall not seek to impose on the Tribe, any activity undertaken by the Tribe, or tribal property, real or personal, located within the exterior boundaries of the Reservation the following taxes: An ad valorem tax (article 1 of title 39, C.R.S.); conservation levy or environmental response fund charge (section 34-60-122, C.R.S.); or severance tax (article

29 of title 39, C.R.S.).

3.05. Partial Interests.

So long as this Taxation Compact remains in full force and effect, the foregoing limitations on State and County taxation shall apply to partial or undivided interests owned by the Tribe, whether such interests arise from partnerships, joint ventures, or otherwise; provided that prior to such limitation becoming applicable, the Tribe shall file with the County and the State Department of Revenue, a declaration of the name of the partnership or joint venture, together with a statement listing the partners or venturers, the ownership interest of said partners or venturers, and a schedule of the on-Reservation property subject to any such partnership or joint venture.

3.06. Reports and Declarations by Third Parties.

So long as this Taxation Compact remains in full force and effect, any person or entity, other than the Tribe, required to submit reports or declarations related to the assessed value of property located within the Reservation owned by the Tribe, or any person or entity otherwise required to withhold and remit taxes or estimated taxes attributable to interests owned by the Tribe shall be permitted to report such tribal interests as exempt and shall not be required to withhold any taxes or estimated taxes with respect to such tribal ownership interests in such property or income.

3.07. State Legislative Amendments.

The Tribe maintains that the foregoing limitations on State and County taxation are mandated by federal statutes and case law and that the State and County are bound by such rules for decision under the United States Constitution, regardless of the provisions of State law. The County has taken the position that interests in real or personal property owned or acquired by the Tribe within the boundaries of the Reservation are subject to ad valorem property taxes in circumstances where those real or personal property interests within the Reservation have been previously taxed to or are taxable in non-Tribal ownership. The State's position is that real property acquired by the Tribe and not placed or held in trust by the federal government for the benefit of the Tribe is subject to taxation. In order to carry out the terms of this Taxation Compact, the parties covenant jointly to seek legislative amendment to existing State statutory law confirming that throughout the duration of this Taxation Compact, the limitation on State and County taxation set forth above in this Article will be recognized by the State. Specifically, the parties shall seek legislative enactments necessary to implement this Taxation compact, including the following:

Add a new section to article 3 of title 39, C.R.S., (or some other appropriate designation) which provides essentially as follows:

Taxation Compact with the Southern Ute Indian Tribe.

(1) The general assembly hereby finds and declares that the Taxation Compact dated March 18, 1996, entered into by and between the County of

La Plata, the Southern Ute Indian Tribe, and the Governor, is in the best interests of the State of Colorado and settles in a satisfactory manner a taxation dispute which has been and would otherwise continue to be a matter of extensive litigation.

(2) The general assembly hereby ratifies said Taxation Compact subject to the conditions and covenants therein contained.

(3) Limited to the duration of said Taxation Compact, with respect to the taxes and the charges imposed by article 29 of title 39, C.R.S. (i.e., severance tax) and article 60 of title 34, C.R.S. (i.e., conservation levy and environmental response fund surcharge), and with respect to ad valorem taxes (article 1 of title 39, C.R.S.), the Southern Ute Indian Tribe and all property, real and personal, owned by the Tribe and located within the exterior boundaries of the Southern Ute Indian Reservation shall be deemed as exempt from taxation as more particularly set forth in said Taxation Compact.

(4) The State Property Tax Administrator, whose duties, powers, and authority are described in article 2 of title 39, C.R.S., shall have the authority to resolve disputes submitted to the administrator for resolution pursuant to and in the manner prescribed by the Taxation Compact dated March 18, 1996, between the County of La Plata, the Southern Ute Indian Tribe, and the State of Colorado.

(5) Any statutory change necessary concerning the school bonded indebtedness provisions of said Taxation Compact.

Should the General Assembly of the State fail to enact such statutory amendments deemed by the parties as necessary to carry out the terms of this Taxation Compact by the close of the 1996 legislative session, the Taxation Compact shall terminate for failure of satisfaction of conditions precedent, unless otherwise extended in writing by the parties.

3.08. Limitation on Scope.

Nothing in this Article Three shall be construed as affecting in any manner the tax liability of any entity other than the Southern Ute Indian Tribe. Nothing in this Taxation Compact shall prevent the Oil and Gas Commission from charging its conservation levy and environmental response fee against any non-Indians operating within the exterior boundaries of the Southern Ute Indian Reservation.

Article Four

Real and Personal Property Interests

Subject to Taxation on the Reservation.

The parties acknowledge that certain non-Indian real and personal property interests within the exterior boundaries of the Southern Ute Indian Reservation, including the interests of non-Indian partners or venturers with the Tribe, are generally subject to State and local taxation; however, the Tribe maintains that those taxes may be legally objectionable in circumstances where Congress has expressly granted an exemption from such taxation or imposition of the tax poses a serious and demonstrable threat to the economic or political security of the Tribe. The Tribe agrees not to interpose any objection for the duration of this Taxation Compact to State and local taxation of non-Indian real and personal property interests located within the Reservation boundaries under current circumstances (i.e., so long as present levels of State and local taxation of such interests do not change significantly). Specifically, those non-Indian real and personal property interests for which the Tribe does not assert exemption from State and local taxation under this Taxation Compact include:

a. Real Property Surface Estates;
b. Real Property Subsurface Estates;
c. Mineral Lease Working Interests;
d. Mineral Lease Royalty Interests;
e. Mineral Lease Production Payments;
f. Vehicles and Mobile Homes;
g. Buildings or Improvements;
h. Equipment;
i. Security Interests;
j. Other Real or Personal Property;
k. Any Oil and Gas Production and Interest.

Article Five

Tribal Declaration of Real Property Acquisition.

5.01. Tribal Declaration.

Following acquisition by the Tribe of any interest in real property located within the boundaries of the Reservation, in order to be entitled to the benefits of this Taxation Compact relative to such interest, the Tribe shall file a declaration of such acquisition with the County Assessor, which declaration shall contain: A legal description of the real property interest acquired, including a geographical description and a statement of the interest acquired; identification of the grantor of such interest; the date of closing of the acquisition transaction; and, with respect to interests acquired by the Tribe in non-trust real property, a statement of tribal intent of whether or not application is to be made by the Tribe to the United States of America to place ownership of such acquired interest into trust status. If the Tribe subsequently applies to have such interest placed into federal trust status, the Tribe shall so notify the County Assessor in writing, and the Tribe shall

further notify the County Assessor in writing if and when such trust status is conferred.

5.02. Assessor's Annual Compilation.

No later than the thirty-first day of January of each year during which the Taxation Compact is in force, the County Assessor shall prepare a compilation of all tribally declared real property interests within the Reservation acquired during the preceding calendar year by the Tribe, which interests have not been identified by the Tribe as having been taken into trust status by the United States of America. For each such parcel or interest listed on said compilation, the County Assessor shall prepare a schedule showing within which taxing districts such parcel or interest is located, together with a statement of the mill levy attributable to said interests by taxing district as reported on the last applicable tax or assessment notice, and a statement of the assessed or estimated assessed value of such parcel or interest based on the last applicable assessment notice. If tribally acquired interests have been shown on a previously issued annual compilation under this paragraph for the immediately preceding year, without subsequent notification by the Tribe of either a change in ownership or trust status of such interests, the County Assessor shall carry forward such interests on the then current annual compilation with such updated schedules of mill levy by taxing district for the particular carried-forward interest or parcel. For each such listed parcel or interest, the County Assessor shall also submit, with the assistance of the County Treasurer, a statement of the amount of ad valorem tax revenue that would have been collected during said applicable annual period, or part thereof during which the Tribe owned a listed interest, but for the Tribe's ownership. Upon completion of the annual compilation, the County Assessor shall promptly forward the same to the designated representative of the Tribe.

5.03. Tribal Valuation Protest.

No later than forty-five days following its receipt of the County Assessor's Annual Compilation of tribally acquired interests, valuation, and statement of tax revenue, the Tribe may submit to the County Assessor a protest of the valuation estimate or statement of tax revenue for any parcel or interest which the Tribe believes is overstated in the Annual Compilation. Said protest shall be accompanied by written justification setting forth the basis for the protest. Such justification may include, for example, records of actual production and sales value of oil and gas or coalbed methane using valuation criteria similar to that employed by the State in valuing non-Indian oil and gas properties. Should the County Assessor and the Tribe not be able to reach agreement as to the proper valuation or statement of tax revenue to be assigned to any such parcel or interest, then said dispute shall be submitted to the State Property Tax Administrator for resolution. The State Property Tax Administrator shall employ such procedures he or she deems fair and reasonable for hearing the dispute, provided that in any event, both the Assessor and the Tribe shall have an effective opportunity to state their respective positions. The State Property Tax Administrator shall issue a ruling resolving said dispute no later than the first day of June of any such year, which ruling shall be binding and final. In no event

shall the State Property Tax Administrator be permitted to reach a finding of valuation or a statement of tax revenue greater than that originally estimated by the County Assessor as set forth in the Annual Compilation.

Article Six

Annual Tribal Payment in Lieu of Taxation.

6.01. Voluntary Payment.

In consideration for the covenants herein contained, the Tribe agrees during each year that this Taxation Compact is in full force and effect to make a voluntary payment to the County as more particularly described below.

6.02. Non-Public School Share and Bonded Indebtedness.

The Tribe hereby agrees to remit to the County no later than the fifteenth day of June of each year a voluntary payment in lieu of taxes which shall be equal to the non-public school share of annual real property ad valorem taxes, plus the portion of annual real property ad valorem taxes that are attributable to public school bonded indebtedness, for non-trust real property owned or acquired by the Tribe within the Reservation that otherwise would have been assessed and collected but for acquisition or ownership of such real property by the Tribe. The parties agree that the Colorado statutory definitions for the terms "real property" and "personal property" presently contained in article 1 of title 39, C.R.S., shall apply for purposes of this section of this Taxation Compact; provided however, the parties agree that regardless of how they are treated under Colorado law, mobile homes owned or acquired by the Tribe shall be considered personal property for purposes of this section of this Taxation Compact.

6.03. How Determined and Reported.

The amount of said voluntary payment will be computed based on the total sum of taxes that would have been collected for each parcel or interest listed on the County Assessor's Annual Compilation for all non-public school taxing districts. Together with the Tribe's voluntary payment, the Tribe shall submit a schedule setting forth the amount of voluntary payment being made for each parcel or interest contained on the County Assessor's Annual Compilation.

6.04. Previously Acquired Non-Trust Real Property.

The parties acknowledge that the County asserts a claim for seventy-seven thousand sixty-five dollars and eighty-four cents ($77,065.84) in taxes due on non-trust real property acquired by the Tribe from and previously taxable to non-Tribal parties for the period of time prior to the 1996 tax year (i.e., prior to and including December 31, 1995). The Tribe agrees to pay the County seventy-seven thousand sixty-five dollars and eighty-four cents ($77,065.84) in full satisfaction of any claims that the County may have against the Tribe relating to these claims. Additionally, prior to December 31, 1996, the Tribe agrees to provide to the County Assessor, in a format consistent with that described in

Section 5.01, supra, a listing of real property interests owned by the Tribe, not held in trust, acquired by the Tribe prior to the effective date of this Taxation Compact for which the Tribe is entitled to exemption from taxation under the provisions of Section 3.03, supra.

Article Seven

Tribal Oil and Gas Operations;

Reporting and Remittance for Non-Indian Parties.

7.01. Red Willow Production Company.
The parties acknowledge that the Tribe serves as the operator of oil, gas, and coalbed methane wells which produce minerals associated with both trust and non-trust mineral interests located within the Reservation. Such operations have been conducted by the Tribe under the name Red Willow Production Company, which is wholly owned by the Tribe. While in most instances such operations involve mineral leases issued by the Tribe pursuant to federal law, there are situations in which the underlying leases have been issued or could have been issued by non-Indian mineral interest holders. In either instance, however, non-operating interest holders typically include non-Indians who own working interests or overriding royalty interests in the applicable leases. The parties acknowledge that nothing in this Taxation Compact shall preclude the collection of lawful and applicable taxes and charges on property and interests owned by the Tribe and located outside the exterior boundaries of the Southern Ute Indian Reservation.

7.02. State and County Reporting Requirements.
Under existing State law, well operators are required to submit to State and County officials reports related to the conduct of well production activities and the disposition of produced substances. Such reports are utilized by the Colorado Oil and Gas Conservation Commission to monitor and regulate the development of oil, gas, and coalbed methane resources within the State. Additionally, such reports are available for use by the Colorado Department of Revenue and County officials to assess and collect taxes, including severance tax and ad valorem tax, from the actual holders of interests in minerals or from the beneficiaries of income derived from energy resource development. Based upon the reporting requirements imposed upon well operators, and based upon statutory provisions which require well operators to withhold and remit funds from production income to meet the tax liabilities of non-operating interest holders of such wells, compliance by well operators in submitting timely reports and remitting taxes withheld is integral to the effective operation of State tax laws with respect to non-operating interest holders.

7.03. Red Willow Reporting Responsibilities.
In order to assist the State and County in obtaining information needed for the effective

monitoring and regulation of resource development, the accurate valuation of taxable interests of non-Indian interest holders on the Reservation, and the collection of taxes from parties lawfully subject to State and County taxes, the Tribe d/b/a Red Willow Production Company (or in whatever name the Tribe is doing business) agrees to remit reports and declarations involving energy production activities on the Reservation over which it serves as operator on the following basis:

a. **Operational Reports.** With respect to operational reports and filings, including, for example, applications for permits to drill and sundry notices, involving mineral operations conducted by Red Willow Production Company subject to federal supervision on lands within the Reservation, the Tribe hereby consents to provide or to cause the appropriate federal agencies to provide informational copies of documents filed by Red Willow with such federal agencies to the Colorado Oil and Gas Conservation Commission. This tribal consent is intended as a supplement to joint cooperative procedures already contained in the Memorandum of Understanding and Interagency Agreement between the Tribe and the Bureau of Land Management and the Bureau of Indian Affairs and the Bureau of Land Management, dated August 22, 1991, and in the Memorandum of Understanding between the Colorado Bureau of Land Management and the Colorado Oil and Gas Conservation Commission, dated August 22, 1991.

b. **Severance Tax Reports and Withholding.** The Tribe hereby agrees to submit to the executive director of the Colorado Department of Revenue an annual report related to energy impacts as otherwise required by section 39-29-110, C.R.S. With respect to wells operated by Red Willow located on the Reservation, the Tribe agrees to withhold from income it receives for the sale of production attributable to non-Indian interests such amounts otherwise required to be withheld on a quarterly basis pursuant to section 39-29-111, C.R.S., and to remit such withholding, together with forms for related reporting, to the Colorado Department of Revenue.

c. **Ad Valorem Declarations.** With respect to any leased lands that are producing or are capable of producing oil or gas on the assessment date of each year, which are operated by Red Willow on the Reservation, the Tribe shall file with the County Assessor in accordance with section 39-7-101, C.R.S., and section 39-5-107, C.R.S., a declaration of the oil, gas, or coalbed methane sold or transported from the premises, which declaration shall designate the Tribe's exempt share, if any, and such tax schedules normally filed by non-Indian operators designating such taxable personal property of non-operators or portions thereof over which Red Willow exercises control as operator. In preparing and filing any such declarations

or schedules, the Tribe shall be entitled to list its own ownership share as exempt.

7.04. Cooperation in Reporting.

In order to assist the Tribe in complying with the reporting obligations of this Article Seven, officials from the State and the County shall make reasonable efforts to meet with tribal officials responsible for rendering such reports and to cooperate with said tribal officials to eliminate any unnecessary reporting obligations and to develop mutually acceptable means for facilitating the transmission of reported information. To the extent practicable and satisfactory, the parties may utilize and develop electronic reports and data retrieval systems.

Article Eight

Statement of Completion of Improvements

By Non-Indians on Tribal Lands.

8.01. Tribal Consent for Surface Disturbance.

In accordance with federal law and regulations, including 25 U.S.C. sec. 476, and the Constitution of the Southern Ute Indian Tribe, tribal consent is required as a condition for third parties to obtain valid mineral leases, surface leases, commercial leases, rights-of-way or easements, or to conduct surface disturbing activities on tribal surface lands, whether held in trust or non-trust status. The Tribe maintains that it possesses the authority to condition its approval or consent to the issuance of such rights to third parties. The County has indicated that its efforts to determine the assessed valuation of improvements constructed by third parties on tribal lands pursuant to tribal authorization have been hampered by a lack of knowledge of the completion or installation of such improvements, including pipelines and compressor stations.

8.02. Disclosure of Completion of Improvements.

Where the Tribe, in its sole discretion, determines that it has the legal right to do so, the Tribe covenants to establish a uniform procedure imposing, as a condition for the grant of its consent to the issuance of leases or rights-of-way on tribal lands involving the installation or construction of improvements, including pipelines or compressor stations, a requirement that the grantee or direct beneficiary of such rights shall notify the County Assessor in a timely manner of the completion of such improvements or facilities.

8.03. Rights Withheld.

In agreeing to require disclosure of completion of improvements by third parties on tribal land, the Tribe expressly reserves and retains all authority it possesses to control where and in what manner such improvements may be located or constructed. The disclosure requirement is solely intended as an aid to the County in conducting determinations of assessed valuation, and is not intended as conceding that the State or the County

possesses the authority to tax such improvements.

Article Nine

Access to Tribal Land for Assessment.

9.01. Conditional Consent to Cross Tribal Lands.
Subject to the conditions hereinafter set forth, the Tribe hereby consents to permit the County Assessor and his duly authorized representatives to cross tribal lands for the purpose of performing assessment and valuation activities with respect to improvements located within the Reservation, including, but not limited to: Oil, gas, and coalbed methane wells; compressor stations; pipelines; buildings; and surface facilities or equipment.

9.02. Annual Permit.
Upon the effective date of this Taxation Compact, and no later than the fifteenth day of January every year thereafter, the County Assessor shall contact the Director of the Division of Natural Resources of the Tribe to obtain a written permit evidencing his authority to cross tribal lands. The County Assessor shall provide to said Director a list of names of persons acting under his authority who he intends to have cross tribal lands for the purposes specified herein, together with a description of vehicles to be used by such persons and corresponding vehicle registration numbers. The list shall be updated from time to time to reflect changes in personnel within the office of the County Assessor. The County Assessor shall require any person within his supervision acting under authority of this Article Nine to carry such permit with him while performing assessment duties within the Reservation. Said permit shall be valid for one year, and shall bear the signature of the County Assessor and the Director.

9.03. Possession of Alcohol and Firearms Prohibited.
Any person, while carrying out his assessment duties within the Reservation pursuant to the aforementioned permit, shall be prohibited from carrying firearms or alcoholic beverages.

9.04. Prior Notice for Tribal Lands.
Prior to entering upon tribal lands for the purpose of inspecting or evaluating any facility or improvement so located, the County Assessor or his authorized delegee shall notify the Director of his intentions and the approximate location of the inspection or evaluation. In the event that the facility to be inspected is related to oil, gas, or coalbed methane operations on tribal surface or mineral lands, the County Assessor shall also notify the Director of the Energy Resource Division of the Tribe.

9.05. Permit Revocation.
In the event that the County Assessor or his authorized delegates fail to comply with the conditions set forth in section 9.03 of this Article, the Tribal Council Chairman shall be authorized to revoke said permit, in whole or in part. In the event that the County

Assessor or his authorized delegates fail to comply with the other conditions set forth in this Article, and such failure is wilful or material, the Tribal Council Chairman shall be authorized to revoke said permit, in whole or in part. Should such permit be revoked in whole, it shall not be eligible for reinstatement until the following year. Revocation of a crossing permit for cause shall not be grounds for termination of this Taxation Compact.

Article Ten

Collection Procedures for Delinquent Taxes

of Non-Indians on Tribal Lands.

10.01. Tribal Court Recognition Required.

No lien created by operation of State law in any interest in Tribal real property, whether owned by the Tribe or by a non-Indian, or in personal property or improvements located on Tribal real property located within the boundaries of the Reservation, shall be recognized by the Tribe as having lawful effect unless recognized under principles of comity by the Southern Ute Tribal Court.

10.02. How Recognition is Obtained.

The Tribal Council hereby covenants to enact by appropriate resolution and ordinance a specially designated section of the Southern Ute Indian Tribal Code addressing recognition of State and County tax liens and the procedure by which such liens may be effectively foreclosed by said officials. Such enactment shall provide that recognition of State created liens, in interests in tribal real property or in personal property located on tribal real property, for non-payment of taxes may be obtained by the appropriate officer of the State or County by commencing an action for such recognition in the Tribal Court. Such action shall name as respondent the person or persons against whom the lien is claimed and shall set forth the basis supporting the lien. Any named respondent shall have the opportunity, in accordance with the Tribe's Civil Procedure Code, to contest the underlying jurisdictional basis of such lien, or the sufficiency of due process in its issuance. Should the named respondent fail to demonstrate an absence of jurisdiction or a lack of due process in the creation of the lien, the Tribal Court shall be required under the enactment to afford recognition to said lien effective as of the date of its creation under State law. Such recognition shall be evidenced by a judgment of recognition entered by the Tribal Court.

10.03. Execution and Foreclosure.

a. Personal Property. The Tribal enactment contemplated in the foregoing section shall provide that recognized tax liens on personal property may be executed upon in accordance with the Enforcement of Secured Transactions Code, Title 15, Southern Ute Indian Tribal Code.

b. Real Property Interests. The Tribal enactment contemplated in the foregoing section shall also specifically address the foreclosure on real property interests in Tribal real property in a manner that comports with both Tribal and federal law, and to the extent applicable, state law. In that regard, the transfer of an interest in Tribal real property requires both Tribal and federal written consent. Both the Tribe and the United States must be provided an opportunity to ensure that purchasers of interests foreclosed upon meet the necessary qualifications to hold such interests under Tribal and federal law. Provision shall be made in said enactment for a process of qualification of bidders at a foreclosure sale in a manner that will not unduly restrict the ability for the State and the County to foreclose on liens on Tribal real property interests owned by non-Indians within the Reservation.

Article Eleven

Duration of Taxation Compact.

11.01. Conditions Subsequent.

This Taxation Compact is premised upon certain conditions that currently exist or that must exist prior to its effectiveness. Certain of such conditions, once in place, are beyond the ability of the parties to control fully; however, alteration of such conditions could dramatically change the nature of the amicable agreement reflected in this Taxation Compact. Accordingly, this Article is intended to identify those conditions subsequent, which, in the absence of amendment of this Taxation Compact will result in its termination. In order to provide the parties an opportunity to amend the Taxation Compact prior to its automatic termination, unless otherwise agreed by the parties in writing, there shall be a 120-day period between the creation of such conditions subsequent and the termination of the Taxation Compact. During the 120-day period, the parties shall meet and confer at least once in an attempt to resolve the issues created by that change in circumstance in a mutually acceptable manner. Any party that believes such a change in circumstance has occurred shall promptly notify the other parties of said occurrence in writing. The commencement of the 120-day period shall begin on the date of such written notice.

11.02. Substantial Alteration or Repeal of Public School Financing and Equalization.

This Taxation Compact is premised on the continuation of the equalization formula set forth under the Public School Finance Act of 1994, article 54 of title 22, C.R.S., which is intended to provide equalization payments to school districts throughout the State including the school districts in La Plata County in a manner that includes the consideration of the assessed value for real and personal property taxes. Accordingly, the

parties understand that the level of funding available to school districts in La Plata County from the State of Colorado will be adjusted in accordance with the equalization formula of the Public School Finance Act in a manner that will address tax revenue losses, except for those associated with bonded indebtedness, to the school districts within La Plata County resulting from real and personal property acquisitions by the Tribe of properties that are subject to the provisions of Sections 3.01 and 3.03 of this Taxation Compact. This Taxation Compact shall terminate, in accordance with the provisions of Section 11.01, in the event that the Public School Finance Act does not in the future operate in such a manner to achieve the results set forth in this Section 11.02.

11.03. Escalation of Non-Public School Taxation District Average Percentage of County Mill Levy above 33-1/3 Percent.

This Taxation Compact is premised on the fact that the average portion of total real property tax levies assessed and collected by the County and its officials attributable to public school taxing districts for any taxed parcel or interest is approximately 70% of the total real property tax assessed and collected by the County and its officials for such parcel or interest. Accordingly, in estimating the voluntary payment that may be due in any annual period of this Taxation Compact for any parcel listed in the Assessor's Annual Compilation, the Tribe anticipates paying an amount that will not exceed approximately 30% of the total mill levy that would have been applicable, but for the Tribe's ownership. Should the aggregate average percentage of non-public school district taxes, as reflected in the Assessor's Annual Compilation, exceed 33-1/3% of the total taxes that would have been assessed with respect to the properties therein listed, the Tribe shall be required to remit as its annual voluntary payment in lieu of taxes an amount no greater than 33-1/3% of the aggregate total tax that would have been assessed, but for the Tribe's ownership. In said event, and upon receipt of the Tribe's annual voluntary payment and accompanying report, the County shall have the option to accept said payment in full satisfaction of the Tribe's contractual liabilities under this Taxation Compact for the immediately preceding tax year, or the County may notify the parties of the occurrence of a condition subsequent in accordance with Section 11.01 above. Should the parties be unable to make mutually satisfactory amendments to this Taxation Compact caused by the change in percentage of non-public school district taxation of total taxation, then this Taxation Compact shall terminate. In said event, the annual voluntary payment tendered by the Tribe shall be held in escrow in an account established by the State, to be distributed in accordance with the order of a court of competent jurisdiction or in accordance with the mutual written agreement of the parties.

11.04. Escalation of Annual Tribal Payment in Lieu of Taxes Above One Million Dollars ($1,000,000).

Should the annual voluntary payment of the Tribe, computed in accordance with this Taxation Compact, ever exceed the amount of one million dollars ($1,000,000), then the Tribe shall have the option in any such year to either make the payment or notify the

parties of termination of the Taxation Compact in accordance with Section 11.01 above. Should the parties be unable to make mutually satisfactory amendments to this Taxation Compact caused by the unanticipated amount of such annual voluntary payment, then this Taxation Compact shall terminate.

11.05. Voluntary Termination by State, County, or Tribe.

Upon one year's notice in writing as set forth in this Taxation Compact, any of the parties may choose to voluntarily terminate this Compact. Upon the notice of such voluntary termination which shall include a statement of reasons and issues as to why the party is terminating this Compact, the matter shall be subjected to the alternative dispute resolution process set forth in Article 12 of this Taxation Compact. Upon any voluntary termination of this Taxation Compact by any of the parties to this Taxation Compact, other than pursuant to sections 11.01-11.04, the Tribe shall make payment to the County pursuant to Section 6.02 calculated up to the end of the tax year preceding the year in which the notice of such termination occurs and the County shall accept such payment in full satisfaction of any obligation the Tribe may have for payment of taxes to the County for the tax year preceding the year in which the notice of such voluntary termination occurs.

Article Twelve

Dispute Resolution.

12.01. Dispute Resolution Mechanism.

The parties shall attempt to promptly and in good faith resolve any dispute arising out of or relating to the matters addressed in the Taxation Compact. Any party may give the other parties written notice of any dispute not resolved in the normal course of business which notice shall include a statement of reasons and issues for the proposed termination as set forth in Article Ten. Upon the receipt of such notice, a meeting at a mutually acceptable place and time shall be scheduled within 15 days after delivery of such notice and will be attended by the Governor of the State of Colorado, the Chairman of the Southern Ute Indian Tribal Council, the Chairman of the La Plata County Board of County Commissioners or their respective designees, and said officials or their designees shall meet to exchange information relating to the dispute and to attempt to resolve the dispute. If the parties are unable to reach agreement to resolve the dispute within 60 days from the date of the notice invoking the provisions of this Article Twelve, the parties within 15 days after the passage of such 60-day period shall agree upon a single arbitrator to render a recommended decision to the parties concerning the resolution of the dispute. The arbitrator shall render his or her decision within 120 days of the date of notice invoking the provisions of this Article Twelve. The decision of the arbitrator shall then be implemented by the parties, provided however, that the State's obligation to implement the decision shall be subject to State constitutional limitations, unless affirmatively

rejected by any of the parties in writing setting forth that party's conclusions and reasons for such rejection within 30 days of the arbitrator's recommended decision.

Article Thirteen

Miscellaneous.

13.01. Third Party Rights Unaffected.
Except as provided herein, this Taxation Compact is not intended by the parties to affect the individual rights of third parties or entities, including rights of individual members of the Tribe or the rights of persons subject to taxation by the State, County, or Tribe.

13.02. Amendments.
The parties may amend this Taxation Compact from time to time in writing, provided that such amendment must bear the signature of an authorized representative of each party. This provision for amendment, however, is not intended to grant to any party individually or to the parties collectively any legislative authority to change State or Tribal law without the concurrence of the appropriate legislative body.

13.03. Annual Review.
On the anniversary date of this Taxation Compact or the first business day thereafter, or on some other mutually agreed upon date, but in no event less than annually, the parties to this Taxation Compact agree to meet and confer to discuss compliance, progress in implementation, whether amendments are necessary, and other issues related to this Taxation Compact.

Article Fourteen

Post-Compact Non-Waiver and Preservation.

14.01. Preservation of Rights, Claims, and Defenses.
Upon the termination of the Taxation Compact, the parties may wish to reinstitute litigation concerning any claims and defenses relating to taxation within the exterior boundaries of the Reservation, and if that occurs, the parties understand and agree that all issues relating to State and local taxation may be litigated *de novo* including any and all claims and defenses related to the taxation of all real and personal property interests within the Reservation as set forth in Articles Three and Four of the Taxation Compact. The parties acknowledge, understand and agree that this Taxation Compact, the prior litigation and the settlement negotiations leading up to this Taxation Compact shall not operate as a bar, waiver of any rights of the parties, or in any respect affect the ability of any party to this Taxation Compact to institute litigation and seek declaratory or injunctive relief or damages. The parties acknowledge, understand and agree that this Taxation Compact and the conduct of the parties pursuant to this Taxation Compact shall not be used in discovery or admissible into evidence, and all negotiations relating to this

Taxation Compact and efforts to resolve any disputes relating to this Taxation Compact under Article Eleven shall be treated as compromise in settlement negotiations for purposes of the Federal Rules of Evidence, State Rules of Evidence, or Tribal Rules of Evidence. Notwithstanding the foregoing, however, for every annual period during which the Tribe makes and the County accepts, without contest, an annual voluntary payment in lieu of taxes, the Tribe shall be barred from asserting as a claim the sum of such payment, and the County and State shall be barred from seeking any taxes from the Tribe attributable to property, real or personal, owned by the Tribe within the Reservation.

IN WITNESS WHEREOF, the parties set forth their hands and seals on the date first above written.

Fred W. Klatt, III,
Chairman
Board of County Commissioners

Craig Larson,
La Plata County Assessor
La Plata County, Colorado

Leonard C. Burch,
Chairman
Southern Ute Indian Tribal Council
Southern Ute Indian Tribe

Ed Murray,
La Plata County Treasurer

Roy Romer,
Governor
State of Colorado

24-61-103. Compact to be ratified. Said taxation compact shall not become binding or operative unless and until the same has been ratified by the legislative bodies of each of the signatory entities and approved by the secretary of the interior of the United States, if required, in accordance with section 2.04 of article two of said taxation compact. The governor of the state of Colorado shall give notice of state approval of said taxation compact to the La Plata county board of county commissioners and the Southern Ute Indian tribal council.

PART 2

TRIBAL PROPERTY IMPACT MITIGATION FUND

24-61-201. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) A taxation compact has been entered into between the Southern Ute Indian tribe, La Plata county, and the state of Colorado, as set forth in House Bill 96-1367, enacted at the second regular session of the sixtieth general assembly; and

(b) Pursuant to section 3.02 of said compact, the tribe, the county, and the state have agreed to explore means of mitigating the local property tax revenue impacts of tribal acquisitions on trust property.

(2) It is the intent of this part 2 to establish a mechanism for holding and distributing moneys made available from any source to implement the provisions of section 3.02 of said compact.

24-61-202. La Plata county to establish fund - requirements. (1) The board of county commissioners of La Plata county shall establish a fund to be known as the tribal property impact mitigation fund, referred to in this part 2 as the "impact fund", to which all moneys contributed, transferred, appropriated, or otherwise made available for mitigating the impacts of acquisitions of property by the Southern Ute Indian tribe on local governments pursuant to section 3.02 of the taxation compact between the Southern Ute Indian tribe, La Plata county, and the state of Colorado, as set forth in House Bill 96-1367, enacted at the second regular session of the sixtieth general assembly, shall be deposited.

(2) Moneys from any source, including but not limited to the state or the United States, may be deposited in the impact fund and released to La Plata county for distribution to taxing authorities within La Plata county to mitigate the revenue impacts addressed in section 3.02 of the taxation compact between the Southern Ute Indian tribe, La Plata county, and the state of Colorado, as set forth in House Bill 96-1367, enacted at the second regular session of the sixtieth general assembly.

(3) The impact fund shall be under the control of a three-member board comprised of the chairman of the La Plata county board of county commissioners, the chairman of the Southern Ute Indian tribal council, and the governor, or their respective designees.

(4) Moneys may be distributed from the impact fund upon an affirmative vote of a majority of the members of the board described in subsection (3) of this section and all distributions shall be made in accordance with the direction of said board.

ARTICLE 62

Intergovernmental Agreement Between
the Southern Ute Indian Tribe and the State of Colorado
Concerning Air Quality Control on the Southern Ute Indian Reservation

24-62-101. Intergovernmental agreement between the Southern Ute Indian tribe and the state of Colorado concerning air quality control on the Southern Ute Indian reservation. The general assembly hereby approves the intergovernmental agreement between the Southern Ute Indian tribe and the state of Colorado, referred to in this section as the "Agreement", dated December 13, 1999, and signed by Bill Owens, governor of Colorado; Howard D. Richards, Sr., vice-chairman of the Southern Ute Indian tribal council; and Ken Salazar, attorney general of Colorado. Said compact is as follows:

INTERGOVERNMENTAL AGREEMENT
between
THE SOUTHERN UTE INDIAN TRIBE
and THE STATE OF COLORADO
CONCERNING AIR QUALITY CONTROL
ON THE SOUTHERN UTE INDIAN RESERVATION

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the SOUTHERN UTE INDIAN TRIBE ("Tribe") and the STATE OF COLORADO ("State").

Article I
Purpose and Summary of the Agreement.

The purpose of this Agreement is to establish a single air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation ("the Reservation Air Program"). The Southern Ute Indian Tribe/State of Colorado Environmental Commission ("Commission") established under this Agreement shall promulgate rules and regulations for the Reservation Air Program and shall conduct review of appealable administrative actions, pursuant to laws enacted by both parties. Any United States Environmental Protection Agency ("EPA") delegation to the Tribe as contemplated in this Agreement shall be contingent upon and shall last only so long as this Agreement is in effect and shall be exercised pursuant to this Agreement. The Commission shall be the air quality policy making and the administrative review entity for the Reservation Air Program. When all conditions and terms of this Agreement are fully in effect, the Tribe and the State intend that the Reservation Air Program shall be implemented and administered by the Tribe, pursuant to a delegation from the EPA, through the use of the staff of the Tribe's Environmental Programs Division ("EPD"), with the participation of the State's Air Pollution Control Division as outlined in this Agreement.

Article II
Background.

The Southern Ute Indian Reservation ("Reservation") is located in southwest Colorado in the southern portions of La Plata and Archuleta Counties. Congress confirmed the boundaries of the Reservation in the Act of May 21, 1984, Pub. L. No. 98-290, 98 Stat. 201, 202 (found at "Other Provisions" note to 25 U.S.C.S. § 668) ("P.L. 98-290"). The Reservation encompasses approximately 681,000 acres, of which approximately 308,000 surface acres are held in trust by the United States for the benefit of the Tribe. Additionally, the Tribe owns the mineral estate underlying a majority of Reservation lands. As the result of the historical allotment, homesteading, and restoration of undisposed of lands to tribal ownership, the Reservation is a checkerboard of land ownerships, including: lands held in trust by the United States for the Tribe's benefit; lands held in trust by the United States for the benefit of individual tribal members; lands owned in fee by members of the Tribe; lands owned in fee by non-Indians; and National Forest lands.

The Clean Air Act directs EPA to promulgate regulations specifying those Clean Air Act provisions for which Indian tribes may be treated in the same manner as states for the purposes of primacy in the development and implementation of air quality programs, 42 U.S.C. § 7601 (d). EPA promulgated such regulations on February 12, 1998, 63 Fed. Reg. 7253. Pursuant to the Clean Air Act and EPA regulations, tribes have the flexibility to assume responsibility for administering some, but not necessarily all, Clean Air Act programs and preserving that flexibility is important to the Tribe.

In July, 1998, the Tribe submitted an application for treatment as a state ("TAS application"). In its application, the Tribe requested it be treated as a state with respect to the administration of Clean Air Act programs over all land located within the exterior boundaries of the Reservation. The specific purposes of the TAS application were to receive grant funding under section 105 of the Clean Air Act and recognition as an "affected State" to comment on draft operating permits. The Tribe asserted in its TAS application that it has jurisdiction to regulate all sources of air pollution located within the Reservation's exterior boundaries under the Clean Air Act, including non-Indian owned sources located on fee lands.

In its comments on the Tribe's TAS application, the State has objected insofar as the application requests tribal Clean Air Act authority over non-Indian owned sources located on fee land within the exterior boundaries of the Reservation. The State asserts that P.L. 98-290 establishes its jurisdiction to regulate non-Indian owned sources located on fee lands within the Reservation boundaries. There is no dispute as to the Tribe's jurisdictional authority to regulate sources of air pollution located on trust lands within the Reservation and Indian-owned sources located on fee land within the Reservation.

The purpose of P.L. 98-290 was to avoid long and costly litigation over issues

dependent on reservation or Indian country status by confirming the boundaries of the Southern Ute Indian Reservation and defining jurisdiction within such reservation. Despite the enactment of P.L. 98-290, the Tribe and the State do not agree as to territorial and regulatory jurisdiction concerning the administration of Clean Air Act programs relative to non-Indian air pollution sources on fee land within the boundaries of the Reservation. Notwithstanding the Tribe's and the State's conflicting jurisdictional assertions regarding the regulation of non-Indian sources of air pollution located on fee lands within the boundaries of the Reservation, the Tribe and the State wish to work cooperatively to develop a comprehensive air quality program applicable to all lands within the boundaries of the Reservation to improve and protect the air quality on the Reservation. It is agreed that the air quality program to be developed pursuant to this Agreement should reflect the particular interests of the Tribe, yet remain compatible with State air quality goals. The State and the Tribe, as governments that share contiguous physical boundaries, recognize that it is in the interest of the environment and all residents of the Reservation and the State of Colorado to work together to ensure consistent and comprehensive air quality regulation on the Reservation without threat of expensive and lengthy jurisdictional litigation.

The Tribe and State agree that the establishment of a single collaborative authority for all lands within the exterior boundaries of the Reservation best advances rational, sound, air quality management and will minimize duplicative efforts and expenditures of monetary and program resources by the Tribe and the State. The State and the Tribe also agree that the establishment of such an air program would create the most readily defined regulatory environment for sources on the Reservation. Therefore, this Agreement encompasses the regulation of all air pollution sources on the Reservation.

Article III
Authorities.

The Tribe is a federally recognized Indian tribe that is organized under a constitution, approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461, et seq.). The Tribal Council of the Southern Ute Indian Tribe is authorized to act for the Tribe by the Constitution adopted by the Southern Ute Indian Tribe and approved by the Secretary of the Interior on November 4, 1936, and approved as amended on October 1, 1975.

Colorado is a state admitted to the United States of America on an equal footing, pursuant to Art. IV, § 3 of the Constitution of the United States of America. The State of Colorado was duly formed in 1876 under its Constitution and Enabling Act. The Governor of the State of Colorado is empowered to act on behalf of the State pursuant to Art. IV of the Colorado Constitution and other authorities.

In the Clean Air Act, Congress encourages cooperative activities and agreements between adjoining governments for the prevention and control of air pollution, 42 U.S.C. § 7402. Moreover, EPA strongly encourages tribal and State cooperation in the development of air programs, 64 Fed. Reg. 8253.

Article IV
Preservation of Jurisdiction and Sovereign Immunity.

Nothing in this Intergovernmental Agreement shall affect the respective jurisdictions of the Tribe and the State as set forth in P.L. 98-290, until and unless changed by federal legislation. By entering into this Agreement, neither the State nor the Tribe concedes or waives any legal arguments concerning the authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation. Upon termination of this Agreement, the parties acknowledge, understand and agree that this Agreement shall not operate as a bar, waiver of any rights of the parties, or in any respect affect the ability of any party to this Agreement to assert its arguments in support of its authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation.

Nothing in this Agreement shall be construed as constituting a waiver of any immunity by either the Tribe or State for any purpose whatsoever.

Article V
Process for Establishing the Reservation Air Program.

The Tribe and the State agree that establishing the Reservation Air Program will take many steps and occur in phases. The parties set forth the phases here to serve as a context for the remainder of the terms of this Agreement. A description of the phases also clarifies the particular aspects of this Agreement that are operative at any given time.

A. Formation Phase. The Formation Phase is the time between execution of this Agreement and the enactment of tribal and State legislation that approves of this Agreement and creates the Commission as provided in Articles VII and VIII. In the Formation Phase, the Tribe and the State will seek the enabling legislation. If EPA grants the portion of the Tribe's TAS application seeking grant authority only for the limited purpose of determining that the Tribe is eligible to receive grant funding under section 105 of the Clean Air Act, the State will not contest this limited EPA finding. To implement the terms and conditions of this Agreement, the EPA will also have to find that the Tribe has authority to and is eligible to implement a regulatory program under the Clean Air Act. The Tribe will incorporate this Agreement and the Commission's role under this Agreement in any amended TAS application or request for EPA delegation to the Tribe of Clean Air Act programs. The Tribe and the State agree that they will

cooperate to obtain this further finding and approval from EPA as is necessary for and subject to the performance of this Agreement. The parties will also seek federal legislation as set forth in this Agreement. During the Formation Phase, the Tribe and the State will work cooperatively to administer and enforce an air quality program for the Reservation, as provided in Article IX.

B. Development Phase. The Development Phase is the time period after enactment of the tribal and State legislation creating the Commission and its authority and before adoption of federal legislation and delegation by the EPA of any Clean Air Act programs. In the Development Phase, the Commission will determine which parts of the Clean Air Act or other air programs to incorporate into the Reservation Air Program, based on State or other regulations as modified by the Commission to address the particular local circumstances of the Reservation. The Tribe will then apply for delegation of those programs from EPA, such delegation being conditioned upon compliance with this Agreement, including the Commission's authority to participate under this Agreement in the administration of the Reservation Air Program. The Commission will also adopt procedural rules and regulations for the Reservation Air Program. The Commission will work cooperatively with the Tribe's EPD staff in the administration and implementation of the Reservation Air Program, as set forth in Articles VII and VIII. The parties shall also diligently seek federal legislation during the development phase.

C. Program Phase. The program phase is that time period after enactment of federal legislation and after actual delegation of Clean Air Act Programs by the EPA. At that point all components of this Agreement will be in effect.

Article VI
Conditions.

A. Legislative Ratification. As a condition to implementation of this Agreement, the parties agree that this Agreement must be approved by the Colorado General Assembly.

B. State Statutory Enactment. As an additional condition, the parties agree that the state legislation needed to implement the terms of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, shall be enacted by the Colorado General Assembly during the Second Regular Session of the Sixty-Second General Assembly.

C. Tribal Enactment. As an additional condition, the parties agree that the Tribe, through its Tribal Council, shall enact such resolutions or ordinances approving and permitting the implementation of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, no later than January 26, 2000.

D. Agreement for Federal Enactment. The parties agree to support and to seek

the passage of federal legislation, as provided in Article XI. The parties agree to seek and support passage of such federal legislation during the Congressional session held during the years 2000, 2001, and 2002. As an additional condition, if such federal legislation is not enacted within three years of the effective date of this Agreement, this Agreement shall become null and void.

Article VII
The State/Tribe Environmental Commission.

The Tribe and the State shall establish a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission ("Commission"), by the enactment of legislation by each party. The Commission is not an agency of the State of Colorado nor the Southern Ute Indian Tribe, but is a separate entity.

The Commission shall consist of six members, three of whom shall be appointed by the Tribal Council of the Tribe and three of whom shall be appointed by the Governor. Commission members shall serve for the terms and under the conditions specified in the enabling legislation. The Commission shall annually elect a person to preside as chair. The chair shall alternate annually between a tribal and State member. During their term of service, a member may be removed with or without cause only by the authority that appointed that member.

The Commission shall only act by a majority vote of all of its members.

The purpose of the Commission is to establish the rules and regulations applicable to the Reservation Air Program and conduct review of appealable administrative actions. Both the Tribe and the State may advocate any particular interest or viewpoint to the Commission, but the Commission is empowered to make rules and regulations for the Reservation Air Program and to review appealable administrative actions taken by the Tribe. While this Agreement is in effect, the Tribe and the State shall recognize and abide by the Commission's decisions, and its rules and regulations.

To carry out its functions, the Commission may call upon the employees of the Tribe's Environmental Programs Division and the State's Air Pollution Control Division, as more fully set forth in Article VIII of this Agreement.

The duties of the Commission shall include the responsibility to:

(a) Determine the specific programs under the Clean Air Act, or other air programs, that should apply to the Reservation, by taking into account the specific environmental, economic, geographic, and cultural needs of the Reservation;

(b) Promulgate rules and regulations that are necessary for the proper implementation and administration of those programs, including determining which administrative actions are appealable to the Commission;

(c) Establish procedures the Commission will follow in promulgating rules and regulations, and for review of appealable administrative actions taken by the Tribe;

(d) Review and approve of a long-term plan, initially prepared by the Tribe, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;

(e) Monitor the relationships among the State and tribal environmental protection agencies to facilitate information sharing, technical assistance and training;

(f) Review administrative actions according to the Commission's adopted administrative procedures;

(g) Approve and adopt fees for permits and other regulatory services conducted by the Tribe or the State, after considering a proposed fee schedule prepared by the Tribe, and direct payment of fees by air pollution sources to the Tribe;

(h) Ensure consistency and adherence to applicable standards and resolve disputes involving third parties;

(i) Review emission inventories as developed by the Tribe and State;

(j) Conduct public hearings pertaining to the adoption of rules and regulations, or relating to review of appealable administrative actions, and issue orders resulting from those proceedings;

(k) Request tribal staff to perform any administrative or clerical functions necessary to issue orders and conduct Commission business, or the Commission at its option may appoint a technical secretary to perform such duties, except that no authority shall be delegated to adopt, promulgate, amend or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the Commission;

(l) Any other duties necessary to accomplish the purposes of this Agreement, and as authorized by the State and tribal enabling legislation.

Article VIII
Administration of the Reservation Air Program.

The Commission is the policy making and administrative review authority for the Reservation Air Program. The Commission may call upon either tribal or State staff for assistance in carrying out its responsibilities pursuant to this Agreement. The Tribe and the State agree that during the Development and Program Phases, tribal employees shall assume the primary role for day-to-day administration and enforcement.

A. Duties of Tribe. The State and Tribe agree that the day-to-day administration and enforcement of the Reservation Air Program shall be the responsibility of the Tribe. The Tribe agrees that it shall administer and enforce the standards, rules and regulations adopted by the Commission for the Reservation Air Program. The Tribe may also promulgate rules and regulations that are consistent with the rules and regulations adopted by the Commission and necessary for the Tribe to maintain its delegations from EPA obtained to perform this Agreement.

In addition to other responsibilities that the parties may agree are necessary for the

effective implementation of this Agreement, it is agreed that the administrative and enforcement responsibilities of the Tribe shall include the responsibility to:

(a) Prepare initial drafts of rules and regulations for the Reservation Air Program for review by the State and, ultimately, for consideration by the Commission;

(b) Administer all activities related to permits including, for example, permit application review, permit issuance, permit modification procedures, and conduct all permit processing;

(c) Collect data, by means of field studies and air monitoring conducted by the Tribe or by individual stationary sources and mobile air pollution sources, and determine the nature and quality of existing ambient air throughout the Reservation;

(d) Conduct inspections of any property, premises, or place within the Reservation with respect to any actual, suspected, or potential source of air pollution or for ascertaining compliance or noncompliance with any applicable requirements;

(e) Furnish technical advice and services relating to air pollution problems and control techniques;

(f) Initiate enforcement actions when the results of atmospheric tests conducted establish that the ambient air or source of emission of smoke or air pollution fails to meet the applicable standards;

(g) Develop a long-term plan, for approval by the Commission, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;

(h) Prepare a fee schedule for approval by the Commission, and to collect said fees as are necessary for the administration of the Reservation Air Program and the Commission expenses, consistent with sub-section (B) of this article VIII;

(i) Expend and account for funds, either collected from air pollution sources or granted to the Tribe by the EPA to administer the Reservation Air Program, for reasonable and necessary expenses to administer the Reservation Air Program;

(j) Establish emission inventories;

(k) Issue permits and enforce the terms and conditions of permits;

(l) Gather information from sources of air pollution;

(m) Issue cease and desist orders, and take other emergency actions as may be necessary to protect the public health, welfare, and the environment;

(n) Issue notices of violation as may be required;

(o) Require any air pollution source to furnish information related to source emissions or to any investigation authorized by law or regulation, and to obtain from a court of appropriate jurisdiction a subpoena to compel the production of necessary documents to obtain such information;

(p) Prepare applications for delegation of programs from EPA, in furtherance of this Agreement.

The Tribe shall afford the State, through its Air Quality Control Division and Air

Quality Control Commission, the opportunity to participate in the carrying out of such responsibilities by the Tribe, through appropriate notice, comment, and consultation.

B. Funding for Commission and Program Costs. Once the Commission is established and during the Program Phase of this Agreement, it is the intent of the Tribe and the State that funding for administration of the Reservation Air Program and the Commission's expenses shall come from fees and grants. Pursuant to Article VII, the Commission shall establish fees for air pollution sources and direct payment of those fees to the Tribe. The Tribe shall apply for and may receive grants from EPA for administration of the Reservation Air Program. From these revenues (i.e., fees and grants), the Tribe shall fund the staff and program costs necessary to perform the Tribe's duties under this Agreement. The Tribe shall pay the State for the personal services costs, at a rate of compensation determined by contract, of any State employee who participates in the administration of the Reservation Air Program pursuant to this Article VIII. It is the intent of the Tribe and the State that fees shall also be sufficient to cover the Commission's necessary expenses. The parties agree that they may also jointly seek funding from EPA for the necessary expenses of the Commission to perform its duties. To the extent such EPA funding is not obtained or if funding from fees is not allowed by the Clean Air Act, the State and the Tribe each will be responsible for funding associated with the participation of their representatives on the Commission. However, State funding for its expenses is conditioned upon appropriation or the availability of other state-only funds that the State could use for this purpose.

Article IX
Tribal and State Cooperation During the Formation and Development Phases of the Reservation Air Program.

The parties recognize that the fulfillment of the purposes of this Agreement will require communication, collaboration, and cooperation among the State, Tribe, and federal governments, State agencies such as the Department of Public Health and Environment and the Air Pollution Control Division, the Tribe's Environmental Programs Division, EPA, and the Commission. Such cooperation is especially needed during the formation and development phases of this Agreement.

A. Air Program During the Formation and Development Phases. During the Formation and Development Phases, the Tribe will work cooperatively with EPA to allow direct EPA implementation of Clean Air Act requirements for sources located on trust lands and Indian sources located on fee lands within the Reservation. With regard to Fee Lands, the Tribe will not jurisdictionally challenge the State's administration of such programs with respect to non-Indian owned air pollution sources located on fee lands within the Reservation. During the formation and development phases, for regulation of

non-Indian air pollution sources on fee lands, the State and the Tribe shall participate together in regulatory activities. In its administration of permits for non-Indian air pollution sources on fee lands, the State shall:

(a) Notify the Tribe upon receipt of permit applications and afford the Tribe an opportunity to participate in the review of permit applications;

(b) Afford the Tribe the opportunity to review and comment, within thirty (30) days, on draft notices of violation, draft consent orders, draft compliance orders, and draft air pollution source permits prepared by the APCD;

(c) Afford the Tribe the opportunity to participate in source inspections and in surveillance activities;

(d) Notify the Tribe and provide for tribal participation in decisions concerning potential enforcement actions, including penalties to be assessed, and participation in all notice of violation conferences.

1. Funding during the Formation and Development Phases. During the Formation Phase, the State will continue to assess and collect fees as provided by Colorado statute and will expend such funds to administer the State program for non-Indian sources on fee lands. The Tribe will use its own funds or may apply for EPA grants to fund its activities. During the Development Phase, permitting fees and any other fees for non-Indian owned sources located on fee lands will be divided between the Tribe and State in a manner that is commensurate with the responsibilities, costs incurred, and time spent by each party with respect to such permits and such division of fees shall be authorized pursuant to the State and tribal legislation contemplated herein. The parties shall endeavor to reach agreement on the appropriate division of fees prior to the conduct of any work related to such permits.

B. Other Cooperation during the Formation and Development Phases. During the time period that the Commission is being created by State and tribal legislation, and prior to the time that EPA delegates specific programs to the Tribe, the Tribe and the State agree to cooperate as follows:

1. Technical Assistance. The State, by and through the APCD, will advise the Tribe about the kinds of technical assistance that it can provide. The Tribe, with the assistance of the APCD, will develop technical assistance priorities. The APCD will make available technical expertise from all APCD program areas to assist the Tribe in the development and management of the Reservation Air Program and to assist the Tribe in developing its own technical expertise in air resource management. The Tribe and the APCD agree to exchange technical expertise regarding matters of mutual interest. Unless otherwise required by state or federal law, the APCD shall not share or release to any other governmental or private agency or person, without the written consent of the Tribe, any information obtained by the APCD from the Tribe or information generated by the APCD through technical assistance to the Tribe; provided, however, this confidentiality requirement shall not apply to information which has already been disclosed to the public

by the Tribal Council or its representatives and information that the Tribe specifically approves for distribution to the public. If the APCD receives a request under the state Open Records Act to disclose confidential information, the APCD shall notify the Tribe of the request within a time sufficient to enable the Tribe to assert its claim to confidentiality prior to the APCD producing any requested documents.

2. Training. Upon request, the Tribe will help APCD employees improve their understanding of Southern Ute traditional values and practices, natural resource values, treaty and other federally reserved rights, and relevant law enforcement policy issues. The APCD will provide the Tribe with access to APCD training programs. To facilitate the attendance of tribal personnel at APCD training programs, the APCD shall notify the Tribe in advance of such programs.

3. Funding. During the Program Phase, the Reservation Air Program shall be funded as set forth in Article VIII.

Article X
Enforcement and Judicial Review.

A. During Formation and Development Phase. Prior to the formation of the Commission and the adoption of the federal legislation and actual EPA delegation of Clean Air Act programs, the parties agree that the State may exercise civil and criminal enforcement jurisdiction over non-Indians on fee lands within Reservation boundaries for violations of applicable air quality regulations. Appeals of State air enforcement action and other air quality related decisions may be brought in State court consistent with State law and regulation. Pursuant to P.L. 98-290, the Tribe may exercise jurisdiction over Indians on all lands within the boundaries of the Reservation, and over non-Indians on trust land, for violations of applicable tribal air quality regulations. Nothing herein is intended as restricting, diminishing or defining the jurisdiction of EPA.

B. During the Program Phase.

1. Civil Enforcement Action. Following the adoption of the federal legislation and EPA delegation of Clean Air Act programs contemplated by this agreement, the Tribe will exercise civil enforcement jurisdiction over any persons on all lands within Reservation boundaries for violations of the Reservation air quality program, subject to administrative review by the Commission. Consistent with the federal legislation contemplated by this Agreement, final decisions of the Commission will be subject to review in federal district court in accord with the provisions of the federal Administrative Procedure Act.

2. Criminal Enforcement Action. Following the formation of the Commission and the adoption of the federal legislation contemplated by this agreement, it is the intent of the parties that EPA will exercise criminal enforcement jurisdiction over any persons on all lands with Reservation boundaries for violations of the Reservation Air Program.

Article XI
Federal Legislation.

The State and Tribe agree to seek cooperatively federal legislation to confirm the eligibility of the Tribe to receive a delegation of authority to administer programs under the Clean Air Act for all lands within the boundaries of the Reservation, contingent upon the continued existence of this Agreement. The purpose of the federal legislation will be to facilitate the delegation of authority to the Tribe pursuant to the terms and conditions of this Agreement and to provide an effective mechanism for the enforcement of program requirements and for administrative and judicial review. It is agreed that the parties will seek legislation whereby, notwithstanding any limitation contained in P.L. 98-290 or any other limitation contained in federal law, the Tribe will be authorized to be treated as a State for Clean Air Act purposes for all lands within the Reservation and recognized as eligible to receive a delegation of authority from EPA to administer programs pursuant to the Clean Air Act, provided that this Agreement and the joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, established pursuant to State and tribal law as provided herein, remains in effect.

Article XII
Tribal Treatment as a State Applications and Requests for Program Approval.

During the Development Phase, the Tribe shall apply to EPA for approval of Clean Air Act programs and delegation to the Tribe of the authority to administer such programs with respect to all lands within the Reservation, as determined by the Commission and subject to the terms of this Agreement. The State agrees that it will not jurisdictionally challenge the Tribe's requests to EPA for approval of these programs or delegation to the Tribe of the authority to administer Clean Air Act programs with respect to the Reservation, including non-Indian facilities located or non-Indian activities conducted on fee lands within the boundaries of the Reservation, provided such requests are pursuant to the determination of the Commission and subject to the terms of this Agreement.

For Indian tribes establishing eligibility pursuant to 40 C.F.R. § 35.220 (a), EPA may provide financial assistance in an amount up to 95 percent (95%) of the approved costs of planning, developing, establishing, or approving an air pollution control program, and up to 95 percent (95%) of the approved costs of maintaining that program, 40 C.F.R. § 35.205.

The Tribe and the State agree to cooperate in seeking from EPA any recognition of or delegation to the Tribe necessary to carry out the terms and conditions of this Agreement. The State agrees that it will support an amended or additional TAS application or request for program delegation by the Tribe which incorporates the terms

of this Agreement. The Tribe agrees that it will not submit a request for approval of a Clean Air Act program or for approval of partial elements of a Clean Air Act program unless asked to do so by the Commission and in accordance with the requirements contained in this Agreement.

Article XIII
Miscellaneous.

A. Effective Date. This Agreement shall begin and become effective when executed by both parties.

B. Amendment. The parties may amend this Agreement from time to time in writing, provided that such amendment must bear the signature of an authorized representative of each party. This provision for amendment is not intended to grant to any party individually or to the parties collectively any legislative authority to change State or Tribal law without the concurrence of the appropriate legislative body.

C. Termination. This Agreement shall continue in effect until terminated by joint agreement of the parties, provided, however, that either party may terminate the agreement contained herein by giving advance written notice of one year to the other party. Any termination of this Agreement shall serve to end the delegation from EPA to the Tribe to administer any Clean Air Act programs delegated pursuant to this Agreement. The termination of this Agreement shall also operate as an automatic repeal of the State and tribal legislation enacted pursuant to Article VI of this Agreement.

D. Notices. Notices hereunder shall be in writing and shall be given by personal delivery or by deposit in the United States mail by certified mail, return receipt requested, postage prepaid and addressed to the Tribe and the State at the addresses set forth below, or such other place as is provided to the other parties by written notice:

Southern Ute Indian Tribe
Attention: Tribal Chairman
P.O. Box 737
Ignacio, CO 81137

with a copy to:

Southern Ute Indian Tribe
Environmental Programs Division
Attention: Director
P.O. Box 737
Ignacio, CO 81137

State of Colorado
Office of the Governor
136 State Capitol
Denver, CO 80203-1792

with a copy to:

Executive Director
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South,
Building A, First Floor
Denver, CO 80246-1530

Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Notice shall be effective as of the date of receipt.

E. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Tribe and the State, and is not intended to create any benefit, obligation, or cause of action, whether direct or indirect, for any party not a signatory to this Agreement.

F. Severability. If any provisions of this Intergovernmental Agreement are determined to be prohibited by or invalid under applicable laws, those provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this Intergovernmental Agreement. The Tribe and the State agree to meet and negotiate in good faith to amend this Intergovernmental Agreement in the event any provisions are determined to be prohibited by or invalid under applicable laws.

G. Complete Understanding. This Agreement is intended as the complete integration of all understandings between the parties concerning the Reservation Air Program. No prior or contemporaneous addition, deletion, or other amendment to this Agreement shall have any force or effect whatsoever, unless embodied in this Agreement.

H. Periodic Review. On the anniversary date of this Agreement or on some other mutually agreed upon date, but in no event less than every three years, the parties to this Agreement agree to meet and confer to discuss compliance, progress in implementation, whether amendments are necessary, and other issues related to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed:

SOUTHERN UTE INDIAN TRIBE
Howard D. Richards, Sr.,
Vice-chairman
Southern Ute Indian Tribal Council

STATE OF COLORADO
Bill Owens,
Governor
Ken Salazar,
Attorney General

24-62-102. Legislative declaration. (1) The general assembly hereby:

(a) Finds that sub-section (D) of article VI of the "Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation" originally specified that if federal legislation authorizing the treatment of the tribe as a state for federal "Clean Air Act" purposes was not enacted by December 13, 2002, then the agreement would become null and void;

(b) Determines that, pursuant to sub-section (B) of article XIII of the agreement, the parties to the agreement modified sub-section (D) of article VI of the agreement in December 2001, December 2002, and December 2003, to extend for one year the deadline for passage of the federal legislation, and the final deadline for such passage according to the agreement as modified is December 13, 2004; and

(c) Declares that, whereas the federal legislation contemplated by the agreement, "The Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004" (P.L. 108-336), was approved on October 18, 2004, the contingency contemplated by sub-section (D) of article VI of the agreement and section 25-7-1309 (1) (c), C.R.S., is moot.

PLANNING - STATE

ARTICLE 65

Colorado Land Use Act

24-65-101 to 24-65-106. (Repealed)

ARTICLE 65.1

Areas and Activities of State Interest

PART 1

GENERAL PROVISIONS

24-65.1-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of public interest;

(b) Adequate information on land use and systematic methods of definition, classification, and utilization thereof are either lacking or not readily available to land use decision makers; and

(c) It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.

(2) It is the purpose of this article that:

(a) The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities;

(b) Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof; and

(c) Appropriate state agencies shall assist local governments to identify, designate, and adopt guidelines for administration of matters of state interest.

24-65.1-102. General definitions. As used in this article, unless the context otherwise requires:

(1) "Development" means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs.

(2) "Local government" means a municipality or county.

(3) "Local permit authority" means the governing body of a local government with which an application for development in an area of state interest or for conduct of an activity of state interest must be filed, or the designee thereof.

(4) "Matter of state interest" means an area of state interest or an activity of state

interest or both.

(5) "Municipality" means a home rule or statutory city, town, or city and county or a territorial charter city.

(6) "Person" means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the state.

24-65.1-103. Definitions pertaining to natural hazards. As used in this article, unless the context otherwise requires:

(1) "Aspect" means the cardinal direction the land surface faces, characterized by north-facing slopes generally having heavier vegetation cover.

(2) "Avalanche" means a mass of snow or ice and other material which may become incorporated therein as such mass moves rapidly down a mountain slope.

(3) "Corrosive soil" means soil which contains soluble salts which may produce serious detrimental effects in concrete, metal, or other substances that are in contact with such soil.

(4) "Debris-fan floodplain" means a floodplain which is located at the mouth of a mountain valley tributary stream as such stream enters the valley floor.

(5) "Dry wash channel and dry wash floodplain" means a small watershed with a very high percentage of runoff after torrential rainfall.

(6) "Expansive soil and rock" means soil and rock which contains clay and which expands to a significant degree upon wetting and shrinks upon drying.

(7) "Floodplain" means an area adjacent to a stream, which area is subject to flooding as the result of the occurrence of an intermediate regional flood and which area thus is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Mainstream floodplains;

(b) Debris-fan floodplains; and

(c) Dry wash channels and dry wash floodplains.

(8) "Geologic hazard" means a geologic phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes;

(b) Seismic effects;

(c) Radioactivity; and

(d) Ground subsidence.

(9) "Geologic hazard area" means an area which contains or is directly affected by a geologic hazard.

(10) "Ground subsidence" means a process characterized by the downward displacement of surface material caused by natural phenomena such as removal of underground fluids, natural consolidation, or dissolution of underground minerals or by man-made phenomena such as underground mining.

(11) "Mainstream floodplain" means an area adjacent to a perennial stream, which area is subject to periodic flooding.

(12) "Mudflow" means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff.

(13) "Natural hazard" means a geologic hazard, a wildfire hazard, or a flood.

(14) "Natural hazard area" means an area containing or directly affected by a natural hazard.

(15) "Radioactivity" means a condition related to various types of radiation emitted by natural radioactive minerals that occur in natural deposits of rock, soil, and water.

(16) "Seismic effects" means direct and indirect effects caused by an earthquake or an underground nuclear detonation.

(17) "Siltation" means a process which results in an excessive rate of removal of soil and rock materials from one location and rapid deposit thereof in adjacent areas.

(18) "Slope" means the gradient of the ground surface which is definable by degree or percent.

(19) "Unstable or potentially unstable slope" means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.

(20) "Wildfire behavior" means the predictable action of a wildfire under given conditions of slope, aspect, and weather.

(21) "Wildfire hazard" means a wildfire phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Slope and aspect;

(b) Wildfire behavior characteristics; and

(c) Existing vegetation types.

(22) "Wildfire hazard area" means an area containing or directly affected by a wildfire hazard.

24-65.1-104. Definitions pertaining to other areas and activities of state interest. As used in this article, unless the context otherwise requires:

(1) "Airport" means any municipal or county airport or airport under the

jurisdiction of an airport authority.

(2) "Area around a key facility" means an area immediately and directly affected by a key facility.

(3) "Arterial highway" means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the department of transportation.

(4) "Collector highway" means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers and constructed under guidelines and standards established by, or under the supervision of, the department of transportation. "Collector highway" does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

(5) "Domestic water and sewage treatment system" means a wastewater treatment facility, water distribution system, or water treatment facility, as defined in section 25-9-102 (5), (6), and (7), C.R.S., and any system of pipes, structures, and facilities through which wastewater is collected for treatment.

(6) "Historical or archaeological resources of statewide importance" means resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.

(7) "Key facilities" means:

(a) Airports;

(b) Major facilities of a public utility;

(c) Interchanges involving arterial highways;

(d) Rapid or mass transit terminals, stations, and fixed guideways.

(8) "Major facilities of a public utility" means:

(a) Central office buildings of telephone utilities;

(b) Transmission lines, power plants, and substations of electrical utilities; and

(c) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.

(9) "Mass transit" means a coordinated system of transit modes providing transportation for use by the general public.

(10) "Mineral" means an inanimate constituent of the earth, in solid, liquid, or gaseous state, which, when extracted from the earth, is usable in its natural form or is capable of conversion into usable form as a metal, a metallic compound, a chemical, an energy source, a raw material for manufacturing, or a construction material. "Mineral" does not include surface or groundwater subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include geothermal resources.

(11) "Mineral resource area" means an area in which minerals are located in sufficient concentration in veins, deposits, bodies, beds, seams, fields, pools, or otherwise

as to be capable of economic recovery. "Mineral resource area" includes but is not limited to any area in which there has been significant mining activity in the past, there is significant mining activity in the present, mining development is planned or in progress, or mineral rights are held by mineral patent or valid mining claim with the intention of mining.

(12) "Natural resources of statewide importance" is limited to shorelands of major, publicly owned reservoirs and significant wildlife habitats in which the wildlife species, as identified by the division of parks and wildlife of the department of natural resources, in a proposed area could be endangered.

(13) "New communities" means the major revitalization of existing municipalities or the establishment of urbanized growth centers in unincorporated areas.

(14) "Rapid transit" means the element of a mass transit system involving a mechanical conveyance on an exclusive lane or guideway constructed solely for that purpose.

24-65.1-105. Effect of article - public utilities. (1) With regard to public utilities, nothing in this article shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the public utilities commission. Any order, rule, or directive issued by any governmental agency pursuant to this article shall not be inconsistent with or in contravention of any decision, order, or finding of the public utilities commission with respect to public convenience and necessity. The public utilities commission and public utilities shall take into consideration and, when feasible, foster compliance with adopted land use master plans of local governments, regions, and the state.

(2) Nothing in this article shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

24-65.1-106. Effect of article - rights of property owners - water rights. (1) Nothing in this article shall be construed as:

(a) Enhancing or diminishing the rights of owners of property as provided by the state constitution or the constitution of the United States;

(b) Modifying or amending existing laws or court decrees with respect to the determination and administration of water rights.

24-65.1-107. Effect of article - developments in areas of state interest and

activities of state interest meeting certain conditions. (1) This article shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of May 17, 1974:

(a) The development or activity is covered by a current building permit issued by the appropriate local government; or

(b) The development or activity has been approved by the electorate; or

(c) The development or activity is to be on land:

(I) Which has been conditionally or finally approved by the appropriate local government for planned unit development or for a use substantially the same as planned unit development; or

(II) Which has been zoned by the appropriate local government for the use contemplated by such development or activity; or

(III) With respect to which a development plan has been conditionally or finally approved by the appropriate governmental authority.

24-65.1-108. Effect of article - state agency or commission responses. (1) Whenever any person desiring to carry out development as defined in section 24-65.1-102 (1) is required to obtain a permit, to be issued by any state agency or commission for the purpose of authorizing or allowing such development, pursuant to this or any other statute or regulation promulgated thereunder, such agency or commission shall establish a reasonable time period, which shall not exceed sixty days following receipt of such permit application, within which such agency or commission must respond in writing to the applicant, granting or denying said permit or specifying all reasonable additional information necessary for the agency or commission to respond. If additional information is required, said agency or commission shall set a reasonable time period for response following the receipt of such information.

(2) Whenever a state agency or commission denies a permit, the denial must specify:

(a) The regulations, guidelines, and criteria or standards used in evaluating the application;

(b) The reasons for denial and the regulations, guidelines, and criteria or standards the application fails to satisfy; and

(c) The action that the applicant would have to take to satisfy the state agency's or commission's permit requirements.

(3) Whenever an application for a permit, as provided under this section, contains a statement describing the proposed nature, uses, and activities in conceptual terms for the development intended to be accomplished and is not accompanied with all additional information, including, without limitation, engineering studies, detailed plans and specifications, and zoning approval, or, whenever a hearing is required by the statutes,

regulations, rules, ordinances, or resolutions thereof prior to the issuance of the requested permit, the agency or commission shall, within the time provided in this section for response, indicate its acceptance or denial of the permit on the basis of the concept expressed in the statement of the proposed uses and activities contained in the application. Such conceptual approval shall be made subject to the applicant filing and completing all prerequisite detailed additional information in accordance with the usual filing requirements of the agency or commission within a reasonable period of time.

(4) All agencies and commissions authorized or required to issue permits for development shall adopt rules and regulations, or amend existing rules and regulations, so as to require that such agencies and commissions respond in the time and manner required in this section.

(5) Nothing in this section shall shorten the time allowed for responses provided by federal statute dealing with, or having a bearing on, the subject of any such application for permit.

(6) The provisions of this section shall not apply to applications approved, denied, or processed by a unit of local government.

PART 2

AREAS AND ACTIVITIES DESCRIBED - CRITERIA FOR ADMINISTRATION

24-65.1-201. Areas of state interest as determined by local governments. (1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain areas of state interest from among the following:

(a) Mineral resource areas;

(b) Natural hazard areas;

(c) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance; and

(d) Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community.

24-65.1-202. Criteria for administration of areas of state interest. (1) (a) Mineral resource areas designated as areas of state interest shall be protected and administered in such a manner as to permit the extraction and exploration of minerals therefrom, unless extraction and exploration would cause significant danger to public health and safety. If the local government having jurisdiction, after weighing sufficient technical or other evidence, finds that the economic value of the minerals present therein is less than the value of another existing or requested use, such other use

should be given preference; however, other uses which would not interfere with the extraction and exploration of minerals may be permitted in such areas of state interest.

(b) Areas containing only sand, gravel, quarry aggregate, or limestone used for construction purposes shall be administered as provided by part 3 of article 1 of title 34, C.R.S.

(c) The extraction and exploration of minerals from any area shall be accomplished in a manner which causes the least practicable environmental disturbance, and surface areas disturbed thereby shall be reclaimed in accordance with the provisions of article 32 of title 34, C.R.S.

(d) Unless an activity of state interest has been designated or identified or unless it includes part or all of another area of state interest, an area of oil and gas development shall not be designated as an area of state interest unless the state oil and gas conservation commission identifies such area for designation.

(2) (a) Natural hazard areas shall be administered as follows:

(I) (A) Floodplains shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado water conservation board shall promulgate a model floodplain regulation no later than September 30, 1974. Open space activities such as agriculture, horticulture, floriculture, recreation, and mineral extraction shall be encouraged in the floodplains. Any combination of these activities shall be conducted in a mutually compatible manner. Building of structures in the floodplain shall be designed in terms of the availability of flood protection devices, proposed intensity of use, effects on the acceleration of floodwaters, potential significant hazards to public health and safety or to property, and other impact of such development on downstream communities such as the creation of obstructions during floods. Activities shall be discouraged that, in time of flooding, would create significant hazards to public health and safety or to property. Shallow wells, solid waste disposal sites, and septic tanks and sewage disposal systems shall be protected from inundation by floodwaters. Unless an activity of state interest is to be conducted therein, an area of corrosive soil, expansive soil and rock, or siltation shall not be designated as an area of state interest unless the Colorado conservation board, through the local conservation district, identifies such area for designation.

(B) Nothing in sub-subparagraph (A) of this subparagraph (I), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(II) Wildfire hazard areas in which residential activity is to take place shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado state forest service shall promulgate a model wildfire hazard area control regulation no later than September 30, 1974. If development is to take place, roads shall be adequate for service by fire trucks and other safety equipment. Firebreaks

and other means of reducing conditions conducive to fire shall be required for wildfire hazard areas in which development is authorized.

(III) In geologic hazard areas all developments shall be engineered and administered in a manner that will minimize significant hazards to public health and safety or to property due to a geologic hazard. The Colorado geological survey shall promulgate a model geologic hazard area control regulation no later than September 30, 1974.

(b) After promulgation of guidelines for land use in natural hazard areas by the Colorado water conservation board, the Colorado conservation board through the conservation districts, the Colorado state forest service, and the Colorado geological survey, natural hazard areas shall be administered by local government in a manner that is consistent with the guidelines for land use in each of the natural hazard areas.

(3) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.

(4) The following criteria shall be applicable to areas around key facilities:

(a) If the operation of a key facility may cause a danger to public health and safety or to property, as determined by local government, the area around the key facility shall be designated and administered so as to minimize such danger; and

(b) Areas around key facilities shall be developed in a manner that will discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by local government. Compatibility with nonmotorized traffic shall be encouraged. A development that imposes burdens or deprivation on the communities of a region cannot be justified on the basis of local benefit alone.

(5) In addition to the criteria described in subsection (4) of this section, the following criteria shall be applicable to areas around particular key facilities:

(a) Areas around airports shall be administered so as to:

(I) Encourage land use patterns for housing and other local government needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas; and

(II) Avoid danger to public safety and health or to property due to aircraft crashes.

(b) Areas around major facilities of a public utility shall be administered so as to:

(I) Minimize disruption of the service provided by the public utility; and

(II) Preserve desirable existing community patterns.

(c) Areas around interchanges involving arterial highways shall be administered so as to:

(I) Encourage the smooth flow of motorized and nonmotorized traffic;

(II) Foster the development of such areas in a manner calculated to preserve the smooth flow of such traffic; and

(III) Preserve desirable existing community patterns.

(d) Areas around rapid or mass transit terminals, stations, or guideways shall be developed in conformance with the applicable municipal master plan adopted pursuant to section 31-23-206, C.R.S., or any applicable master plan adopted pursuant to section 30-28-108, C.R.S. If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such development in such areas shall be made with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.

24-65.1-203. Activities of state interest as determined by local governments. (1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain activities of state interest from among the following:

(a) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;

(b) Site selection and development of solid waste disposal sites except those sites specified in section 25-11-203 (1), C.R.S., sites designated pursuant to part 3 of article 11 of title 25, C.R.S., and hazardous waste disposal sites, as defined in section 25-15-200.3, C.R.S.;

(c) Site selection of airports;

(d) Site selection of rapid or mass transit terminals, stations, and fixed guideways;

(e) Site selection of arterial highways and interchanges and collector highways;

(f) Site selection and construction of major facilities of a public utility;

(g) Site selection and development of new communities;

(h) Efficient utilization of municipal and industrial water projects;

(i) Conduct of nuclear detonations; and

(j) The use of geothermal resources for the commercial production of electricity.

24-65.1-204. Criteria for administration of activities of state interest. (1) (a) New domestic water and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.

(b) Major extensions of domestic water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.

(2) Major solid waste disposal sites shall be developed in accordance with sound conservation practices and shall emphasize, where feasible, the recycling of waste materials. Consideration shall be given to longevity and subsequent use of waste disposal sites, soil and wind conditions, the potential problems of pollution inherent in the proposed site, and the impact on adjacent property owners, compared with alternate locations.

(3) Airports shall be located or expanded in a manner which will minimize disruption to the environment of existing communities, minimize the impact on existing community services, and complement the economic and transportation needs of the state and the area.

(4) (a) Rapid or mass transit terminals, stations, or guideways shall be located in conformance with the applicable municipal master plan adopted pursuant to section 31-23-206, C.R.S., or any applicable master plan adopted pursuant to section 30-28-108, C.R.S. If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, floodwaters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Activities shall be conducted with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.

(b) Proposed locations of rapid or mass transit terminals, stations, and fixed guideways which will not require the demolition of residences or businesses shall be given preferred consideration over competing alternatives.

(c) A proposed location of a rapid or mass transit terminal, station, or fixed guideway that imposes a burden or deprivation on a local government cannot be justified on the basis of local benefit alone, nor shall a permit for such a location be denied solely because the location places a burden or deprivation on one local government.

(5) Arterial highways and interchanges and collector highways shall be located so that:

(a) Community traffic needs are met;

(b) Desirable community patterns are not disrupted; and

(c) Direct conflicts with adopted local government, regional, and state master plans are avoided.

(6) Where feasible, major facilities of public utilities shall be located so as to avoid direct conflict with adopted local government, regional, and state master plans.

(7) When applicable, or as may otherwise be provided by law, a new community design shall, at a minimum, provide for transportation, waste disposal, schools, and other governmental services in a manner that will not overload facilities of existing communities of the region. Priority shall be given to the development of total communities which provide for commercial and industrial activity, as well as residences, and for internal transportation and circulation patterns.

(8) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.

(9) Nuclear detonations shall be conducted so as to present no material danger to public health and safety. Any danger to property shall not be disproportionate to the benefits to be derived from a detonation.

PART 3

LEVELS OF GOVERNMENT INVOLVED AND THEIR FUNCTIONS

24-65.1-301. Functions of local government. (1) Pursuant to this article, it is the function of local government to:

(a) Designate matters of state interest after public hearing, taking into consideration:

(I) The intensity of current and foreseeable development pressures; and

(II) Applicable guidelines for designation issued by the applicable state agencies;

(b) Hold hearings on applications for permits for development in areas of state interest and for activities of state interest;

(c) Grant or deny applications for permits for development in areas of state interest and for activities of state interest;

(d) Receive recommendations from state agencies and other local governments relating to matters of state interest;

(e) Send recommendations to other local governments relating to matters of state

interest.

(f) (Deleted by amendment, L. 2005, p. 667, § 2, effective June 1, 2005.)

24-65.1-302. Functions of other state agencies. (1) Pursuant to this article, it is the function of other state agencies to:

(a) Send recommendations to local governments relating to designation of matters of state interest on the basis of current and developing information; and

(b) Provide technical assistance to local governments concerning designation of and guidelines for matters of state interest.

(2) Primary responsibility for the recommendation and provision of technical assistance functions described in subsection (1) of this section is upon:

(a) The Colorado water conservation board, acting in cooperation with the Colorado conservation board, with regard to floodplains;

(b) The Colorado state forest service, with regard to wildfire hazard areas;

(c) The Colorado geological survey, with regard to geologic hazard areas, geologic reports, and the identification of mineral resource areas;

(d) The division of reclamation, mining, and safety, with regard to mineral extraction and the reclamation of land disturbed thereby;

(e) The Colorado conservation board and conservation districts, with regard to resource data inventories, soils, soil suitability, erosion and sedimentation, floodwater problems, and watershed protection; and

(f) The division of parks and wildlife of the department of natural resources, with regard to significant wildlife habitats.

(3) Pursuant to section 24-65.1-202 (1) (d), the oil and gas conservation commission of the state of Colorado may identify an area of oil and gas development for designation by local government as an area of state interest.

PART 4

DESIGNATION OF MATTERS OF STATE INTEREST - GUIDELINES FOR ADMINISTRATION

24-65.1-401. Designation of matters of state interest. (1) After public hearing, a local government may designate matters of state interest within its jurisdiction, taking into consideration:

(a) The intensity of current and foreseeable development pressures.

(b) Repealed.

(2) A designation shall:

(a) Specify the boundaries of the proposed area; and

(b) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

24-65.1-402. Guidelines - regulations. (1) The local government shall develop guidelines for administration of the designated matters of state interest. The content of such guidelines shall be such as to facilitate administration of matters of state interest consistent with sections 24-65.1-202 and 24-65.1-204.

(2) A local government may adopt regulations interpreting and applying its adopted guidelines in relation to specific developments in areas of state interest and to specific activities of state interest.

(3) No provision in this article shall be construed as prohibiting a local government from adopting guidelines or regulations containing requirements which are more stringent than the requirements of the criteria listed in sections 24-65.1-202 and 24-65.1-204.

24-65.1-403. Technical and financial assistance. (1) Appropriate state agencies shall provide technical assistance to local governments in order to assist local governments in designating matters of state interest and adopting guidelines for the administration thereof.

(2) (a) The department of local affairs shall oversee and coordinate the provision of technical assistance and provide financial assistance as may be authorized by law.

(b) The department of local affairs shall determine whether technical or financial assistance or both are to be given to a local government on the basis of the local government's:

(I) Showing that current or reasonably foreseeable development pressures exist within the local government's jurisdiction; and

(II) Plan describing the proposed use of technical assistance and expenditure of financial assistance.

(3) (a) Any local government applying for federal or state financial assistance for floodplain studies shall provide prior notification to the Colorado water conservation board. The board shall coordinate and prescribe the standards for all floodplain studies conducted pursuant to this article, including those conducted by federal, local, or other state agencies, to the end that reasonably uniform standards can be applied to the identification and designation of all floodplains within the state and to minimize duplication of effort.

(b) No floodplains shall be designated by any local government until such

designation has been first approved by the Colorado water conservation board as provided in sections 30-28-111 and 31-23-301, C.R.S.

24-65.1-404. Public hearing - designation of an area or activity of state interest and adoption of guidelines by order of local government. (1) The local government shall hold a public hearing before designating an area or activity of state interest and adopting guidelines for administration thereof.

(2) (a) Notice, stating the time and place of the hearing and the place at which materials relating to the matter to be designated and guidelines may be examined, shall be published once at least thirty days and not more than sixty days before the public hearing in a newspaper of general circulation in the county.

(b) Any person may request, in writing, that his name and address be placed on a mailing list to receive notice of all hearings held pursuant to this section. If the local government decides to maintain such a mailing list, it shall mail notices to each person paying an annual fee reasonably related to the cost of production, handling, and mailing of such notice. In order to have his name and address retained on said mailing list, the person shall resubmit his name and address and pay such fee before January 31 of each year.

(3) Within thirty days after completion of the public hearing, the local government, by order, may adopt, adopt with modification, or reject the particular designation and guidelines; but the local government, in any case, shall have the duty to designate any matter which has been finally determined to be a matter of state interest and adopt guidelines for the administration thereof.

(4) After a matter of state interest is designated pursuant to this section, no person shall engage in development in such area, and no such activity shall be conducted until the designation and guidelines for such area or activity are finally determined pursuant to this article.

(5) (Deleted by amendment, L. 2005, p. 668, § 4, effective June 1, 2005.)

24-65.1-405. Report of local government's progress. (Repealed)

24-65.1-406. Colorado land use commission review of local government order containing designation and guidelines. (Repealed)

24-65.1-407. Colorado land use commission may initiate identification, designation, and promulgation of guidelines for matters of state

interest. (Repealed)

PART 5

PERMITS FOR DEVELOPMENT IN AREAS
OF STATE INTEREST AND FOR CONDUCT OF
ACTIVITIES OF STATE INTEREST

24-65.1-501. Permit for development in area of state interest or to conduct an activity of state interest required. (1) (a) Any person desiring to engage in development in an area of state interest or to conduct an activity of state interest shall file an application for a permit with the local government in which such development or activity is to take place. A reasonable fee determined by the local government sufficient to cover the cost of processing the application, including the cost of holding the necessary hearings, shall be paid at the time of filing such application.

(b) The requirement of paragraph (a) of this subsection (1) that a public utility obtain a permit shall not be deemed to waive the requirements of article 5 of title 40, C.R.S., that a public utility obtain a certificate of public convenience and necessity.

(2) (a) Not later than thirty days after receipt of an application for a permit, the local government shall publish notice of a hearing on said application. Such notice shall be published once in a newspaper of general circulation in the county, not less than thirty days nor more than sixty days before the date set for hearing.

(b) If a person proposes to engage in development in an area of state interest or to conduct an activity of state interest not previously designated and for which guidelines have not been adopted, the local government may hold one hearing for determination of designation and guidelines and granting or denying the permit.

(c) The local government may maintain a mailing list and send notice of hearings relating to permits in a manner similar to that described in section 24-65.1-404 (2) (b).

(3) The local government may approve an application for a permit to engage in development in an area of state interest if the proposed development complies with the local government's guidelines and regulations governing such area. If the proposed development does not comply with the guidelines and regulations, the permit shall be denied.

(4) The local government may approve an application for a permit to conduct an activity of state interest if the proposed activity complies with the local government's regulations and guidelines for conduct of such activity. If the proposed activity does not comply with the guidelines and regulations, the permit shall be denied.

(5) The local government conducting a hearing pursuant to this section shall:

(a) State, in writing, reasons for its decision, and its findings and conclusions; and

(b) Preserve a record of such proceedings.

(6) After May 17, 1974, any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest who does not obtain a permit pursuant to this section may be enjoined by the appropriate local government from engaging in such development or conducting such activity.

24-65.1-502. Judicial review. The denial of a permit by a local government agency shall be subject to judicial review in the district court for the judicial district in which the major development or activity is to occur.

ARTICLE 65.5

Notification of Surface Development

24-65.5-101. Legislative declaration - intent. The general assembly recognizes that the surface estate and the mineral estate are separate and distinct interests in real property and that one may be severed from the other. It is the intent of the general assembly that this article provide a streamlined procedure for providing notice to owners of mineral interests concerning impending surface development and to facilitate the negotiation of a surface use agreement providing for the joint use of the surface and a mechanism for resolution if an agreement is not reached. Further, it is the intent of the general assembly to include local governments in this process without creating additional liabilities for local governments.

24-65.5-102. Definitions - legislative declaration. As used in this article, unless the context otherwise requires:

(1) "Applicant" means a person who submits an application for development to a local government.

(1.5) "Affiliate" means a person controlling, controlled by, or under common control with another person and any officer, director, shareholder, member, partner, or owner of any such person.

(2) (a) "Application for development" means an initial application for a sketch plan, a preliminary or final plat for a subdivision, a planned unit development, or any other similar land use designation that is used by a local government. "Application for development" includes applications for general development plans and special use permits or any applications for zoning or rezoning to a planned unit development that would change or create lot lines where such applications are in anticipation of new

surface development, but does not include amendments to an urban growth boundary, applications for annexation and zoning, applications for zoning or rezoning that will not change or create lot lines, an application for development that is a special use permit for the extraction of construction materials, as that term is defined in section 34-32.5-103, C.R.S., building permit applications, applications for a change of use for an existing structure, applications for boundary adjustments, applications for platting of an additional single lot, applications for lot site plans, or applications with respect to electric lines, crude oil or natural gas pipelines, steam pipelines, chilled and other water pipelines, or appurtenances to said lines or pipelines.

(b) (I) The general assembly hereby finds that:

(A) Pursuant to section 2-4-202, C.R.S., statutes are presumed to have only prospective effect, and under applicable case law this presumption applies unless the general assembly's contrary intent is clearly expressed; and

(B) House Bill 01-1088, which enacted this article, did not contain an applicability clause and was silent with regard to the issue of whether the requirements of this article apply to applications for development that were pending on July 1, 2001, the effective date of House Bill 01-1088.

(II) The general assembly hereby determines that, notwithstanding the fact that House Bill 01-1088 did not clearly express any intent of the general assembly that the requirements of this article would apply retroactively, there is uncertainty concerning whether such requirements should apply retroactively.

(III) To clarify its intent, the general assembly hereby declares that this article was intended to apply, and should only be applied, to applications for development that were filed on or after July 1, 2001, except as specified in subparagraphs (IV) and (V) of this paragraph (b).

(IV) To further clarify its intent, the general assembly hereby declares that the provisions of section 24-65.5-103 as amended on August 3, 2007, are intended to apply, and should only be applied, to applications for development where the initial public hearing had not been held prior to August 3, 2007, and that nothing in section 24-65.5-103 shall be deemed to supersede or modify the provisions of any surface use agreement or the provisions of any oil and gas or mineral lease entered into prior to August 3, 2007.

(V) To further clarify its intent, the general assembly hereby declares that nothing in this article shall be deemed to affect or establish the application of the doctrine of reasonable accommodation to determine the respective rights and obligations of the surface owner or mineral estate owner except upon lands that are qualifying surface developments burdened by oil and gas operations areas under section 24-65.5-103.5.

(2.5) "Commission" means the Colorado oil and gas conservation commission created in section 34-60-104, C.R.S.

(2.6) "Drilling window" means an area established by the commission within which the surface location of a well or wells may be established. In the greater

Wattenberg area, such drilling windows are referred to generally as the "GWA window" and more specifically as the "four-hundred-foot window" and the "eight-hundred-foot window".

(2.7) "Governmental quarter section" means an area, approximately square, consisting of four contiguous quarter-quarter sections as defined by an official governmental survey.

(2.8) "Greater Wattenberg area" means those lands from and including townships 2 south to 7 north and ranges 61 west to 69 west of the sixth principal meridian.

(3) "Local government" means a county; a home rule or statutory city, town, or city and county; or a territorial charter city.

(4) "Mineral estate" means a mineral interest in real property that is shown by the real estate records of the county in which the real property is situated.

(5) "Mineral estate owner" means the owner or lessee of a mineral estate underneath a surface estate that is subject to an application for development.

(5.5) "Oil and gas operations" has the meaning established in section 34-60-103, C.R.S.

(5.6) "Oil and gas operations area" means an area designated pursuant to section 24-65.5-103.5 as the exclusive area for the conduct of oil and gas drilling and production operations and the location of associated production facilities in qualified surface developments.

(5.7) "Qualifying surface development" means an application for development covering at least one hundred sixty gross acres, plus or minus five percent, within the greater Wattenberg area, including any applications for development filed by affiliates sharing a common boundary, in whole or in part.

(6) "Surface estate" means a fee title interest in the surface of real property that may or may not include mineral rights as shown by the real estate records of the county in which the real property is situated.

(7) "Surface owner" means the owner of the surface estate and any person with rights under a recorded contract to purchase all or part of the surface estate.

24-65.5-103. Notice requirements. (1) Not less than thirty days before the date scheduled for the initial public hearing by a local government on an application for development, the applicant shall send notice, by certified mail, return receipt requested, or by a nationally recognized overnight courier, to:

(a) (I) A mineral estate owner who either:

(A) Is identified as a mineral estate owner in the county tax assessor's records, if those records are searchable by parcel number or by section, township, and range numbers or other legally sufficient description; or

(B) Has filed in the office of the county clerk and recorder in which the real

property is located a request for notification in the form specified in subsection (3) of this section.

(II) Such notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location and legal description by section, township, and range of the property that is the subject of the hearing, and the name of the applicant.

(b) The local government considering the application for development. Such notice shall contain the name and address of the mineral estate owners to whom notices were sent in accordance with paragraph (a) of this subsection (1).

(1.5) If an applicant files more than one application for development for the same new surface development with a local government, the applicant shall only be required to send notice pursuant to subsection (1) of this section of the initial public hearing scheduled for the first application for development to be considered by the local government. Local governments shall, pursuant to section 24-6-402 (7), provide notice of subsequent hearings to mineral estate owners who register for such notification.

(2) (a) The applicant shall identify the mineral estate owners entitled to notice pursuant to this section by examining the records in the office of the county tax assessor and clerk and recorder of the county in which the real property is located, including the appropriate request for notification pursuant to subsection (3) of this section. Notice shall be sent to the last-known address of the mineral estate owner as shown by such records.

(b) If such records do not identify any mineral estate owners, including their addresses of record, the applicant shall be deemed to have acted in good faith and shall not be subject to further obligations under this article. The applicant shall not be liable for any errors or omissions in such records.

(3) A mineral estate owner who requests or desires to obtain notice under this article or the mineral estate owner's agent may file in the office of the county clerk and recorder of the county in which the real property is located a request for notification form that identifies the mineral estate owner's mineral estate and the corresponding surface estate by parcel number and by section, township, and range numbers or other legally sufficient description. The clerk and recorder shall file request for notification forms in the real estate records for the county and shall also keep an index of request for notification forms by section, township, and range numbers or by subdivision lots and blocks.

(4) Prior to convening an initial public hearing on an application for development, a local government shall require the applicant to certify that notice has been provided to the mineral estate owner pursuant to subsection (1) of this section.

(5) A mineral estate owner may waive the right to notice under this section in writing to the applicant. Failure of a mineral estate owner to be identified in the records described in paragraph (a) of subsection (1) of this section or to file a request for notification under subsection (3) of this section shall not waive the right of such mineral estate owner to file an objection with the local government to such application for

development no later than thirty days following the initial public hearing for approval of the application for development or to exercise the remedies set forth in section 24-65.5-104.

(6) Before completing the sale of a mineral estate, a mineral estate owner who has received notice as the owner of the mineral estate of a pending public hearing with respect to an application for development pursuant to this section shall notify the buyer of the mineral estate of the existence of the application for development. A transfer of an interest in a mineral estate by a mineral estate owner following the filing of a request for notification pursuant to subsection (3) of this section shall not modify the address to which the applicant may deliver notice under paragraph (a) of subsection (1) of this section until the transferee of such interest has filed an amendment to the request for notification describing the address to which such notices shall be sent.

24-65.5-103.3. Local government approval. (1) A local government shall, as a condition of final approval of an application for development, require the applicant to certify:

(a) That notice has been provided to mineral estate owners pursuant to section 24-65.5-103; and

(b) With respect to qualifying surface developments, that either:

(I) No mineral estate owner has entered an appearance or filed an objection to the proposed application for development within thirty days after the initial public hearing on the application;

(II) The applicant and any mineral estate owners who have filed an objection to the proposed application for development or have otherwise filed an entry of appearance in the initial public hearing regarding such application no later than thirty days following the initial public hearing on the application have executed a surface use agreement related to the property included in the application for development, the provisions of which have been incorporated into the application for development or are evidenced by a memorandum or otherwise recorded in the records of the clerk and recorder of the county in which the property is located so as to provide notice to transferees of the applicant, who shall be bound by such surface use agreements; or

(III) The application for development provides:

(A) Access to mineral operations, surface facilities, flowlines, and pipelines in support of such operations existing when the final public hearing on the application for development is held by means of public roads sufficient to withstand trucks and drilling equipment or thirty-foot-wide access easements;

(B) An oil and gas operations area and existing wellsite locations in accordance with section 24-65.5-103.5; and

(C) That the deposit for incremental drilling costs described in section 24-65.5-

103.7 has been made.

(2) A local government approval of an application for development without the certification required by subsection (1) of this section when a mineral owner has timely entered an appearance or filed an objection shall be suspended and shall not constitute a valid final approval until the required certification is provided, any required local government proceedings following notice to affected mineral estate owners are held, and the local government approval is confirmed, amended, or revoked in response to the certification.

24-65.5-103.5. Oil and gas operations areas. (1) (a) Within the boundaries of a qualifying surface development, an oil and gas operations area shall meet at least one of the following requirements:

(I) If three or more wells have been or are being drilled in three separate drilling windows in any governmental quarter section, the oil and gas operations area shall provide for a setback not to exceed:

(A) A two-hundred-fifty-foot radius around one of the existing wells located in each of three separate drilling windows;

(B) A two-hundred-foot radius around any other existing wells;

(C) A two-hundred-foot perimeter around tanks; and

(D) An adequate right-of-way or easement for existing and future flowlines and pipelines and a nonexclusive right-of-way for roads reasonably necessary to access the wells and operations located within such areas; or

(II) If two or fewer wells have been or are being drilled in any governmental quarter section, the oil and gas operations area shall provide for:

(A) A six-hundred-foot by six-hundred-foot area, referred to in this paragraph (a) as the six-hundred-foot window, the center of which shall be located no further than two hundred feet from the center of the governmental quarter section. The six-hundred-foot window shall establish a setback from wells and tanks not to exceed two hundred feet from any occupied structure, one-hundred-fifty feet of such setback to be located inside the boundary of the oil and gas operations area and fifty feet to be located outside the boundary of the oil and gas operations area.

(B) A two-hundred-foot radius around any existing wells located outside of the six-hundred-foot window;

(C) A two-hundred-foot perimeter around tanks; and

(D) An adequate right-of-way or easement for existing and future flowlines and pipelines and roads reasonably necessary to access the wells and operations located within such areas.

(b) The oil and gas operations area configured under subparagraph (I) or (II) of paragraph (a) of this subsection (1) shall be the exclusive area for the location of wells

and associated surface production facilities, including tanks. The approved plat may provide that the outer fifty feet of any setback of two hundred feet or more may be used by the surface owner for underground utilities, sidewalks, trails, and parking and may be landscaped with grasses or shallow-root landscaping and irrigated by sprinklers, all at the cost of the surface owner and without any liability to the mineral estate owner in the event of any damage to such improvements from the resumption or continuation of oil and gas operations. The surface owner shall cooperate with the operator to ensure that any sidewalks, trails, or parking areas within the outer fifty feet of any setback are restricted from public access during active oil and gas operations requiring use of the area by heavy equipment.

(2) A surface owner may not encroach on an oil and gas operations area or interfere with the mineral estate owner's use of an oil and gas operations area or any associated rights of way or easements designated in a plat or other application for development approved for recordation except as specified in this section.

(3) In addition to the criteria specified in subsection (1) of this section, the area included within an oil and gas operations area may be modified or moved as reasonably necessary to take into account legal, topographical, or existing surface development restrictions if such modification or movement does not adversely affect oil and gas operations, but an oil and gas operations area may not be reduced or increased in area.

(4) If the development plan contained in an approved application for development containing an approved oil and gas operations area is vacated, a mineral estate owner owning a mineral estate within the boundaries of such development shall thereafter be free to conduct operations within such boundaries in accordance with article 60 of title 34, C.R.S., and the commission's rules then or thereafter existing and subject to the provisions of any applicable surface use agreement.

(5) Nothing in this section impairs or overrides the authority of the commission to establish, amend, or otherwise regulate with respect to the establishment, modification, or elimination of drilling windows or any other matter within the commission's jurisdiction.

24-65.5-103.7. Deposit for incremental drilling costs. (1) The deposit for incremental drilling costs required under section 24-65.5-103.3 (1) (b) (III) (C) shall be an amount for each well in an approved oil and gas operations area that is required to be drilled directionally in order to access a bottom-hole location in one of the five drilling windows permitted by the commission under its greater Wattenberg rule, 2 CCR 404-1, rule 318A, as in effect on August 3, 2007, excluding directional wells required by the commission's greater Wattenberg rule, 2 CCR 404-1, rule 318A (e), as such rule was in effect on December 31, 2006, to be drilled at the operator's expense, up to a total of four wells per governmental quarter section, and shall be determined in accordance with the following criteria:

(a) The amount deposited by the applicant for incremental drilling costs shall be eighty-seven thousand five hundred dollars per well, which amount shall be increased or decreased on July 1 of each year in accordance with corresponding percentage increases or decreases in the consumer price index published by the United States department of labor bureau of labor statistics for the Denver-Boulder-Greeley metropolitan area.

(b) As a condition of obtaining approval to record the final plat, the applicant shall provide confirmation to the local government that the applicant has deposited into an escrow account maintained at a commercial financial institution approved by the commission the amount determined under paragraph (a) of this subsection (1) to defray incremental drilling costs to be incurred by mineral estate owners for drilling wells to prospective formations accessible from the oil and gas operations area that could otherwise have been vertically drilled within drilling windows established by the commission that are not included in such oil and gas operations area. As an alternative to such deposit, the applicant may post a letter of credit or other security for such costs in such manner as the commission shall determine to be adequate. An applicant's failure to make such deposit shall not otherwise rescind, curtail, abrogate, or restrict any final approval of an application for development. If a directional well is commenced within the oil and gas operations area after final plat approval by the local government and before recordation of the final plat, the operator shall give written notice to the applicant of such commencement and the applicant shall be required to make the escrow deposit required under this section within ten days after the commencement for each well that is so commenced.

(c) At the end of three years after recording the plat, subject to extension for a period of up to one year during the pendency of any federal, state, or local drilling permit filed within such three-year period, any funds in escrow or posted as security for which a claim has not been made by a mineral estate owner shall be released or returned to the applicant or its designated successor.

(d) A mineral estate owner that begins to drill a well pursuant to a drilling permit approved no later than three years after final plat approval, as such period may be extended as provided in paragraph (c) of this subsection (1), is entitled to draw on the incremental drilling cost account the amount of its actual incremental drilling costs up to eighty-seven thousand five hundred dollars per directional well, as such amount may be adjusted pursuant to paragraph (a) of this subsection (1) and by allocation of earned interest, by presenting to the commission confirmation that the well has been drilled directionally and confirmation regarding the amount of incremental drilling costs it has incurred with respect to such well. Incremental drilling costs eligible for reimbursement shall not include a mark-up for overhead, administrative, or managerial costs in excess of the actual costs directly incurred as the result of directional drilling of wells within oil and gas operations areas. No mineral estate owner is entitled to recover more than the amount of incremental drilling costs initially deposited in the escrow account, plus its

proportionate share of accrued interest, divided by the number of wells for which the deposit was initially made. Upon the commission's approval of such information, the commission shall issue a directive to the escrow account holder or security holder to release the designated incremental drilling costs for such well to such mineral estate owner.

(e) Exhaustion of the incremental drilling funds in an escrow account or termination of the account shall not modify the availability of designated oil and gas operations areas for further drilling and other oil and gas operations or the protection afforded wellsites, tanks, access roads, flowlines, and pipelines pursuant to section 24-65.5-103.5. The commission shall resolve disputes between the applicant and a mineral estate owner regarding the amount of incremental drilling costs to be deposited in escrow or the amount of such costs for which reimbursement is sought.

24-65.5-104. Enforcement - remedies. (1) (a) If an applicant certifies to the local government that such applicant has complied with the notice requirements of section 24-65.5-103 and that no mineral estate owner has entered an appearance or filed an objection as provided in this article to the applicant and to the local government, after the final approval of the application for development, no development or related activities contemplated by such application, no permit or other approval by such local government, and no permit or other approval by any other local government or agency that approves or permits such development or related activities or any aspect thereof shall, except as provided in subparagraphs (I) and (II) of this paragraph (a), be rescinded, curtailed, abrogated, or otherwise restricted in connection with any purported noncompliance with the notice requirements of section 24-65.5-103 that may be alleged by any party. If the applicant complies with the publication and posting notice requirements of the local government reviewing its application for development, and if an applicant certifies that it has provided the required notice as provided in section 24-65.5-103 in a timely manner, mineral estate owners shall be deemed to have constructively received notice of the application for development. In such event, if the applicant otherwise complies with this article, the applicant shall not have any liability to a mineral estate owner for any legal or equitable remedy or relief arising from, in connection with, or otherwise relating to the application for development, any development activities commenced on the surface of the real property, any ineinability or impediment or other hindrance to drilling operations or other development of the mineral estate or any portion thereof, or any actual failure to receive any notice required by section 24-65.5-103 or 31-23-215, C.R.S., unless:

(I) The applicant knowingly and willfully provides a false certification with respect to the provision of notice, the existence of a surface use agreement, the designation of oil and gas operations areas, or the establishment of an escrow account as required by this article, in which case any local government approval of the application

for development is null and void and all aggrieved parties shall have all legal and equitable remedies available to them;

(II) The certification by the applicant with respect to the provision of notice is incorrect due to the negligence of the applicant or its agent in identifying the mineral estate owners entitled to actual notice under this article, in which case a mineral owner entitled to actual notice that was not sent such notice in the manner required by section 24-65.5-103 is entitled to file an objection to the application for development at any time prior to the final approval of the application for development and to seek compensatory damages only thereafter, in accordance with paragraph (b) of this subsection (1); or

(III) A mineral estate owner, who received constructive notice only and did not enter an appearance or file an objection with the applicant and the local government within thirty days after the initial public hearing on the application for development, files suit for compensatory damages within one year after the posting of the property with a sign indicating that the application for development has received final approval by the local government.

(b) With respect to actions brought under subparagraph (II) or (III) of paragraph (a) of this subsection (1), a mineral estate owner may not recover special, punitive, or other extraordinary damages and is not entitled to equitable remedy or relief. The prevailing party in such action is entitled to an award of reasonable attorney fees.

(2) A mineral estate owner entitled to notice pursuant to section 24-65.5-103 has standing to enforce the requirements of that section, and, except as provided in this subsection (2) with respect to qualifying surface developments, has standing to make claims as may be available at law or equity for noncompliance. With respect to qualifying surface developments:

(a) A mineral estate owner has standing to move for the vacation of the final plat covering an area in which the mineral estate owner owns a mineral estate after depletion of the incremental drilling funds in an escrow account posted under section 24-65.5-103.7 in connection with the recording of such plat only to the extent of areas encompassed within commission-approved drilling windows, and upon the granting of such vacation by the local government has the right to conduct oil and gas drilling and production operations within such commission-approved drilling windows, if such mineral estate owner establishes to the satisfaction of the local government that there is no reasonable likelihood that the surface development approved in such plat will occur and if all other local government requirements for vacating the plat are met.

(b) If a mineral estate owner believes that the oil and gas operations area designated by the applicant for land in which such mineral estate owner owns a mineral estate does not satisfy the criteria specified in section 24-65.5-103.5, such person may register an objection with the local government within thirty days after the public hearing at which the oil and gas operations area is designated, and may appeal the designation to the district court having jurisdiction of the land covered by such application within thirty

days after the decision of the local government with respect to such objection.

24-65.5-105. Authority - local government - commission. Nothing in this article shall establish, alter, impair, or negate the authority of local governments related to oil and gas operations or the authority of the commission to regulate in accordance with this article or any rules promulgated pursuant to this article.

ARTICLE 66

Planning Aid to Local Governments

24-66-101 to 24-66-104. (Repealed)

ARTICLE 67

Planned Unit Development Act of 1972

24-67-101. Short title. This article shall be known and may be cited as the "Planned Unit Development Act of 1972".

24-67-102. Legislative declaration. (1) In order that the public health, safety, integrity, and general welfare may be furthered in an era of increasing urbanization and of growing demand for housing of all types and design, the powers set forth in this article are granted to all counties and municipalities for the following purposes:

(a) To provide for necessary commercial, recreational, and educational facilities conveniently located to such housing;

(b) To provide for well-located, clean, safe, and pleasant industrial sites involving a minimum of strain on transportation facilities;

(c) To ensure that the provisions of the zoning laws which direct the uniform treatment of dwelling type, bulk, density, and open space within each zoning district will not be applied to the improvement of land by other than lot-by-lot development in a manner which would distort the objectives of the zoning laws;

(d) To encourage innovations in residential, commercial, and industrial development and renewal so that the growing demands of the population may be met by

greater variety in type, design, and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;

(e) To encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may enure to the benefit of those who need homes;

(f) To lessen the burden of traffic on streets and highways;

(g) To encourage the building of new towns incorporating the best features of modern design;

(h) To conserve the value of the land;

(i) To provide a procedure which can relate the type, design, and layout of residential, commercial, and industrial development to the particular site, thereby encouraging preservation of the site's natural characteristics; and

(j) To encourage integrated planning in order to achieve the above purposes.

24-67-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Common open space" means a parcel of land, an area of water, or a combination of land and water within the site designated for a planned unit development designed and intended primarily for the use or enjoyment of residents, occupants, and owners of the planned unit development.

(2) "Plan" means the provisions for development of a planned unit development, which may include, and need not be limited to, easements, covenants, and restrictions relating to use, location, and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets, ways, roads, pedestrian areas, and parking facilities, common open space, and other public facilities. "Provisions of the plan" means the written and graphic materials referred to in this definition.

(3) "Planned unit development" means an area of land, controlled by one or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational, recreational, or industrial uses, or any combination of the foregoing, the plan for which does not correspond in lot size, bulk, or type of use, density, lot coverage, open space, or other restriction to the existing land use regulations.

24-67-104. Implementation of article. (1) Any county with respect to territory within the unincorporated portion of the county or any municipality with respect to territory within its corporate limits may authorize planned unit developments by enacting a resolution or ordinance which:

(a) Refers to this article;

(b) Includes a statement of objectives of development;

(c) Designates the board, which may be a commission, board, or the governing body of the county or municipality, authorized to review planned unit development applications as set forth in this article;

(d) Sets forth standards of development consistent with the provisions of section 24-67-105;

(e) Sets forth the procedures pertaining to the application for, hearing on, and tentative and final approval of a planned unit development which shall afford procedural due process to interested parties. The resolution or ordinance shall establish maximum time periods within which any application shall be reviewed and approved, disapproved, or conditionally approved. At least one public hearing shall be held by the board designated pursuant to paragraph (c) of this subsection (1) prior to approval, disapproval, or conditional approval of a planned unit development. Public notice of the public hearing shall be given in the manner prescribed by section 30-28-116 or 31-23-304, C.R.S., whichever is applicable, for the amendment of zoning resolutions and ordinances. Written notice of the public hearing shall be delivered or mailed, first-class postage prepaid, at least fifteen days prior to the public hearing to adjoining landowners.

(f) Requires a finding by the county or municipality that such plan is in general conformity with any master plan or comprehensive plan for the county or municipality.

(2) The enactment of the resolution or ordinance provided for in this section and the enactment of any amendment thereto shall be in accordance with the procedures required for the adoption of an amendment to a zoning resolution or ordinance as prescribed by section 30-28-116 or 31-23-305, C.R.S., whichever is applicable.

24-67-105. Standards and conditions for planned unit development. (1) Every resolution or ordinance adopted pursuant to the provisions of this article shall set forth the standards and conditions by which a proposed planned unit development shall be evaluated, which shall be consistent with the provisions of this section. No planned unit development may be approved by a county or municipality without the written consent of the landowner whose properties are included within the planned unit development.

(2) Such resolution or ordinance shall set forth the uses permitted in a planned unit development and the minimum number of units or acres which may constitute a planned unit development.

(3) Such resolution or ordinance may establish the sequence of development among the various types of uses.

(4) Such resolution or ordinance shall establish standards governing the density or intensity of land use, or methods for determining such density or intensity, in a planned unit development.

(5) Such resolution or ordinance shall specify information which shall be

submitted with the planned unit development application to ensure full evaluation of the application, and the board designated pursuant to section 24-67-104 (1) (c) may require such additional relevant information as it may deem necessary.

(6) (a) Such resolution or ordinance may provide standards for inclusion of common open space.

(b) The ordinance or resolution may require that the landowner provide for and establish an organization for the ownership and maintenance of any common open space or that other adequate arrangements for the ownership and maintenance thereof be made.

(c) In the event that the organization established to own and maintain common open space, or any successor organization, fails at any time after establishment of the planned unit development to maintain the common open space in reasonable order and condition in accordance with the plan, the county or municipality may serve written notice upon such organization or upon the residents of the planned unit development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty days thereof and shall state the date and place of a hearing thereon which shall be held within fourteen days of the notice. At such hearing the county or municipality may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty days or any extension thereof, the county or municipality, in order to preserve the taxable values of the properties within the planned unit development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any right to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the county or municipality shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization or to the residents of the planned unit development to be held by the board designated by the county or municipality, at which hearing such organization or the residents of the planned unit development shall show cause why such maintenance by the county or municipality shall not, at the election of the county or municipality, continue for a succeeding year. If the board designated by the county or municipality determines that such organization is ready and able to maintain said common open space in reasonable condition, the county or municipality shall cease to maintain said common open space at the end of said year. If the board designated by the county or municipality determines that such organization is not ready and able to maintain said common open space in a reasonable condition, the county or municipality may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination,

in each year thereafter.

(d) The cost of such maintenance by the county or municipality shall be paid by the owners of properties within the planned unit development that have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on said properties. The county or municipality shall file a notice of such lien in the office of the county clerk and recorder upon the properties affected by such lien within the planned unit development and shall certify such unpaid assessments to the board of county commissioners and county treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

(7) Design, construction, and other requirements applicable to a planned unit development may be different from or modifications of the requirements otherwise applicable by reason of any zoning or subdivision regulation, resolution, or ordinance of the county or municipality as long as such requirements substantially comply with the subdivision provisions of part 1 of article 28 of title 30 or part 2 of article 23 of title 31, C.R.S., whichever is applicable, and appropriate regulations promulgated thereunder. Subdivision regulations applicable to planned unit developments may differ from those otherwise applicable.

24-67-105.5. Review of planned unit development. (1) The county planning commission or governing body may request redesign of all or any portion of a planned unit development submitted for approval, but any such request shall include specific, objective criteria. If the applicant redesigns the planned unit development in accordance with the request, no further redesign shall be required unless necessary to comply with a duly adopted county resolution, ordinance, or regulation.

(2) Nothing in this section shall be construed to preclude a county from taking any action permitted by law based on the consideration of the rights and privileges of the owners of subsurface mineral interests and their lessees pursuant to section 30-28-133 (10), C.R.S.

(3) Any required public hearing on any planned unit development shall be conducted expeditiously and concluded when all those present and wishing to testify have done so. No public hearing shall continue for more than forty days from the date of commencement without the written consent of the applicant. Any continuation of a public hearing shall be to a date certain.

(4) Unless withdrawn by the applicant, any planned unit development that has been neither approved, conditionally approved, nor denied within a time certain mutually agreed to by the county and the applicant at the time of filing shall be deemed approved. Such time period may be extended by the county to receive a recommendation from an agency to which a planned unit development was referred, but such extension shall not

exceed thirty days unless the agency has notified the county that it will require additional time to complete its recommendation.

(5) Any requirement set forth in this section may be waived in writing by the applicant.

24-67-106. Enforcement and modification of provisions of the plan. (1) To further the mutual interest of the residents, occupants, and owners of a planned unit development and of the public in the preservation of the integrity of the plan, the provisions of the plan relating to the use of land and the location of common open space shall run in favor of the county or municipality and shall be enforceable at law or in equity by the county or municipality without limitation on any power or regulation otherwise granted by law.

(2) All provisions of the plan shall run in favor of the residents, occupants, and owners of the planned unit development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and, to that extent, said provisions, whether recorded by plat, covenant, easement, or otherwise, may be enforced at law or in equity by residents, occupants, or owners acting individually, jointly, or through an organization designated in the plan to act on their behalf. However, no provisions of the plan shall be implied to exist in favor of residents, occupants, and owners except as to those portions of the plan which have been finally approved.

(3) All those provisions of the plan authorized to be enforced by the county or municipality may be modified, removed, or released by the county or municipality, subject to the following:

(a) No modification, removal, or release of the provisions of the plan by the county or municipality shall affect the rights of the residents, occupants, and owners of the planned unit development to maintain and enforce those provisions at law or in equity as provided in subsection (1) of this section.

(b) Except as otherwise provided in paragraph (b.5) of this subsection (3), no substantial modification, removal, or release of the provisions of the plan by the county or municipality shall be permitted except upon a finding by the county or municipality, following a public hearing called and held in accordance with the provisions of section 24-67-104 (1) (e) that the modification, removal, or release is consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.

(b.5) (I) Subject to the requirements of subparagraph (II) of this paragraph (b.5), in the case of any land located within a planned unit development that has been set aside for a governmental use or purpose as specified in the plan, the plan agreement, or related

documents, a governmental entity that holds legal title to the land may, with the approval of the county or municipality in which the land is located, as applicable, and following a public hearing called for and held in accordance with the provisions of section 24-67-104 (1) (e), do any of the following, singularly or in combination:

(A) Subdivide all or any portion of the land;

(B) Remove or release all or any portion of the land from any limitations on its use or purpose by the governmental entity as specified in the plan, the plan agreement, or related documents; or

(C) Sell or otherwise dispose of all or any portion of the land.

(II) Any action authorized in accordance with the requirements of subparagraph (I) of this paragraph (b.5) shall only be undertaken upon a finding by the county or municipality, as applicable, following the public hearing required pursuant to subparagraph (I) of this paragraph (b.5) that all or any portion of the land is not reasonably expected to be necessary for a governmental use or purpose or that the governmental use or purpose will be furthered by disposal of the land. Notwithstanding any other provision of this paragraph (b.5), where action has been undertaken in accordance with the requirements of this paragraph (b.5), the future use of all or any portion of the land shall in all other respects be consistent with the efficient development and preservation of the entire planned unit development and with the plan.

(c) Residents and owners of the planned unit development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove, or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the county or municipality to enforce the provisions of the plan.

24-67-107. Application and construction of article. (1) The provisions of this article shall apply to home rule municipalities unless superseded by charter or ordinance enactment.

(2) Any county or municipality which has enacted, prior to May 21, 1972, a resolution or ordinance providing for planned unit developments may continue to follow the provisions established therein, and any amendments thereto in lieu of electing to follow the provisions of this article.

(3) Nothing in this article shall be construed to impair, affect, or invalidate any rights vested in connection with planned unit developments for which applications were filed prior to May 21, 1972.

(4) Nothing in this article shall be construed to waive the requirements for substantial compliance by counties and municipalities with the subdivision requirements of part 1 of article 28 of title 30 and part 2 of article 23 of title 31, C.R.S., respectively, and appropriate regulations promulgated thereunder. Counties and municipalities, including home rule cities, shall comply with the requirements of article 65.5 of this title.

Subdivision regulations applicable to planned unit developments may differ from those otherwise applicable. In order to facilitate processing of applications, however, a county or municipality, pursuant to resolution or ordinance, may provide for concurrent or simultaneous processing of planned unit development and subdivision applications.

(5) No county or municipality shall adopt pursuant to this article any resolution or ordinance which limits development exclusively to planned unit development districts.

(6) This article shall be liberally construed in furtherance of the purposes of this article and to the end that counties and municipalities shall be encouraged to utilize planned unit developments. Enactment of this article by the general assembly is declared to be for the purpose of supplementing the provisions of part 1 of article 28 of title 30 and article 23 of title 31, C.R.S., as the same relate to and authorize planned unit developments.

24-67-108. Model resolutions - subdivisions - improvement notices. The department of local affairs shall develop model resolutions and ordinances to serve as guidelines for counties and municipalities in enacting enabling resolutions and ordinances pursuant to this article.

ARTICLE 68

Vested Property Rights

24-68-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is necessary and desirable, as a matter of public policy, to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning.

(b) The ability of a landowner to obtain a vested property right after local governmental approval of a site specific development plan will preserve the prerogatives and authority of local government with respect to land use matters, while promoting those areas of statewide concern described in paragraph (a) of this subsection (1).

(c) The establishment of vested property rights will promote the goals specified in this subsection (1) in a manner consistent with section 3 of article II of the state constitution, which guarantees to each person the inalienable right to acquire, possess, and protect property, and is therefore declared to be a matter of statewide concern.

24-68-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Application" means a substantially complete application for approval of a site specific development plan that has been submitted to a local government in compliance with applicable requirements established by the local government. For local governments that have provided for the review and approval of site specific development plans in multiple stages, "application" means the original application at the first stage in any process that may culminate in the ultimate approval of a site specific development plan.

(1.5) "Landowner" means any owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.

(2) "Local government" means any county, city and county, city, or town, whether statutory or home rule, acting through its governing body or any board, commission, or agency thereof having final approval authority over a site specific development plan, including without limitation any legally empowered urban renewal authority.

(3) "Property" means all real property subject to land use regulation by a local government.

(4) (a) "Site specific development plan" means a plan that has been submitted to a local government by a landowner or such landowner's representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but need not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a specially planned area, a planned building group, a general submission plan, a preliminary or general development plan, a conditional or special use plan, a development agreement, or any other land use approval designation as may be utilized by a local government. What constitutes a site specific development plan under this article that would trigger a vested property right shall be finally determined by the local government either pursuant to ordinance or regulation or upon an agreement entered into by the local government and the landowner, and the document that triggers such vesting shall be so identified at the time of its approval.

(b) "Site specific development plan" shall not include a variance, a preliminary plan as defined in section 30-28-101 (6), C.R.S., or any of the following:

(I) A sketch plan as defined in section 30-28-101 (8), C.R.S.;

(II) A final architectural plan;

(III) Public utility filings; or

(IV) Final construction drawings and related documents specifying materials and methods for construction of improvements.

(5) "Vested property right" means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

24-68-102.5. Applications - approval by local government. (1) Except as otherwise provided in subsection (2) of this section, an application for approval of a site specific development plan as well as the approval, conditional approval, or denial of approval of the plan shall be governed only by the duly adopted laws and regulations in effect at the time the application is submitted to a local government. For purposes of this section, "laws and regulations" includes any zoning law of general applicability adopted by a local government as well as any zoning or development regulations that have previously been adopted for the particular parcel described in the plan and that remain in effect at the time of the application for approval of the plan.

(2) Notwithstanding the limitations contained in subsection (1) of this section, a local government may adopt a new or amended law or regulation when necessary for the immediate preservation of public health and safety and may enforce such law or regulation in relation to applications pending at the time such law or regulation is adopted.

24-68-103. Vested property right - establishment - waiver. (1) (a) Each local government shall specifically identify, by ordinance or resolution, the type or types of site specific development plan approvals within the local government's jurisdiction that will cause property rights to vest as provided in this article. Any such ordinance or resolution shall be consistent with the provisions of this article. Effective January 1, 2000, if a local government has not adopted an ordinance or resolution pursuant to section 24-68-102 (4) specifying what constitutes a site specific development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch listed in section 24-68-102 (4).

(b) A vested property right shall be deemed established with respect to any property upon the approval, or conditional approval, of a site specific development plan, following notice and public hearing, by the local government in which the property is situated.

(c) A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto. A local government may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights. A site specific development plan shall be deemed approved upon the effective date of the local government legal action, resolution, or

ordinance relating thereto. Such approval shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a newspaper of general circulation within the jurisdiction of the local government granting the approval, of a notice advising the general public of the site specific development plan approval and creation of a vested property right pursuant to this article. Such publication shall occur no later than fourteen days following approval.

(2) Zoning that is not part of a site specific development plan shall not result in the creation of vested property rights.

24-68-104. Vested property right - duration - termination. (1) A property right which has been vested as provided for in this article shall remain vested for a period of three years. This vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the local government.

(2) Notwithstanding the provisions of subsection (1) of this section, local governments are hereby authorized to enter into development agreements with landowners providing that property rights shall be vested for a period exceeding three years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions. Such development agreements shall be adopted as legislative acts subject to referendum.

(3) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals by the local government to ensure compliance with the terms and conditions of the original approval, if such reviews and approvals are not inconsistent with said original approval.

24-68-105. Subsequent regulation prohibited - exceptions. (1) A vested property right, once established as provided in this article, precludes any zoning or land use action by a local government or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in a site specific development plan, except:

(a) With the consent of the affected landowner;

(b) Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of site specific development plan approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

(c) To the extent that the affected landowner receives just compensation for all

costs, expenses, and liabilities incurred by the landowner after approval by the governmental entity, including, but not limited to, costs incurred in preparing the site for development consistent with the site specific development plan, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultants' fees, together with interest thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.

(2) The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

24-68-106. Miscellaneous provisions. (1) As used in this article, the term "development" includes redevelopment.

(2) A vested property right arising while one local government has jurisdiction over all or part of the property included within a site specific development plan shall be effective against any other local government which may subsequently obtain or assert jurisdiction over such property.

(3) Nothing in this article shall preclude judicial determination, based on common law principles, that a vested property right exists in a particular case or that a compensable taking has occurred.

(4) This article shall apply only to site specific development plans approved on or after January 1, 1988.

PUBLICATION OF LEGAL NOTICES AND PUBLIC PRINTING

ARTICLE 70

Publication of Legal Notices and Public Printing

PART 1

LEGAL NOTICES - PUBLICATION

24-70-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Legal notice" or "advertisement" means any notice or other written matter required to be published in a newspaper by any law of this state, or by the ordinances of

any city or town, or by the order of any court of record of this state.

(2) "Privately supported legal notice or advertisement" means any legal notice or advertisement which is required by federal, state, or local law or court order which is paid for by a person or entity other than a governmental entity either directly or by direct, specific reimbursement to the governmental entity.

(3) "Publicly supported legal notice or advertisement" means any legal notice or advertisement which is required by federal, state, or local law or court order which is paid for by a governmental entity.

(4) "Published" means a newspaper maintains an office in the county to gather news, sell advertising, or conduct the general business of newspaper publications.

24-70-102. Legal publications. Every newspaper printed and published daily, or daily except Sundays and legal holidays, or on each of any five days in every week excepting legal holidays and including or excluding Sundays shall be considered and held to be a daily newspaper; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a triweekly newspaper; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semiweekly newspaper; and every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper. No publication, no matter how frequently published, shall be considered a legal publication unless it has been admitted to the United States mails with periodicals mailing privileges.

24-70-103. Requisites of legal newspaper. (1) Any and every legal notice or advertisement shall be published only in a daily, a triweekly, a semiweekly, or a weekly newspaper of general circulation and printed or published in whole or in part in the county in which such notice or advertisement is required to be published, except as provided in this section. The newspaper, if published triweekly, semiweekly, or weekly, shall have been so published in such county, except as provided in this section, continuously and uninterruptedly during the period of at least fifty-two consecutive weeks next prior to the first issue thereof containing any such notice or advertisement; and the newspaper, if published daily, shall have been so published in such county, uninterruptedly and continuously, during the period of at least six months next prior to the first issue thereof containing any such notice or advertisement. In the case of a municipality having territory in two counties, each of which counties has one or more legal newspapers within the municipality, the publication by such municipality of its legal notices and advertisements in one of such newspapers shall be construed as valid publication under this part 1.

(2) The mere change in the name of any newspaper or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the same is in fact continuously and uninterruptedly printed or published within such county. A newspaper shall not lose its rights as a legal publication if it fails to publish one or more of its issues by reason of a strike, transportation embargo or tie-up, or other casualty beyond the control of the publishers. Any legal notice which fails of publication for the required number of insertions by reason of a strike shall not be declared illegal if publication has been made in one issue of the publication.

(3) If in any county in this state no newspaper has been published for the prescribed period at the time when any such notice or advertisement is required to be published or if there is no newspaper published therein, such notice or advertisement may be published in any newspaper published in whole or in part in an adjoining county and having a general circulation in whole or in part in said county having no newspaper published therein. If there is no newspaper in any adjoining county that has been published for the prescribed period at the time when any such notice or advertisement is required to be published, a required notice or advertisement may be published in a newspaper having general circulation within the county.

(4) Notwithstanding any other provision of this part 1, if no newspaper is published within the territorial boundaries of a municipality that satisfies the requirements for a legal publication as specified in section 24-70-102, but a newspaper that provides local news and that would satisfy the requirements to be admitted to the United States mails with periodicals mailing privileges but for the absence of paid circulation is distributed within such territorial boundaries, the municipality may publish any legal notice or advertisement required by law in such newspaper.

24-70-104. Publication of proposed constitutional amendments and initiated and referred bills. (Repealed)

24-70-105. Proof of publication. Proof of the publication of any such legal notice or advertisement may be made by the affidavit of the printer, editor, publisher, or proprietor of the newspaper in which the publication is made or by any other competent person who has personal knowledge of the essential facts, which affidavit, in addition to the other matters required by law to be set forth therein, shall state that such notice or advertisement was published in a newspaper duly qualified for that purpose.

24-70-106. Competency of newspapers - publication periods

construed. (1) Except as otherwise provided by law in express terms or by necessary implication, daily, weekly, semiweekly, and triweekly newspapers shall all be equally competent as the media for the publication of all legal notices and advertisements. Except where the publication of any such legal notice or advertisement at intervals of less than one week is required by law, publication once each week on the same weekday in any such daily, weekly, semiweekly, or triweekly newspaper for the required number of times shall constitute publication in accordance with the law.

(2) For the purpose of defining and clarifying ambiguities in the various statutes requiring the publication of legal notices and advertisements, but not for the purpose of increasing any period of publication or the number of publications required by any statute, the meaning and intent of any law governing the publication of legal notices and advertisements, except as otherwise expressly provided, is declared to be as follows, where publication is required for:

(a) Ten days, publication once each week for three successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(b) Two weeks, publication once each week for three successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(c) Three weeks, publication once each week for four successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(d) Four weeks, publication once each week for five successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(e) Five weeks, publication once each week for six successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(f) Thirty days, publication once each week for six successive weeks in any daily, weekly, semiweekly, or triweekly newspaper shall be sufficient;

(g) More than thirty days or five weeks, publication once each week in any daily, weekly, semiweekly, or triweekly newspaper for a period such that the interval elapsing between the first and last publication shall be equal to the period of publication prescribed by law shall be sufficient.

24-70-107. Rates for legal publications. (1) (a) On or after January 1, 1993, for all publicly supported legal notices or advertisements published in newspapers, the rate paid for the first insertion of such notice shall not exceed forty-four cents for each single-column line of six-point type and shall not exceed thirty-two cents per line for each subsequent insertion. If the notice is set in larger type, the rate shall be prorated. Regardless of the size of type the notice is set in, the rates specified in this paragraph (a) are based on a single column measuring ten pica ems wide. If the column width is either wider or narrower for a single column, the rate per line shall be prorated on the ten pica em width.

(b) All emblems, display headings, rule work, and necessary blank space shall be considered to be solid type. For the purpose of calculating the charge for the items enumerated in this paragraph (b) only, the rate shall not exceed the line rate charge figured at twelve lines per inch for each column inch or a proportional amount for fractions of an inch.

(2) (a) On or after January 1, 1993, for all privately supported legal notices or advertisements, the rate paid shall not exceed the newspaper's local classified display line rate which is offered to commercial customers and shall include the same frequency and volume discounts. The legal publication rate shall be published in the newspaper's rate card.

(b) Notwithstanding any statute to the contrary, if any local government fee set by statute is too low to permit the local government to recover the full cost of publishing a privately supported legal notice or advertisement, the local government may adjust the fee by the actual dollar amount necessary to recover the full cost of the publication.

(3) Any contract providing for payment of a notice at a lesser sum than is provided in this section shall be valid.

(4) Upon request by the party placing a legal publication, the newspaper shall minimize the space required for publication of a valid and readable notice, but in no case shall the type be less than six points.

24-70-108. Designation of legal newspaper. In all cases and proceedings brought in courts of record in this state and in foreclosure proceedings through the public trustee wherein the law requires the publication of a legal notice or advertisement or said legal notice or advertisement is published by order of the court in compliance with the law or rules of procedure of such court, the party upon whose motion or application or the beneficiary under the deed of trust or the legal holder of an indebtedness secured by a deed of trust shall have the right to designate the newspaper in which such legal notice or advertisement shall be published. Said newspaper shall be a legal newspaper as defined by law and shall be published in the county where such publication is required to be made by law or by the rules of civil procedure or rules of the court applicable thereto.

24-70-109. Legal notices - contents - requirements in the case of a foreclosure sale or a sale by a public trustee. (1) All legal notices which are published to advertise sales of real property by a public trustee under a deed of trust or an execution sale resulting from the foreclosure of a mortgage shall contain a statement that the lien foreclosed may not be a first lien, which statement shall be printed in bold-faced type.

(2) This section shall apply to all legal notices described in subsection (1) which are published on or after January 1, 1989.

PART 2

PUBLIC PRINTING

24-70-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Person" includes individuals, limited liability companies, partnerships, associations, and corporations.

(2) "Public printing" or "printing" means printing, lithographing, engraving, embossing, composition, binding, and the furnishing of necessary stationery and materials in connection therewith done for the state of Colorado or any of its departments.

24-70-202. Executive director of the department of personnel to supervise. The executive director of the department of personnel shall have full direction and supervision of all public printing of the state of Colorado and particularly as specified in this part 2. The general assembly declares that it is in the public interest and necessary for economy in the expenditure of public moneys, and in the prevention of the duplication of public offices, to provide for the supervision and direction of public printing by the executive director of the department of personnel. The executive director of the department of personnel shall supervise and direct all public printing as a part of and in connection with his or her duties as executive director of the department of personnel without additional compensation. The executive director of the department of personnel shall employ, pursuant to section 13 of article XII of the state constitution and laws relating to the state personnel system, such persons as he or she may deem necessary to properly and fully direct and supervise all public printing of the state of Colorado, who shall be practical printers with at least five years' experience in commercial printing.

24-70-203. Classes of printing. (1) All public printing for the state of Colorado shall be divided into four classes, as follows:

(a) The legislative bills, memorials, resolutions, calendars, and journals of the general assembly shall constitute the first class.

(b) The laws passed by the general assembly at each session, known as the "Session Laws of Colorado", shall constitute the second class.

(c) The reports of the opinions of the Colorado supreme court and court of appeals shall constitute the third class.

(d) All other types of printing required by any governmental agency of the state, except as provided in article 5 of title 2, C.R.S., shall constitute the fourth class.

24-70-203.5. Printing - paper specifications. (1) Any public printing for purpose of a permanent record authorized by the general assembly shall be printed on acid-free, alkaline-based, or permanent type paper that conforms to American national standards for permanent paper for printed library materials (ANSI Z 3948). Use of such permanent type paper shall be appropriately noted in the publication.

(2) The general assembly hereby recommends the use of acid-free, alkaline-based, or permanent type paper by state agencies publishing documents meant to be a permanent public record.

24-70-204. Specifications. (1) Legislative bills, memorials, resolutions, calendars, the daily journals of each house of the general assembly, and the session laws shall be printed in accordance with such specifications as shall be drawn by the speaker and chief clerk of the house of representatives and the president and secretary of the senate.

(2) (a) Acts which amend existing law shall show the specific changes to the existing law in the manner provided by joint rule of the senate and the house of representatives.

(b) (Deleted by amendment, L. 91, p. 675, § 1, effective March 29, 1991.)

(c) Amendatory bills approved by both houses of the general assembly and enrolled in final form by the respective houses shall be prepared in the manner set forth in the joint rules of the senate and the house of representatives for final deposit with the secretary of state.

(d) (Deleted by amendment, L. 91, p. 675, § 1, effective March 29, 1991.)

(e) At the bottom of the first page in the session laws where each amendatory act first appears, explanatory notes shall be printed in italics which indicate how new material and deleted material is indicated in the act.

(f) If through error or omission any amendatory act or part thereof is not printed in the session laws in compliance with this subsection (2), such error or omission shall not affect the validity of such act.

(g) Corrections may be made to an enrolled bill before being printed in the session laws under the direction of the chief clerk of the house of representatives, in the case of a house bill, or the secretary of the senate, in the case of a senate bill, if such corrections involve only punctuation, capitalization, and crossed-out material and do not change the meaning of the act.

(3) The reports of the supreme court and court of appeals shall be printed in accordance with such specifications as shall be drawn by the chief justice and the reporter of the supreme court.

24-70-205. Contracts for public printing.

(1) Repealed.

(2) The executive director of the department of personnel shall advertise at least two times in newspapers of general circulation published and printed in the city and county of Denver, in sufficient time to insure furnishing of such printing when needed, inviting sealed proposals for doing printing included in the first, second, or third classes. Calls for bids for the printing specified in the fourth class shall be made from time to time in the discretion of the executive director of the department of personnel as such printing may be required for the state and its departments. The executive director of the department of personnel may call for bids on any item or group of items at such times as he or she may designate; except that printing for the state agencies outside the Denver area may be secured by the respective heads of such agencies by securing the approval of the executive director of the department of personnel after a call for bids, as specified under rules and regulations established by the executive director of the department of personnel.

24-70-206. Bids - specifications. The executive director of the department of personnel shall have the responsibility for setting detailed standards and specifications for the submission of all bids. Bids which do not comply with such standards and specifications may be rejected by the executive director of the department of personnel. The executive director of the department of personnel shall consult with the president of the senate and the speaker of the house of representatives and the chief justice of the Colorado supreme court, as applicable, concerning the content, format, and specifications for printing in classes one, two, and three. Publications of the executive branch in class four of public printing shall be approved by the controller before being submitted for bid.

24-70-207. Delivery of sealed bids. All bids and proposals shall be delivered at the office of the executive director of the department of personnel, in the state capitol buildings group, endorsed, "Proposals for state printing; Class .....", and shall be and remain sealed until the hour specified in the advertisements or call for the opening of such bids and proposals, and in no case shall bids be received by the executive director of the department of personnel after such hour, except for bids of state institutions.

24-70-208. Bid guarantee - opening bid. The executive director of the department of personnel, in the case of classes one, two, or three, shall consider only bids which are accompanied by a bid guarantee satisfactory to the executive director, in the sum of at least five percent of the established value of the contract, conditioned that the

person making the bid, if the contract is awarded him or her, within ten days after notification that his or her bid has been accepted, will enter into such contract in accordance with his or her bid or proposal and in accordance with the provisions of this part 2 and all specifications submitted by the executive director of the department of personnel.

24-70-209. Letting of contract - bond. (1) At the hour specified for the opening of bids submitted for printing under classes one, two, or three, the executive director of the department of personnel, in the presence of such bidders as may choose to attend, shall open such bids and proceed to determine the lowest responsible bidder for each class, having full regard for the probable aggregate cost of all things to be furnished and work to be done under such contract in accordance with such bid. After the determination of same, the executive director of the department of personnel immediately shall notify such lowest responsible bidder of his or her appointment to execute the work, and such bidder, within ten days after receiving such notice, shall execute a bond to the state of Colorado in such sum as the executive director determines, conditioned for the faithful performance of his or her contract in all respects, with sureties to be approved by the executive director, and such bonds shall be deposited with and remain in the custody of the secretary of state.

(2) In case the lowest bidder fails to execute such bond or fails to enter into contract in accordance with the terms of his or her bid, he or she and the sureties on his or her bond tendered with his or her bid shall be liable for all costs which may accrue to the state by reason of such failure, to be recovered from him or her and the sureties on his or her bond, and any such failure shall be conclusive evidence of damages in at least the sum of one hundred dollars. In case of such failure, the executive director of the department of personnel shall immediately award the contract to the next lowest responsible bidder, and the same steps shall be taken successively until a proper contract has been executed. The executive director of the department of personnel, if he deems it for the best interest of the state, may reject any or all bids, or parts of bids, and in such case, as well as on the failure of any successful bidder to enter into contract in accordance with his or her bid or proposal, the executive director shall readvertise for such bids or parts of bids.

24-70-210. Law constitutes part of contract. Each and every provision of law in force at the time of the execution of any contract for state printing or binding constitutes a part of every such contract.

24-70-211. Right to print, publish, and sell state laws and supreme court and

court of appeals reports. Unless otherwise provided by law, nothing in this part 2 authorizes any person, by virtue of a contract for printing the official statutes, pursuant to article 5 of title 2, C.R.S., the session laws, or the supreme court and court of appeals reports of this state, either directly or indirectly, to print, publish, sell, or give away for his own use or benefit any such statutes, session laws, or reports; but the right to print, publish, sell, or give away such statutes, session laws, or supreme court and court of appeals reports shall always remain with the state. Any person who contracts for such printing and who prints, publishes, sells, or gives away such statutes, session laws, or court reports in violation of the terms of such contract or without other authorization of the general assembly for such statutes or session laws or without the authorization of the supreme court for such court reports shall forfeit to the state the sum of one hundred dollars for each and every book, volume, computer representation, or pamphlet so printed, to be recovered by an action in the name of the state.

24-70-212. Quality of paper. The quality of paper to be used for blanks, stationery, and blank books shall be number one grade flat writing, twenty pound, twenty-five percent rag content bond and number one grade ledger, which shall be furnished by the contractor according to the specifications of the executive director of the department of personnel, unless otherwise specified in the call for bids, as the nature of the job may require.

24-70-213. State purchasing agent to measure printing and keep records. (Repealed)

24-70-214. Invoices to be made in duplicate. (Repealed)

24-70-215. Requisitions for printing. No public printing of any sort or description whatever may be furnished to any department of the state government or to any officer or employee of the state, except on requisition of the head of a department, addressed to the executive director of the department of personnel; but the provisions of this section do not apply to the printing, publishing, or binding of the reports of the decisions of the supreme court or the court of appeals.

24-70-216. When governor may set aside bid. If the governor has reason to believe that at the letting of any contract for printing or binding the bidding therefor is or

has been unfair, fraudulent, or exorbitant or by collusion between any two or more bidders or between any bidder and any other person whatever or if there is any unreasonable delay on the part of any contractor in performing the things required under the terms of such contract, the governor may set aside such bid and cause such contract to be relet if he deems it in the best interest of the state to do so.

24-70-217. Who prohibited from holding contract. No contract shall be let under the provisions of this part 2 for furnishing any work or material to any person holding any state office in this state or a seat in the general assembly or to any person employed in any of the executive offices of the state, nor shall any state officer or member of the general assembly become directly in any way whatever interested in any such contract, and a violation of any of the provisions of this section shall work a forfeiture of such contract. The person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

24-70-218. Attorney general to bring action, when. If any person making any bid or proposal under this part 2 fails or refuses to enter into a contract pursuant to the terms of his or her bid or proposal within the time mentioned in his or her bond presented with such bid or proposal or fails to fulfill his or her contract or if there is any unreasonable delay in performing the things required under the terms of such contract, it is the duty of the executive director of the department of personnel to notify the attorney general of the state, who shall at once bring suit on the bond of such contractor against such contractor and his or her sureties and shall prosecute the same to judgment and final execution.

24-70-219. Annulment of contract. Upon the failure or nonperformance in any particular of the terms of any of the contracts on the part of a contractor with the state or for any unreasonable delay in performing the things required under the terms of such contract, the governor may annul the contract in which such default is made, and payment for all work theretofore done by the contractor shall be withheld until the damage to the state is ascertained by proper adjudication, and the executive director of the department of personnel may thereupon readvertise and enter into a contract for the balance of the uncompleted term of any contract so annulled or abrogated in the manner prescribed for contracting by the terms of this part 2.

24-70-220. Penalty for bribe. Any person who offers to pay any money or other valuable thing to induce another not to bid for a contract under this part 2 or as a recompense for not having bid for such contract or for abandoning a bid made commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person who accepts any money or other valuable thing for not bidding for a contract under this part 2 or for abandoning a bid made by him or her or who withholds a bid in consideration of a promise for the payment of money or other valuable thing commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-70-221. Account not approved, when. All printing that is purchased for the use of the general assembly, or the members thereof, or for any officer or person whatever to whom such printing is furnished at the expense of the state shall be printed on the quality and size of paper and in the manner specified in the contract for printing and furnishing such printing, and the executive director of the department of personnel shall not approve any account, nor shall any money be paid from the state treasury, for any work or material that is not in accordance with the requirements of such contract or for which a higher price is charged than that specified in the contract for such printing.

24-70-222. Blank pages. In determining amounts to be paid for composition under the provisions of this part 2, nothing shall be allowed or paid for composition for any page which is entirely blank.

24-70-223. Publication of session laws. (1) It is the duty of the revisor of statutes, upon approval by the speaker of the house and the president of the senate, to arrange and prepare for publication, immediately after the adjournment of each session of the general assembly, a copy of all the laws passed at such session, together with such resolutions and memorials passed at such session and furnished to the revisor of statutes for publication by the chief clerk of the house and the secretary of the senate, and all initiated and referred laws which have been passed by the vote of the people. The session laws shall contain a full index, a tabulation by Colorado Revised Statutes section numbers of all changes made to such statutes by amendment, repeal, or addition of new subject matter, and a disposition table by house and senate bill number to the session laws and to Colorado Revised Statutes. The revisor of statutes shall see that the printing and binding of the laws are well-executed. The contract and sales pertaining to such publication shall be handled in accordance with this article. The signature of the president of the senate, speaker of the house, and governor shall not be printed at the end of each law, but only the date of the approval by the governor shall be shown. The certificate of the contents of

the session laws volumes shall be signed by the speaker of the house and the president of the senate.

(2) If the committee on legal services finds that economy and efficiency will be achieved, the committee may combine the contract for the publication of session laws of Colorado with that for the publication of Colorado Revised Statutes, in which event the bid and contract provisions of this part 2 shall not apply, and the bid and contract provisions of article 5 of title 2, C.R.S., shall apply.

(3) The classification and arrangement by chapter, article, and number system of sections in any enactment of the general assembly printed in the session laws of Colorado, as well as the section titles or captions and other editorial matter included in the session laws, form no part of the legislative text enacted thereby. Such inclusion is only for the purpose of convenience, orderly arrangement, and information; therefore, no implication or presumption of a legislative construction is to be drawn therefrom.

24-70-224. Official list - designation and disposition of session laws. (1) The revisor of statutes shall prepare for approval by the committee on legal services an official list of the state, district, county, and municipal officials and agencies who shall receive for official use volumes of the session laws, including a sufficient number of volumes for exchange with other states and territories on a reciprocal basis; and the office of legislative legal services shall thereupon deliver such volumes to such officials and agencies, taking a receipt for each volume so delivered.

(2) All volumes provided for official use shall remain the property of the state of Colorado for the use of such named officials and their successors and shall bear such designation.

24-70-225. Session laws - sale - price. Copies of the session laws of Colorado shall be sold by the publisher thereof at the cost price per copy purchased for use of the state plus twenty percent and delivery charges.

24-70-226. Report of sales. The publisher, within one month after the opening of each regular session of the general assembly, shall report to the committee on legal services the total number of copies of the session laws printed, the number of copies in his hands after the distribution provided for in section 24-70-224, and the number of copies sold by him.

24-70-227. Secretary to deliver to successor. (Repealed)

24-70-228. Penalty. Any person violating any provision of this part 2, as well as any person consenting to such violation, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, except as otherwise provided in this part 2.

24-70-229. Publications of educational institutions. Publications of educational institutions, except publications issued by the institutions pursuant to a research contract, circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

24-70-230. Remedies. Disputes arising in connection with the solicitation, award, or performance of contracts for public printing shall be resolved pursuant to the provisions of article 109 of this title.

ELECTRONIC TRANSACTIONS

ARTICLE 71

Electronic Signatures

24-71-101. Electronic signatures - construction with other laws. (1) As used in this article, "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(2) In any written communication in which a signature is required or used, any party to the communication may affix a signature by use of an electronic signature that complies with the requirements of article 71.3 of this title for electronic signatures.

(3) The use or acceptance of an electronic signature shall be at the option of the parties. Nothing in this section shall require any person to use or permit the use of an electronic signature.

(4) In the event of any conflict between article 71.3 of this title and this article, said article 71.3 shall control, but only to the extent of such conflict.

ARTICLE 71.1

24-71.1-101 to 24-71.1-110. (Repealed)

ARTICLE 71.3

Uniform Electronic Transactions Act

24-71.3-101. Short title. This article shall be known and may be cited as the "Uniform Electronic Transactions Act".

24-71.3-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the

intent to sign the record.

(9) "Governmental agency" means an executive agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, charitable, or governmental affairs. For the purpose of this article, "transaction" shall not mean any ballot cast in any election or any petition related to any department, board, commission, authority, institution, or instrumentality of the state or any county, municipality, or of their political subdivisions, or any of their instrumentalities.

24-71.3-103. Scope. (1) Except as otherwise provided in subsection (2) of this section, this article applies to electronic records and electronic signatures relating to a transaction.

(2) This article does not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(b) The "Uniform Commercial Code", title 4, C.R.S., other than section 4-1-306, C.R.S., and articles 2 and 2.5 of title 4, C.R.S.

(3) **Additional exceptions.** This article shall not apply to:

(a) Court orders or notices or official court documents, including briefs, pleadings,

and other writings, required to be executed in connection with court proceedings;

(b) Any notice of:

(I) The cancellation or termination of utility services, including water, heat, and power;

(II) Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual, provided that nothing in this subparagraph (II) shall prohibit any record related to a foreclosure from being sent or received in electronic form or by electronic means between the owner of an evidence of debt or the attorney for such owner and the office of a public trustee or sheriff, nor shall anything in this subparagraph (II) prohibit the office of a public trustee or sheriff from receiving or storing any record related to a foreclosure in electronic form or by electronic means;

(III) The cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; or

(IV) Recall of a product, or material failure of a product, that risks endangering health or safety; or

(c) Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(4) This article applies to an electronic record or electronic signature otherwise excluded from the application of this article under subsection (2) of this section to the extent it is governed by a law other than those specified in said subsection (2).

(5) A transaction subject to this article is also subject to other applicable substantive law.

(6) (a) This article is not intended to limit, modify, or supercede the requirements of section 101 (d), 101 (e), 102 (c), 103 (a), or 103 (b) of the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 (d), 7001 (e), 7002 (c), 7003 (a), and 7003 (b).

(b) The consumer disclosures contained in section 101 (c) of the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 (c), are incorporated by reference and shall also apply to intrastate transactions.

24-71.3-104. Prospective application. This article applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after May 30, 2002.

24-71.3-105. Use of electronic records and electronic signatures - variation by agreement. (1) This article does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) This article applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection (3) may not be waived by agreement.

(4) Except as otherwise provided in this article, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this article of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this article and other applicable law.

24-71.3-106. Construction and application. (1) This article must be construed and applied:

(a) To facilitate electronic transactions consistent with other applicable law;

(b) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(c) To effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

24-71.3-107. Legal recognition of electronic records, electronic signatures, and electronic contracts. (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

24-71.3-108. Provision of information in writing - presentation of records. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its

information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than this article requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in paragraph (b) of subsection (4) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this article requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this article to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by agreement to the extent permitted by the other law.

24-71.3-109. Attribution and effect of electronic record and electronic signature. (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

24-71.3-110. Effect of change or error. (1) If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also

conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(I) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(II) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(III) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(c) If neither paragraph (a) nor paragraph (b) of this subsection (1) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(d) Paragraphs (b) and (c) of this subsection (1) may not be varied by agreement.

24-71.3-111. Notarization and acknowledgment. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

24-71.3-112. Retention of electronic records - originals. (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) of this section by using the services of another person if the requirements of said subsection (1) are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that

law is satisfied by an electronic record retained in accordance with subsection (1) of this section.

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1) of this section.

(6) A record retained as an electronic record in accordance with subsection (1) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes unless a law enacted after May 30, 2002, specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

24-71.3-113. Admissibility in evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

24-71.3-114. Automated transaction. (1) In an automated transaction, the following rules apply:

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(c) The terms of the contract are determined by the substantive law applicable to it.

24-71.3-115. Time and place of sending and receipt. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the

information processing system designated or used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (4) of this section.

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection (4), the following rules apply:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) of this section even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1) of this section or purportedly received under subsection (2) of this section was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection (7) may not be varied by agreement.

24-71.3-116. Transferable records. (1) In this section, "transferable record" means an electronic record that:

(a) Would be a note under article 3 of the "Uniform Commercial Code", title 4, C.R.S., if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that

person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e), and (f) of this subsection (3), unalterable;

(b) The authoritative copy identifies the person asserting control as:

(I) The person to which the transferable record was issued; or

(II) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 4-1-201 (b) (20), C.R.S., of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the "Uniform Commercial Code", title 4, C.R.S., including, if the applicable statutory requirements under section 4-3-302 (a) or 4-9-308, C.R.S., are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection (4).

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the "Uniform Commercial Code", title 4, C.R.S.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

24-71.3-117. Creation and retention of electronic records by political subdivisions. Each department, board, commission, authority, institution, or

instrumentality of the state, in accordance with the policies, standards, and guidelines set forth by the office of information technology, may determine whether, and the extent to which, such department, board, commission, authority, institution, or instrumentality shall create and retain electronic records and convert written records to electronic records. A county, municipality, or other political subdivision, or any of their instrumentalities, shall have the general power, in relation to the administration of the affairs of a county, municipality, or other political subdivision, or any of their instrumentalities, to determine the extent to which it will create and retain electronic records and electronic signatures.

24-71.3-118. Acceptance and distribution of electronic records by governmental agencies. (1) Except as otherwise provided in section 24-71.3-112 (6), each department, board, commission, authority, institution, or instrumentality of the state in consultation with the office of information technology, created in section 24-37.5-103, and the state archivist and in accordance with policies, standards, and guidelines set forth by the office may determine the extent to which such department, board, commission, authority, institution, or instrumentality shall send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. A county, municipality, or other political subdivision, or any of their instrumentalities, shall have the general power, in relation to the administration of the affairs of a county, municipality, or of their political subdivision, or any of their instrumentalities, to determine the extent to which it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) (Deleted by amendment, L. 2007, p. 916, § 14, effective May 17, 2007.)

(3) Except as otherwise provided in section 24-71.3-112 (6), this article does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

(4) Repealed.

24-71.3-119. Interoperability. The office of information technology, created in section 24-37.5-103, may, in adopting policies, standards, and guidelines pursuant to section 24-71.3-118, encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those policies, standards, and guidelines may specify differing levels of standards from which governmental agencies of this state may choose in

implementing the most appropriate standard for a particular application.

24-71.3-120. Severability clause. If any provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are hereby expressly declared to be severable.

24-71.3-121. Construction with other laws. In the event of any conflict between article 71 of this title and this article, this article shall control, but only to the extent of such conflict.

ARTICLE 71.5

Uniform Electronic Legal Material Act

24-71.5-101. Short title. This article may be cited as the "Uniform Electronic Legal Material Act".

Editor's note: This section is effective March 31, 2014.

24-71.5-102. Definitions. In this article:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(a) The constitution of this state;

(b) The session laws of Colorado;

(c) The Colorado Revised Statutes; and

(d) A state agency rule promulgated in accordance with article 4 of this title.

(3) "Official publisher" means:

(a) For the constitution of this state, the general assembly;

(b) For the session laws of Colorado, the general assembly;

(c) For the Colorado Revised Statutes, the general assembly; and

(d) For a rule published in the code of Colorado regulations, the secretary of state.

(4) "Publish" means to display, present, or release to the public, or cause to be

displayed, presented, or released to the public, by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Editor's note: This section is effective March 31, 2014.

24-71.5-103. Applicability. This article applies to all legal material in an electronic record that is designated as official under section 24-71.5-104 and first published electronically on or after March 31, 2014.

Editor's note: This section is effective March 31, 2014.

24-71.5-104. Legal material in official electronic record. (1) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(a) Designate the electronic record as official; and

(b) Meet the requirements of sections 24-71.5-105, 24-71.5-107, and 24-71.5-108.

(2) An official publisher that publishes legal material in a record other than an electronic record may designate an electronic record as official if the requirements of sections 24-71.5-105, 24-71.5-107, and 24-71.5-108 are met.

Editor's note: This section is effective March 31, 2014.

24-71.5-105. Authentication of official electronic record. An official publisher of legal material in an electronic record that is designated as official under section 24-71.5-104 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

Editor's note: This section is effective March 31, 2014.

24-71.5-106. Effect of authentication. (1) Legal material in an electronic record that is authenticated under section 24-71.5-105 is presumed to be an accurate copy of the legal material.

(2) If another state has adopted an act substantially similar to this article, legal material in an electronic record designated as official and authenticated by that state is presumed to be an accurate copy of that legal material.

(3) A party contesting the authentication of legal material has the burden of proving by a preponderance of the evidence that the legal material is not authentic.

Editor's note: This section is effective March 31, 2014.

24-71.5-107. Preservation of legal material in official electronic record. (1) An official publisher of legal material in an electronic record that is or was designated as official under section 24-71.5-104 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(2) If legal material is preserved in an electronic record, the official publisher shall:

(a) Ensure the integrity of the record;

(b) Provide for backup and disaster recovery of the record; and

(c) Ensure the continuing usability of the material.

Editor's note: This section is effective March 31, 2014.

24-71.5-108. Public access to legal material in official electronic record. An official publisher of legal material in an electronic record that must be preserved under section 24-71.5-107 shall ensure that the material is reasonably available for use by the public on a permanent basis.

Editor's note: This section is effective March 31, 2014.

24-71.5-109. Standards. (1) In implementing this article, an official publisher of legal material shall consider:

(a) Standards and practices of other jurisdictions;

(b) The most recent standards regarding authentication of, preservation and

security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;

(c) The needs of users of legal material in an electronic record;

(d) The views of governmental officials and entities and other interested persons; and

(e) To the extent practicable, the use of methods and technologies for the authentication of, preservation and security of, and public access to, legal material that are in harmony and compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted this article.

Editor's note: This section is effective March 31, 2014.

24-71.5-110. Uniformity of application and construction. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Editor's note: This section is effective March 31, 2014.

24-71.5-111. Relation to electronic signatures in global and national commerce act. This article modifies, limits, or supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Editor's note: This section is effective March 31, 2014.

24-71.5-112. Effective date. This article takes effect on March 31, 2014.

Editor's note: This section is effective March 31, 2014.

PUBLIC (OPEN) RECORDS

ARTICLE 72

Public Records

PART 1

RESTORATION AND EVIDENCE

24-72-100.1. Short title. (Repealed)

24-72-101. Records destroyed - certified copies rerecorded. Whenever it appears that the records, or any material part thereof, of any county in this state have been destroyed by fire or otherwise, any map, plat, deed, conveyance, contract, mortgage, deed of trust, or other instrument in writing of whatever nature or character affecting real estate or irrigation ditches in such county, or certified copies thereof, may be rerecorded, and in recording the same the recorder shall record the certificate of the previous record, and the date of filing for record appearing in said original certificate so recorded shall be deemed and taken as the date of the record thereof, and copies of any such record so authorized to be made under this section, duly certified by the recorder of any such county under his seal of office, shall be received in evidence and have the same force and effect as certified copies of the original record.

24-72-102. District court to restore destroyed records. (1) Whenever the public records of any plat or map or any tax list, assessment roll, or any public record or writing connected with the assessment and collection of the revenues of such county and of the state which is required to be kept by the county clerk and recorder of such county in his office is lost or destroyed by fire or otherwise, it is the duty of the county attorney of the county in which such loss or destruction occurs to file in the district court of such county an information in the name of the people of the state of Colorado, setting forth substantially the fact of such loss or destruction of such public records, or so much thereof as may be desired to be reproduced and reestablished or restored, with the circumstances attending the loss or destruction of the same, as nearly as may be, and thereupon the clerk of such court shall cause such information to be published in full in one or more newspapers published in such county for the period of four weeks, together with the notice addressed, "To all whom it may concern", that the court, at a term therein designated to be held not less than four weeks from the first publication of such information and notice, will proceed to hear and determine the matters in said information

set forth and will take testimony for the purpose of reproducing, reestablishing, or restoring such records as the court finds to be lost or destroyed. Upon such publication being made, all persons interested shall be deemed defendants and may appear in person or by counsel and be heard touching such proceedings.

(2) If the court is satisfied that any public record has been lost or destroyed, an order to that effect shall be entered of record, and thereupon the court shall proceed to take testimony for the purpose of reproducing, reestablishing, or restoring the records so lost or destroyed. The proceedings may be continued from time to time and orders and decrees shall be made as to each record, map, plat, tax list, and assessment roll separately. The clerk shall cause all maps, plats, tax lists, assessment rolls, or other records adjudged by the court to be correct copies of the records lost or destroyed, as often and as soon as they are so adjudged, to be filed in the office of the county recorder, with a certified copy of the order or judgment of the court in the premises attached thereto and recorded in a book to be provided for that purpose, and the said record shall be deemed and taken in all courts and places as a public record and as a true and correct reproduction of the original record so lost or destroyed; but any tax list or assessment roll so reproduced and restored, or so much thereof as may be reproduced and restored under the provisions of this section, shall be sufficient authority for the treasurer of such county to collect all taxes contained therein, the same in all respects as if it were the original tax list or assessment roll and were made out, certified, and delivered to him within the time required by law.

24-72-103. Costs and expenses of proceeding. All costs and expenses incurred in the proceeding under section 24-72-102, including those for copies of maps, plats, and other records and recording the same, shall be taxed as costs against the county in which such proceedings are had.

24-72-104. Purchase abstracts. (1) It is the duty of the judge of such court to examine into the state of such records in such county, and, in case he finds any abstracts, copies, minutes, or extracts from said records existing after such loss or destruction and finds that said abstracts, copies, minutes, or extracts were fairly made before such destruction of the records by any person in the ordinary course of business and that they contain a material and substantial part of said records, the judge of such court shall certify the facts found by him in respect to such abstracts, copies, minutes, and extracts and also, if he is of the opinion, that such abstracts, copies, minutes, and extracts tend to show a connected chain of title to the land in said county; and, upon filing such certificate of such judge with the county clerk of the proper county, the board of county commissioners, with the approval of such judge, may purchase from the owners thereof such abstracts, copies, minutes, or extracts, or such part thereof as may tend to show a connected chain of title to

the lands in such county, including all such judgments and decrees as form part of any such chain of title, paying therefor such fair and reasonable price as may be agreed upon between such board and such owner.

(2) The amount thus agreed to be paid for such abstracts, copies, minutes, or extracts shall be paid by such county in money, bonds, or warrants, to be issued by such county as the board of county commissioners may determine; or said board, with the approval of said judge, may procure a copy of said abstracts, copies, minutes, and extracts, instead of the originals, to be paid for in like manner. If no agreement can be made between said board and the owners of such abstracts, copies, minutes, or extracts as to the amount that should be paid for the same, the board may apply to the judge of the court by filing with the clerk a petition for the purpose of ascertaining the compensation that shall be paid to the owners of said abstracts, copies, minutes, or extracts to be assessed, and the proceedings thereunder shall be in like manner, as near as may be, as provided in articles 1 to 7 of title 38, C.R.S.

24-72-105. Abstract books part of records - evidence. When any county is possessed of abstract books, copies, minutes, and extracts, they shall be placed in the office of the county clerk and recorder of said county as part of his records, and, if the abstract books are not alphabetically indexed showing grantors and grantees, he shall cause them to be indexed in the same manner as is provided for indexing original records. The county clerk and recorder shall be paid by the county such fees as are provided by law. If the original of any deed, mortgage, or other instrument in writing affecting the title of any land in said county is lost or destroyed and it is thus impossible for a party to produce the same in any judicial or other proceeding, a copy of the abstract books, copies, minutes, and extracts or any part thereof, duly certified by the county clerk and recorder of the county, shall be admissible as evidence in all courts of record in this state. It is the duty of the county clerk and recorder of the county to furnish to any parties so requesting certified copies of the same or parts thereof upon payment of the charges required by law.

24-72-106. Abstract books - use - presumptions. In all cases in which any abstract books, copies, minutes, and extracts, purchased and placed in the county clerk and recorder's office, are admissible and shall be received in evidence under the provisions of this part 1, all deeds or other instruments in writing appearing thereby to have been executed by any person or in which they appear to have joined, except as against any person in the actual adverse possession of the land described therein at the time of the destruction of the records of said county, claiming title thereto otherwise than under a sale for taxes or special assessments shall be presumed to have been executed and acknowledged according to law, and all sales under powers, judgments, decrees, or legal

proceedings, sales for taxes and assessments excepted, shall be presumed to be regular and correct, except as against said person in actual adverse possession, and unless the abstracts, books, copies, minutes, and extracts show affirmatively some defect or irregularity. Otherwise, any person alleging any defect or irregularity in such conveyance, acknowledgment, or sale shall be held bound to prove the same.

24-72-107. Abstract books, when notice. The abstracts, books, copies, minutes, and extracts, when so placed in the county clerk and recorder's office, shall be deemed notice of all deeds, mortgages, agreements in writing, powers of attorney, and other written instruments affecting or pertaining to the title of real estate, or any interest therein, appearing thereby to have been executed and recorded prior to the destruction of such records, in like manner and to the same intent as the records so destroyed. Nothing in this part 1 shall impair the effect of said destroyed records as notice.

24-72-108. Jurisdiction of courts to make inquiry. In case of such destruction of records as provided for in sections 24-72-101 to 24-72-107, the district court having jurisdiction has power to inquire into the condition of any title to or interest in any land in such county and to make all such orders, judgments, and decrees as are necessary to determine and establish said title or interest, legal or equitable, against all persons, known or unknown, and all liens existing on such lands, whether by statute, judgment, mortgage, deed of trust, or otherwise.

24-72-109. Special commissioners - fees. The judges of courts having equity jurisdiction in such county has power to appoint special commissioners from time to time as may be necessary to carry out the provisions of this part 1 to take evidence and report all such petitions as may be referred to them. The fees of such commissioners and of all clerks, sheriffs, and officers and employees for services under this part 1 shall not in any case exceed two-thirds of the fees provided by law for the same services.

24-72-110. Evidence admissible, when - charges. (1) In all cases under the provisions of this part 1 and in all proceedings or actions instituted after April 19, 1889, as to any estate or any interest or right in or any lien or encumbrance upon any lots, pieces, or parcels of land, where the original evidence has been destroyed or lost or is not in the possession of the party wishing to use it on the trial and the record thereof has been destroyed by fire or otherwise, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of the records and deeds so

destroyed, although not admissible as evidence under the existing rules governing the admission of evidence, and the testimony of the parties themselves shall be received, subject to all the qualifications in respect to such testimony which are now provided by law. Any writing in the hands of any person which may become admissible in evidence under the provisions of this section or any other part of this part 1 shall be rejected and not admitted in evidence unless the same appears upon its face without erasure, blemish, alteration, interlineation, or interpolation in any material part, unless the same is explained to the satisfaction of the court, and to have been fairly and honestly made in the ordinary course of business. Any person making any such erasure, alteration, interlineation, or interpolation in any such writing, with the intent to change the same in any substantial matter, after the same has been once made, is guilty of the crime of forgery and shall be punished accordingly. Any and all persons who may be engaged in the business of making writings or written entries concerning or relating to lands and real estate in any county in this state to which this part 1 applies and of furnishing to persons applying therefor abstracts and copies of such writings or written entries as aforesaid for a fee, reward, or compensation therefor and who do not make the same truly and without alteration or interpolation in any matter of substance, with a view and intent to alter or change the same in any material matter or substance, are guilty of the crime of forgery and shall be punished accordingly.

(2) Any such person shall furnish such abstracts or copies to the person applying therefor, in the order of application and without unnecessary delay, for a reasonable consideration to be allowed therefor. Any person so engaged, whose business is declared to stand upon a like footing with that of a common carrier, who refuses to so furnish if tender of payment is made to him of the amount demanded for such abstract or copy, not to exceed said reasonable consideration, as soon as such amount is made known or ascertained, or of a sum adequate to cover such amount before its ascertainment, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars and shall be liable in any proper form of action or suit for any and all damages, loss, or injury which any person applying therefor may suffer or incur by reason of such failure to furnish such abstract or copy.

24-72-111. Originals destroyed, prior abstracts as evidence. Whenever it appears in any court in which any suit or proceeding is pending that the originals of any deeds, or other instruments of writing, or records in courts relating to any lands or irrigation ditches, the title or interest therein being in controversy in such suit or proceedings, are lost or destroyed or not within the power of the parties to produce the same and the records of such deeds or other instruments in writing or other records relating to or affecting such lands or irrigation ditches are destroyed by fire or otherwise,

it is lawful for any such party to offer in evidence any abstract of title made in the ordinary course of business prior to such loss or destruction showing the title of such land or irrigation ditches, or any part of the title of such land or irrigation ditches, that may have been made and delivered to the owners or purchasers or other parties interested in the land or irrigation ditches, the title or any part of the title to which is shown by such abstract of title.

24-72-112. Public records free to servicemen. Whenever a copy of any public record is required by the United States veterans administration or its successors or any other agency of the government of the United States to be used in determining the eligibility of any person who has served in the armed forces of the United States or any dependent of such person to participate in benefits for such person made available by the laws of the United States in relation to such service in the armed forces of the United States, the official charged with the custody of such public records, without charge, shall provide the applicant for such benefits or any person acting on his behalf, or the representative of such bureau or other agency, with a certified copy of such record.

PART 2

INSPECTION, COPYING, OR PHOTOGRAPHING

24-72-200.1. Short title. Part 2 of this article shall be known and may be cited as the "Colorado Open Records Act" or "CORA".

24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Correspondence" means a communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation:

(a) Communications sent via U.S. mail;

(b) Communications sent via private courier;

(c) Communications sent via electronic mail.

(1.1) "Custodian" means and includes the official custodian or any authorized

person having personal custody and control of the public records in question.

(1.2) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(1.3) "Executive position" means any nonelective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or employment positions in a classified system or civil service system of an institution or political subdivision.

(1.5) "Institution" includes but is not limited to every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. In particular, the term includes the university of Colorado, the regents thereof, and any other state institution of higher education or governing board referred to by the provisions of section 5 of article VIII of the state constitution.

(1.6) "Institutionally related foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the benefit of an institution. An institutionally related foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.7) "Institutionally related health care foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for medical or health care related programs or services at an institution. An institutionally related health care foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.8) "Institutionally related real estate foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the acquisition, development, financing, leasing, or disposition of real property for the benefit of an institution. An institutionally related real estate foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.9) "Local government-financed entity" shall have the same meaning as provided in section 29-1-901 (1), C.R.S.

(2) "Official custodian" means and includes any officer or employee of the state, of any agency, institution, or political subdivision of the state, of any institutionally related foundation, of any institutionally related health care foundation, of any institutionally related real estate foundation, or of any local government-financed entity, who is responsible for the maintenance, care, and keeping of public records, regardless of

whether the records are in his or her actual personal custody and control.

(3) "Person" means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(4.5) "Personnel files" means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. "Personnel files" does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, special district, public highway authority, regional transportation authority, and housing authority within this state.

(6) (a) (I) "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204 (1).

(III) The acceptance by a public official or employee of compensation for services

rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a "public record" into a "public record".

(IV) "Public records" means, except as provided in subparagraphs (VIII) and (IX) of paragraph (b) of this subsection (6), for an institutionally related foundation, an institutionally related health care foundation, or an institutionally related real estate foundation, all writings relating to the requests for disbursement or expenditure of funds, the approval or denial of requests for disbursement or expenditure of funds, or the disbursement or expenditure of funds, by the institutionally related foundation, the institutionally related health care foundation, or the institutionally related real estate foundation, to, on behalf of, or for the benefit of the institution or any employee of the institution. For purposes of this subparagraph (IV), "expenditure" shall be defined in accordance with generally accepted accounting principles.

(b) "Public records" does not include:

(I) Criminal justice records that are subject to the provisions of part 3 of this article;

(II) Work product prepared for elected officials. However, elected officials may release, or authorize the release of, all or any part of work product prepared for them.

(III) Data, information, and records relating to collegeinvest programs pursuant to sections 23-3.1-225 and 23-3.1-307.5, C.R.S., as follows:

(A) Data, information, and records relating to individual purchasers and qualified beneficiaries of advance payment contracts under the prepaid expense trust fund and the prepaid expense program, including any records that reveal personally identifiable information about such individuals;

(B) Data, information, and records relating to designated beneficiaries of and individual contributors to an individual trust account or savings account under the college savings program, including any records that reveal personally identifiable information about such individuals;

(C) Trade secrets and proprietary information regarding software, including programs and source codes, utilized or owned by collegeinvest; and

(D) Marketing plans and the results of market surveys conducted by collegeinvest.

(IV) Materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5.

(V) Notification of a possible nonaccidental fire loss or fraudulent insurance act given to an authorized agency pursuant to section 10-4-1003 (1), C.R.S.

(VI) For purposes of an institutionally related foundation, any documents, agreements, or other records or information other than the writings relating to the financial expenditure records specified in subparagraph (IV) of paragraph (a) of this subsection (6).

(VII) For purposes of an institution or an institutionally related foundation:

(A) The identity of, or records or information identifying or leading to the identification of, any donor or prospective donor to an institution or an institutionally related foundation;

(B) The amount of any actual or prospective gift or donation from a donor or prospective donor to an institutionally related foundation;

(C) Proprietary fundraising information of an institution or an institutionally related foundation; or

(D) Agreements or other documents relating to gifts or donations or prospective gifts or donations to an institution or an institutionally related foundation from a donor or prospective donor.

(VIII) For purposes of an institutionally related health care foundation, expenditures by an institutionally related health care foundation to an institution for medical or health care related programs or services;

(IX) For purposes of an institutionally related real estate foundation, prior to the completion of any transaction for the acquisition, development, financing, leasing, or disposition of real property, all writings relating to such transaction;

(X) The information security plan of a public agency developed pursuant to section 24-37.5-404 or of an institution of higher education developed pursuant to section 24-37.5-404.5;

(XI) Information security incident reports prepared pursuant to section 24-37.5-404 (2) (e) or 24-37.5-404.5 (2) (e);

(XII) Information security audit and assessment reports prepared pursuant to section 24-37.5-403 (2) (d) or 24-37.5-404.5 (2) (d); or

(XIII) The information provided to the state medical marijuana licensing authority pursuant to section 25-1.5-106 (7) (e), C.R.S.

(6.5) (a) "Work product" means and includes all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(I) Notes and memoranda that relate to or serve as background information for such decisions;

(II) Preliminary drafts and discussion copies of documents that express a decision by an elected official.

(b) "Work product" also includes:

(I) All documents relating to the drafting of bills or amendments, pursuant to section 2-3-304 (1) or 2-3-505 (2) (b), C.R.S., but it does not include the final version of documents prepared or assembled pursuant to section 2-3-505 (2) (c), C.R.S.;

(II) All documents prepared or assembled by a member of the general assembly relating to the drafting of bills or amendments;

(III) All documents prepared by or submitted to any legislative staff in connection with assisting a member of the general assembly in responding to the correspondence from a constituent when such correspondence is not a public record of an elected official as provided for in subsection (6) of this section;

(IV) All documents and all research projects conducted by staff of legislative council pursuant to section 2-3-304 (1), C.R.S., if the research is requested by a member of the general assembly and identified by the member as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the general assembly and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall become a public record.

(c) "Work product" does not include:

(I) Any final version of a document that expresses a final decision by an elected official;

(II) Any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(III) Any final accounting or final financial record or report;

(IV) Any materials that would otherwise constitute work product if such materials are produced and distributed to the members of a public body for their use or consideration in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.

(d) (I) In addition, "work product" does not include any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents include, but are not limited to:

(A) Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation; comparisons of any bills, amendments, or proposed laws, ordinances, rules, or regulations with other bills, amendments, or proposed laws, ordinances, rules, or regulations; comparisons of different versions of bills, amendments, or proposed laws, ordinances, rules, or regulations; and comparisons of the laws, ordinances, rules, or regulations of the jurisdiction of the elected official with the laws, ordinances, rules, or regulations of other jurisdictions;

(B) Compilations of existing public information, statistics, or data;

(C) Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.

(II) This paragraph (d) shall not apply to documents prepared or assembled for members of the general assembly pursuant to paragraph (b) of this subsection (6.5).

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. "Writings" includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

(8) For purposes of subsections (6) and (6.5) of this section and sections 24-72-203 (2) (b) and 24-6-402 (2) (d) (III), the members of the Colorado reapportionment commission shall be considered elected officials.

24-72-203. Public records open to inspection. (1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) Adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

(2) (a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.

(3) (a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily

available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

(I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or

(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the general assembly or its staff or service agencies, the general assembly is in session; or

(III) A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

(4) Nothing in this article shall preclude the state or any of its agencies, institutions, or political subdivisions from obtaining and enforcing trademark or copyright protection for any public record, and the state and its agencies, institutions, and political subdivisions are hereby specifically authorized to obtain and enforce such protection in accordance with the applicable federal law; except that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following

grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(d) Such inspection would be contrary to the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property, if a condemning authority determines that it intends to acquire said property as provided in section 38-1-121, C.R.S., relating to eminent domain proceedings, but, in any case, the contents of such appraisal shall be available to the owner under this section no later than one year after the condemning authority receives said appraisal; and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner of such property who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which the owner has obtained relative to the proposed acquisition of the property.

(V) Any market analysis data generated by the department of transportation's bid

analysis and management system for the confidential use of the department of transportation in awarding contracts for construction or for the purchase of goods or services and any records, documents, and automated systems prepared for the bid analysis and management system;

(VI) Records and information relating to the identification of persons filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121, C.R.S.;

(VII) Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the agency, institution, or political subdivision; and

(VIII) (A) Specialized details of security arrangements or investigations. Nothing in this subparagraph (VIII) prohibits the custodian from transferring records containing specialized details of security arrangements or investigations to the division of homeland security and emergency management in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

(B) Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, shall be open for inspection, except to the extent that they contain specialized details of security arrangements or investigations. A custodian may deny the right of inspection of only the portions of a record described in this sub-subparagraph (B) that contain specialized details of security arrangements or investigations and shall allow inspection of the remaining portions of the record.

(C) If an official custodian has custody of a public record provided by another public entity, including the state or a political subdivision, that contains specialized details of security arrangements or investigations, the official custodian shall refer a request to inspect that public record to the official custodian of the public entity that provided the record and shall disclose to the person making the request the names of the public entity and its official custodian to which the request is referred.

(IX) (A) Any records of ongoing civil or administrative investigations conducted by the state or an agency of the state in furtherance of their statutory authority to protect the public health, welfare, or safety unless the investigation focuses on a person or persons inside of the investigative agency.

(B) Upon conclusion of a civil or administrative investigation that is closed because no further investigation, discipline, or other agency response is warranted, all records not exempt pursuant to any other law are open to inspection; except that the custodian may remove the name or other personal identifying or financial information of

witnesses or targets of such closed investigations from investigative records prior to inspection.

(C) Notwithstanding any other provision of this subparagraph (IX), a record is not subject to withholding on the grounds that it is maintained or kept in a civil or administrative investigative file except pursuant to paragraph (a) of subsection (6) of this section if the record was publicly disclosed; was filed with an agency of the state by a regulated entity under a statutory, regulatory, or permit requirement; or was received from a governmental entity and would be available if requested directly from the transmitting entity.

(D) Nothing in this subparagraph (IX) prohibits an agency from disclosing information or materials during an open investigation if it is in the interest of public health, welfare, or safety.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(c) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5.

(d) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a witness protection board, the department of public safety, or a prosecuting attorney that are confidential pursuant to section 24-33.5-106.5.

(e) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by the safe2tell program, as described in section 16-15.8-103, C.R.S., that are confidential pursuant to section 16-15.8-104, C.R.S.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, mental health, sociological, and scholastic achievement data on individual persons, other than scholastic achievement data submitted as part of finalists' records as set forth in subparagraph (XI) of this paragraph (a) and exclusive of coroners' autopsy reports and group scholastic achievement data from which individuals cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) (A) Personnel files; but such files shall be available to the person in interest

and to the duly elected and appointed public officials who supervise such person's work.

(B) The provisions of this subparagraph (II) shall not be interpreted to prevent the public inspection or copying of any employment contract or any information regarding amounts paid or benefits provided under any settlement agreement pursuant to the provisions of article 19 of this title.

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119;

(VIII) Repealed.

(IX) Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services that are owned and operated by the state, its agencies, institutions, or political subdivisions; except that nothing in this subparagraph (IX) shall prohibit the custodian of records from transmitting such data to any agent of an investigative branch of a federal agency or any criminal justice agency as defined in section 24-72-302 (3) that makes a request to the custodian to inspect such records and who asserts that the request for information is reasonably related to an investigation within the scope of the agency's authority and duties. Nothing in this subparagraph (IX) shall be construed to prohibit the publication of such information in an aggregate or statistical form so classified as to prevent the identification, location, or habits of individuals.

(X) (A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. This sub-subparagraph (A) shall not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This sub-subparagraph (A) shall not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the disclosure can be made

without permitting the identification, as a result of the disclosure, of any individual involved.

(B) A person in interest under this subparagraph (X) includes the person making a complaint and the person whose conduct is the subject of such a complaint.

(C) A person in interest may make a record maintained pursuant to this subparagraph (X) available for public inspection when such record supports the contention that a publicly reported, written, printed, or spoken allegation of sexual harassment against such person is false.

(XI) (A) Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202 (1.3) who is not a finalist. For purposes of this subparagraph (XI), "finalist" means an applicant or candidate for an executive position as the chief executive officer of a state agency, institution, or political subdivision or agency thereof who is a member of the final group of applicants or candidates made public pursuant to section 24-6-402 (3.5), and if only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, said applicants or candidates shall be considered finalists.

(B) The provisions of this subparagraph (XI) shall not be construed to prohibit the public inspection or copying of any records submitted by or on behalf of a finalist; except that letters of reference or medical, psychological, and sociological data concerning finalists shall not be made available for public inspection or copying.

(C) The provisions of this subparagraph (XI) shall apply to employment selection processes for all executive positions, including, but not limited to, selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision.

(XII) Any record indicating that a person has obtained an identifying license plate or placard for persons with disabilities under section 42-3-204, C.R.S., or any other motor vehicle record that would reveal the presence of a disability;

(XIII) Records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived. The general assembly hereby finds and declares that in some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any public record is withheld pursuant to this subparagraph (XIII), the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. If the applicant so requests, the custodian shall apply to the district court for an order permitting him or her to restrict disclosure. The application shall be subject to the procedures and burden of proof provided for in subsection (6) of this section. All persons entitled to claim the privilege with respect to the records in issue shall be given notice of the proceedings and shall have the right to

appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest, the court shall weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

(XIV) Veterinary medical data, information, and records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital, including the veterinary teaching hospital at Colorado state university, that provides veterinary medical care and treatment to animals. A veterinary-patient-client privilege exists with respect to such data, information, and records only when a person in interest and a veterinarian enter into a mutual agreement to provide medical treatment for an individual animal and such person in interest maintains an ownership interest in such animal undergoing treatment. For purposes of this subparagraph (XIV), "person in interest" means the owner of an animal undergoing veterinary medical treatment or such owner's designated representative. Nothing in this subparagraph (XIV) shall prevent the state agricultural commission, the state agricultural commissioner, or the state board of veterinary medicine from exercising their investigatory and enforcement powers and duties granted pursuant to section 35-1-106 (1) (h), article 50 of title 35, and section 12-64-105 (9) (e), C.R.S., respectively. The veterinary-patient-client privilege described in this subparagraph (XIV), pursuant to section 12-64-121 (5), C.R.S., may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202, C.R.S., or for an act of animal fighting under section 18-9-204, C.R.S.

(XV) Nominations submitted to a state institution of higher education for the awarding of honorary degrees, medals, and other honorary awards by the institution, proposals submitted to a state institution of higher education for the naming of a building or a portion of a building for a person or persons, and records submitted to a state institution of higher education in support of such nominations and proposals;

(XVI) (Deleted by amendment, L. 2003, p. 1636, § 1, effective May 2, 2003.)

(XVII) Repealed.

(XVIII) (A) Military records filed with a county clerk and recorder's office concerning a member of the military's separation from military service, including the form DD214 issued to a member of the military upon separation from service, that are restricted from public access pursuant to 5 U.S.C. sec. 552 (b) (6) and the requirements established by the national archives and records administration. Notwithstanding any other provision of this section, if the member of the military about whom the record concerns is deceased, the custodian shall allow the right of inspection to the member's parents, siblings, widow or widower, and children.

(B) On and after July 1, 2002, any county clerk and recorder that accepts for filing any military records described in sub-subparagraph (A) of this subparagraph (XVIII) shall

maintain such military records in a manner that ensures that such records will not be available to the public for inspection except as provided in sub-subparagraph (A) of this subparagraph (XVIII).

(C) Nothing in this subparagraph (XVIII) shall prohibit a county clerk and recorder from taking appropriate protective actions with regard to records that were filed with or placed in storage by the county clerk and recorder prior to July 1, 2002, in accordance with any limitations determined necessary by the county clerk and recorder.

(D) The county clerk and recorder and any individual employed by the county clerk and recorder shall not be liable for any damages that may result from good faith compliance with the provisions of this part 2.

(XIX) (A) Except as provided in sub-subparagraphs (B) and (C) of this subparagraph (XIX), applications for a marriage license submitted pursuant to section 14-2-106, C.R.S., and, except as provided in sub-subparagraphs (B) and (C) of this subparagraph (XIX), applications for a civil union license submitted pursuant to section 14-15-110, C.R.S. A person in interest under this subparagraph (XIX) includes an immediate family member of either party to the marriage application. As used in this subparagraph (XIX), "immediate family member" means a person who is related by blood, marriage, or adoption. Nothing in this subparagraph (XIX) shall be construed to prohibit the inspection of marriage licenses or marriage certificates or of civil union certificates or to otherwise change the status of those licenses or certificates as public records.

(B) Any record of an application for a marriage license submitted pursuant to section 14-2-106, C.R.S., and any record of an application for a civil union license submitted pursuant to section 14-15-110, C.R.S., shall be made available for public inspection fifty years after the date that record was created.

(C) Upon application by any person to the district court in the district wherein a record of an application for a marriage license is found, the district court may, in its discretion and upon good cause shown, order the custodian to permit the inspection of such record.

(XX) Repealed.

(XXI) All records, including, but not limited to, analyses and maps, compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land shall not be subject to this subparagraph (XXI).

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or

photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, disciplinary information involving a student, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his or her parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his or her parent or guardian shall not be required therefor.

(d) The provisions of this paragraph (d) shall apply to all public schools and school districts that receive funds under article 54 of title 22, C.R.S. Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names, addresses, and home telephone numbers of students in any secondary school shall be released to a recruiting officer for any branch of the United States armed forces who requests such information, subject to the following:

(I) Each local board of education shall adopt a policy to govern the release of the names, addresses, and home telephone numbers of secondary school students to military recruiting officers that provides that such information shall be released to recruiting officers unless a student submits a request, in writing, that such information not be released.

(II) The directory information requested by a recruiting officer shall be released by the local board of education within ninety days of the date of the request.

(III) The local board of education shall comply with any applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and the federal regulations cited thereunder relating to the release of student information by educational institutions that receive federal funds.

(IV) Actual direct expenses incurred in furnishing this information shall be paid for by the requesting service and shall be reasonable and customary.

(V) The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within

the recruiting services of the armed forces.

(e) (I) The provisions of this paragraph (e) shall apply to all public schools and school districts. Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), under policies adopted by each local board of education, consistent with applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, information directly related to a student and maintained by a public school or by a person acting for the public school shall be available for release if the disclosure meets one or more of the following conditions:

(A) The disclosure is to other school officials, including teachers, working in the school at which the student is enrolled who have specific and legitimate educational interests in the information for use in furthering the student's academic achievement or maintaining a safe and orderly learning environment;

(B) The disclosure is to officials of a school at which the student seeks or intends to enroll or the disclosure is to officials at a school at which the student is currently enrolled or receiving services, after making a reasonable attempt to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or attending an institution of postsecondary education, as prescribed by federal regulation;

(C) The disclosure is to state or local officials or authorities if the disclosure concerns the juvenile justice system and the system's ability to serve effectively, prior to adjudication, the student whose records are disclosed and if the officials and authorities to whom the records are disclosed certify in writing that the information shall not be disclosed to any other party, except as otherwise provided by law, without the prior written consent of the student's parent or legal guardian or of the student if he or she is at least eighteen years of age or is attending an institution of postsecondary education;

(D) The disclosure is to comply with a judicial order or a lawfully issued subpoena, if a reasonable effort is made to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or is attending a postsecondary institution about the order or subpoena in advance of compliance, so that such parent, legal guardian, or student is provided an opportunity to seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose and the court or the issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(E) The disclosure is in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, as specifically prescribed by federal regulation.

(II) Nothing in this paragraph (e) shall prevent public school administrators, teachers, or staff from disclosing information derived from personal knowledge or observation and not derived from a student's record maintained by a public school or a

person acting for the public school.

(3.5) (a) Effective January 1, 1992, any individual who meets the requirements of this subsection (3.5) may request that the address of such individual included in any public records concerning that individual which are required to be made, maintained, or kept pursuant to the following sections be kept confidential:

(I) Sections 1-2-227 and 1-2-301, C.R.S.;

(II) (Deleted by amendment, L. 2000, p. 1337, § 1, effective May 30, 2000.)

(III) Section 24-6-202.

(b) (I) An individual may make the request of confidentiality allowed by this subsection (3.5) if such individual has reason to believe that such individual, or any member of such individual's immediate family who resides in the same household as such individual, will be exposed to criminal harassment as prohibited in section 18-9-111, C.R.S., or otherwise be in danger of bodily harm, if such individual's address is not kept confidential in accordance with this subsection (3.5).

(II) A request of confidentiality with respect to records described in subparagraph (I) of paragraph (a) of this subsection (3.5) shall be made in person in the office of the county clerk and recorder of the county where the individual making the request resides. Requests shall be made on application forms approved by the secretary of state, after consultation with county clerk and recorders. The application form shall provide space for the applicant to provide his or her name and address, date of birth, and any other identifying information determined by the secretary of state to be necessary to carry out the provisions of this subsection (3.5). In addition, an affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date, stating the following: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Immediately below the signature line, there shall be printed a notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such affirmation to be true.

(III) The county clerk and recorder of each county shall provide an opportunity for any individual to make the request of confidentiality allowed by this subsection (3.5) in person at the time such individual makes application to the county clerk and recorder to register to vote or to make any change in such individual's registration, and at any other time during normal business hours of the office of the county clerk and recorder. The county clerk and recorder shall forward a copy of each completed application to the secretary of state for purposes of the records maintained by him or her pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5). The county clerk and recorder shall collect a processing fee in the amount of five dollars of which amount two dollars

and fifty cents shall be transmitted to the secretary of state for the purpose of offsetting the secretary of state's costs of processing applications forwarded to the secretary of state pursuant to this subparagraph (III). All processing fees received by the secretary of state pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(IV) The secretary of state shall provide an opportunity for any individual to make the request of confidentiality allowed by paragraph (a) of this subsection (3.5), with respect to the records described in subparagraph (III) of paragraph (a) of this subsection (3.5). The secretary of state may charge a processing fee, not to exceed five dollars, for each such request. All processing fees collected by the secretary of state pursuant to this subparagraph (IV) or subparagraph (III) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(V) Notwithstanding the amount specified for any fee in subparagraph (III) or (IV) of this paragraph (b), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the department of state cash fund if necessary pursuant to section 24-75-402 (3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(c) The custodian of any records described in paragraph (a) of this subsection (3.5) that concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that such custodian shall allow the inspection of such records by such individual, by any person authorized in writing by such individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(I) A criminal justice agency, as defined by section 24-72-302 (3);

(II) An agency of the United States, the state of Colorado, or of any political subdivision or authority thereof;

(III) A person required to obtain such individual's address in order to comply with federal or state law or regulations adopted pursuant thereto;

(IV) An insurance company which has a valid certificate of authority to transact insurance business in Colorado as required in section 10-3-105 (1), C.R.S.;

(V) A collection agency which has a valid license as required by section 12-14-115 (1), C.R.S.;

(VI) A supervised lender licensed pursuant to section 5-1-301 (46), C.R.S.;

(VII) A bank as defined in section 11-101-401 (5), C.R.S., a trust company as defined in section 11-109-101 (11), C.R.S., a credit union as defined in section 11-30-101 (1), C.R.S., a domestic savings and loan association as defined in section 11-40-102 (5), C.R.S., a foreign savings and loan association as defined in section 11-40-102 (8), C.R.S., or a broker-dealer as defined in section 11-51-201 (2), C.R.S.;

(VIII) An attorney licensed to practice law in Colorado or his representative authorized in writing to inspect such records on behalf of the attorney;

(IX) A manufacturer of any vehicle required to be registered pursuant to the provisions of article 3 of title 42, C.R.S., or a designated agent of such manufacturer. Such inspection shall be allowed only for the purpose of identifying, locating, and notifying the registered owners of such vehicles in the event of a product recall or product advisory and may also be allowed for statistical purposes where such address is not disclosed by such manufacturer or designated agent. No person who obtains the address of an individual pursuant to this subparagraph (IX) shall disclose such information, except as necessary to accomplish said purposes.

(d) Notwithstanding any provisions of this subsection (3.5) to the contrary, any person who appears in person in the office of any custodian of records described in paragraph (a) of this subsection (3.5) and who presents documentary evidence satisfactory to the custodian that such person is a duly accredited representative of the news media may verify the address of an individual whose address is otherwise protected from inspection in accordance with this subsection (3.5). Such verification shall be limited to the custodian confirming or denying that the address of an individual as known to the representative of the news media is the address of the individual as shown by the records of the custodian.

(e) No person shall make any false statement in requesting any information pursuant to paragraph (a) or (b) of this subsection (3.5).

(f) Any request of confidentiality made pursuant to this subsection (3.5) shall be kept confidential and shall not be open to inspection as a public record unless a written release is executed by the person who made the request.

(g) Prior to the release of any information required to be kept confidential pursuant to this subsection (3.5), the custodian shall require the person requesting the information to produce a valid Colorado driver's license or identification card and written authorization from any entity authorized to receive information under this subsection (3.5). The custodian shall keep a record of the requesting person's name, address, and date of birth and shall make such information available to the individual requesting confidentiality under this subsection (3.5) or any person authorized by such individual.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Except as provided in subsection (5.5) of this section, any person denied the

right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record; except that, at least three business days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing said custodian that the person intends to file an application with the district court. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court; except that no court costs and attorney fees shall be awarded to a person who has filed a lawsuit against a state public body or local public body and who applies to the court for an order pursuant to this subsection (5) for access to records of the state public body or local public body being sued if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant to chapter 4 of the Colorado rules of civil procedure. In the event the court finds that the denial of the right of inspection was proper, the court shall award court costs and reasonable attorney fees to the custodian if the court finds that the action was frivolous, vexatious, or groundless.

(5.5) (a) Any person seeking access to the record of an executive session meeting of a state public body or a local public body recorded pursuant to section 24-6-402 (2) (d.5) shall, upon application to the district court for the district wherein the records are found, show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3) (a) or (4). If the applicant fails to show grounds sufficient to support such reasonable belief, the court shall deny the application and, if the court finds that the application was frivolous, vexatious, or groundless, the court shall award court costs and attorney fees to the prevailing party. If an applicant shows grounds sufficient to support such reasonable belief, the applicant cannot be found to have brought a frivolous, vexatious, or groundless action, regardless of the outcome of the in camera review.

(b) (I) Upon finding that sufficient grounds exist to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3) (a) or (4), the court shall conduct an in camera review of the record of the executive session to determine whether the state public body or local public body engaged in substantial

discussion of any matters not enumerated in section 24-6-402 (3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3) (a) or (4).

(II) If the court determines, based on the in camera review, that violations of the open meetings law occurred, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in section 24-6-402 (3) or (4) or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection.

(6) (a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure of the record is prohibited, issue an order directing the official custodian not to disclose the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.

(b) In defense against an application for an order under subsection (5) of this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection (6).

(7) (a) Except as permitted in paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall not allow a person, other than the person in interest, to inspect information contained in a driver's license application under section 42-2-107, C.R.S., a driver's license renewal application under section 42-2-

118, C.R.S., a duplicate driver's license application under section 42-2-117, C.R.S., a commercial driver's license application under section 42-2-403, C.R.S., an identification card application under section 42-2-302, C.R.S., a motor vehicle title application under section 42-6-116, C.R.S., a motor vehicle registration application under section 42-3-113, C.R.S., or other official record or document maintained by the department under section 42-2-121, C.R.S.

(b) Notwithstanding paragraph (a) of this subsection (7), only upon obtaining a completed requestor release form under section 42-1-206 (1) (b), C.R.S., the department may allow inspection of the information referred to in paragraph (a) of this subsection (7) for the following uses:

(I) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(II) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;

(III) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(IV) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(V) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact the parties in interest;

(VI) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;

(VII) For use in providing notice to the owners of towed or impounded vehicles;

(VIII) For use by any private investigator licensed pursuant to section 12-58.5-105, C.R.S., licensed private investigative agency, or licensed security service for any purpose permitted under this paragraph (b);

(IX) For use by an employer or its agent or insurer to obtain or verify information relating to a party in interest who is a holder of a commercial driver's license;

(X) For use in connection with the operation of private toll transportation facilities;

(XI) For any other use in response to requests for individual motor vehicle records if the department has obtained the express consent of the party in interest pursuant to section 42-2-121 (4), C.R.S.;

(XII) For bulk distribution for surveys, marketing or solicitations if the department has obtained the express consent of the party in interest pursuant to section 42-2-121 (4), C.R.S.;

(XIII) For use by any requestor, if the requestor demonstrates he or she has obtained the written consent of the party in interest;

(XIV) For any other use specifically authorized under the laws of the state, if such use is related to the operation of a motor vehicle or public safety; or

(XV) For use by the federally designated organ procurement organization for the purposes of creating and maintaining the organ and tissue donor registry authorized in section 12-34-120, C.R.S.

(c) (I) For purposes of this paragraph (c), "law" shall mean the federal "Driver's Privacy Protection Act of 1994", 18 U.S.C. sec. 2721 et seq., the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq., section 42-1-206, C.R.S., and this part 2.

(II) If the requestor release form indicates that the requestor will, in any manner, use, obtain, resell, or transfer the information contained in records, requested individually or in bulk, for any purpose prohibited by law, the department or agent shall deny inspection of any motor vehicle or driver record.

(III) In addition to completing the requestor release form under section 42-1-206 (1) (b), C.R.S., and subject to the provisions of section 42-1-206 (3.7), C.R.S., the requestor shall sign an affidavit of intended use under penalty of perjury that states that the requestor shall not obtain, resell, transfer, or use the information in any manner prohibited by law. The department or the department 's authorized agent shall deny inspection of any motor vehicle or driver record to any person, other than a person in interest as defined in section 24-72-202 (4), or a federal, state, or local government agency carrying out its official functions, who has not signed and returned the affidavit of intended use.

(d) Notwithstanding paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall allow inspection of records maintained by the department pursuant to section 42-2-121.5, C.R.S., only by the person in interest or by an officer of a law enforcement or public safety agency in accordance with section 42-2-121.5 (3), C.R.S.

(8) (a) A designated election official shall not allow a person, other than the person in interest, to inspect the election records of any person that contain the original

signature, social security number, month of birth, day of the month of birth, or identification of that person, including electronic, digital, or scanned images of a person's original signature, social security number, month of birth, day of the month of birth, or identification.

(b) Nothing in paragraph (a) of this subsection (8) shall be construed to prohibit a designated election official from:

(I) Making such election records available to any law enforcement agency or district attorney of this state in connection with the investigation or prosecution of an election offense specified in article 13 of title 1, C.R.S.;

(II) Making such election records available to employees of or election judges appointed by the designated election official as necessary for those employees or election judges to carry out the duties and responsibilities connected with the conduct of any election; and

(III) Preparing a registration list and making the list available for distribution or sale to or inspection by any person.

(c) For purposes of this subsection (8):

(I) "Designated election official" shall have the same meaning as set forth in section 1-1-104 (8), C.R.S.

(II) "Election records" shall have the same meaning as set forth in section 1-1-104 (11), C.R.S., and shall include a voter registration application.

(III) "Identification" shall have the same meaning as set forth in section 1-1-104 (19.5), C.R.S.

(IV) "Registration list" shall have the same meaning as set forth in section 1-1-104 (37), C.R.S.

24-72-204.5. Adoption of electronic mail policy. (1) On or before July 1, 1997, the state or any agency, institution, or political subdivision thereof that operates or maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted.

(2) The policy shall include a statement that correspondence of the employee in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under section 24-72-203.

24-72-205. Copy, printout, or photograph of a public record. (1) (a) In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this

section; except that, when the custodian is the secretary of state, fees shall be determined and collected pursuant to section 24-21-104 (3), and when the custodian is the executive director of the department of personnel, fees shall be determined and collected pursuant to section 24-80-102 (10). Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.

(b) Upon request for records transmission by a person seeking a copy of any public record, the custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or electronic mail. No transmission fees may be charged to the record requester for transmitting public records via electronic mail. Within the period specified in section 24-72-203 (3) (a), the custodian shall notify the record requester that a copy of the record is available but will only be sent to the requester once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, unless recovery of all or any portion of such costs or fees has been waived by the custodian. Upon either receiving such payment or making arrangements to receive such payment at a later date, the custodian shall send the record to the requester as soon as practicable but no more than three business days after receipt of, or making arrangements to receive, such payment.

(2) If the custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian may charge for furnishing a copy, printout, or photograph under subsection (5) of this section.

(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

(4) If the public record is a result of computer output other than word processing,

the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(5) (a) A custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page.

(b) Notwithstanding paragraph (a) of this subsection (5), an institution, as defined in section 24-72-202 (1.5), that is the custodian of scholastic achievement data on an individual person may charge a reasonable fee for a certified transcript of the data.

24-72-205.5. Public inspection of ballots - stay period - recounts - rules governing public inspection of ballots - legislative declaration - definitions. (1) (a) By enacting this section, the general assembly intends to permit the inspection of ballots under the conditions specified in this section and to protect the integrity of the election process while protecting voter privacy and preserving secrecy in voting in accordance with the provisions of section 8 of article VII of the state constitution.

(b) In order to facilitate and ensure a consistent application of the provisions of this section across the state, the matters addressed in this section are matters of statewide concern.

(2) As used in this section, unless the context otherwise requires:

(a) "Ballot" means a ballot voted by any acceptable, applicable, or legal method that is in the custody of an election official. "Ballot" includes any digital image or electronic representation of votes cast.

(b) "Designated election official" has the same meaning as set forth in section 1-1-104 (8), C.R.S.

(c) "Interested party" means:

(I) Any candidate who was in an election contest that is the subject of a recount or the political party or political organization as defined in section 1-1-104 (24), C.R.S., of such candidate;

(II) Any petition representative identified pursuant to section 1-40-113 or 31-11-106 (2), C.R.S., as applicable, in connection with a ballot issue or ballot question that is the subject of the recount;

(III) The governing body that referred a ballot question or ballot issue to the electorate that is the subject of the recount; or

(IV) The agent of an issue committee that is required to report contributions

pursuant to the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., that either supported or opposed a ballot question or ballot issue that is the subject of the recount.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), the designated election official shall not fulfill a request under this part 2 for the public inspection of ballots during the period commencing with the forty-fifth day preceding election day and concluding with the date either by which the designated election official is required to certify an official abstract of votes cast for the applicable candidate contest or ballot issue or ballot question pursuant to section 1-10-102 or 31-10-1205 (1), C.R.S., as applicable, or by which any recount conducted in accordance with article 10.5 of title 1, C.R.S., or section 31-10-1207, C.R.S., is completed, as applicable, whichever date is later. The denial of public inspection of ballots authorized pursuant to this paragraph (a) shall also apply to any internal batch reports generated by a designated election official for the specific purpose of auditing ballots received in the course of conducting an election.

(b) Notwithstanding any other provision of this section, the denial of public inspection of ballots authorized pursuant to paragraph (a) of this subsection (3) shall apply to a recount that is conducted in accordance with the provisions of article 10.5 of title 1, C.R.S., or section 31-10-1207, C.R.S., as applicable; except that, during the period described in paragraph (a) of this subsection (3), an interested party may inspect and request copies of ballots in connection with such recount without having to obtain a court order granting such inspection. In connection with an inspection by an interested party as authorized by this paragraph (b), an interested party may witness the handling of ballots involved in the recount to verify that the recount is being conducted in a fair, impartial, and uniform manner so as to determine that all ballots that have been cast are accurately interpreted and counted; except that an interested party is not permitted to handle the original ballots. Except as specified in this paragraph (b), nothing in this section shall be construed to prohibit an interested party from requesting copies of ballots in connection with a recount, to affect the conduct of a recount, or to affect the rights of an interested party in connection with a recount.

(c) Notwithstanding any other provision of this section, nothing in this section shall be construed to restrict the public inspection of election records as defined in section 1-1-104 (11), C.R.S.; except that, for purposes of this section, election records shall not include ballots.

(4) (a) In accordance with the provisions of section 24-72-203 (1) (a) and in addition to any other requirements that are applicable to a person requesting the inspection of public records under this part 2, prior to and later than the stay period described in paragraph (a) of subsection (3) of this section, ballots shall be available for inspection by the public in accordance with the requirements of this part 2.

(b) In connection with the public inspection of the ballots to which this section pertains:

(I) The original ballots shall at all times remain in the custody of the designated election official or his or her designee. In the discretion of the designated election official or his or her designee, and subject to the provisions of paragraph (a) of this subsection (4) and this part 2, the designated election official or his or her designee shall determine the manner in which such ballots may be viewed by the public.

(II) The designated election official or his or her designee shall cover or redact, based upon the most practical means available, any markings or message on a ballot that may identify the particular elector who cast the ballot before the ballot may be made available for public inspection;

(III) To protect the privacy of particular electors, any ballots cast by electors within groups of discrete individuals who are more susceptible of being personally identified, such as military and overseas electors, shall be made available for public inspection only to the extent such ballots may be duplicated without identifying elector information. Insofar as such ballots are not able to be duplicated without identifying elector information, they are not available for public inspection. Notwithstanding any other provision of this section, no ballot, or any portion thereof, may be made available for inspection where the ballot, or any requested portion thereof, is identical in printed form, considering a combination of the election contests at issue and precinct coding, to only nine or fewer ballots, or comparable portions thereof, among all ballots used in the same election. However, any such ballot, or any requested portion thereof, that is identical in printed form to ten or more ballots, or comparable portions thereof, used in the same election may be inspected.

(IV) To protect the privacy of particular electors, ballots made available for inspection may be presented in random order selected by the designated election official or his or her designee;

(V) For the purpose of minimizing the costs of making ballots available for public inspection, the person seeking the inspection may indicate the candidate contest, ballot issue, or ballot question for which the person seeks to inspect the ballots; and

(VI) Any actual costs incurred by the office of the designated election official in making the ballots available for inspection in accordance with the requirements of this section may be charged to the person requesting inspection of the ballots. If the designated election official selects a person other than an employee of his or her office to conduct the duties required by this section, the actual costs to be charged the person seeking inspection shall not exceed the actual costs that would have been incurred if the work involved in complying with the requirements of this section was completed by an employee of the designated election official.

(5) Notwithstanding any other provision of this section, nothing in this section affects either the rights of a watcher set forth in the provisions of titles 1 and 31, C.R.S., or the operation of a canvass board in accordance with the provisions of articles 1 to 13 of title 1, C.R.S.

24-72-206. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

PART 3

CRIMINAL JUSTICE RECORDS

24-72-301. Legislative declaration. (1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last-known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, place and date of birth, last-known address, social security number, occupation and address of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state, including but not limited to the department of education, or any agency of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority

that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers conducted pursuant to sections 16-11-102.4 and 16-23-104, C.R.S.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, limited liability company, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

(11) "Private custodian" means a private entity that has custody of the criminal justice records in question and is in the business of providing the information to others.

24-72-303. Records of official actions required - open to inspection. (1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice

agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

24-72-304. Inspection of criminal justice records. (1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central

repository shall forthwith reply directly to the applicant.

(4) (a) The name and any other information that would identify any victim of sexual assault or of alleged sexual assault or attempted sexual assault or alleged attempted sexual assault shall be deleted from any criminal justice record prior to the release of such record to any individual or agency other than a criminal justice agency when such record bears the notation "SEXUAL ASSAULT" prescribed by this subsection (4).

(b) (I) A criminal justice agency or custodian of criminal justice records shall make the notation "SEXUAL ASSAULT" on any record of official action and on the file containing such record when the official action is related to the commission or the alleged commission of any of the following offenses:

(A) Sexual assault under section 18-3-402, C.R.S., or sexual assault in the first degree under section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree under section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(C) Unlawful sexual contact under section 18-3-404, C.R.S., or sexual assault in the third degree under section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(D) Sexual assault on a child under section 18-3-405, C.R.S.;

(E) Sexual assault on a child by one in a position of trust under section 18-3-405.3, C.R.S.;

(F) Sexual assault on a client by a psychotherapist under section 18-3-405.5, C.R.S.;

(G) Incest under section 18-6-301, C.R.S.;

(H) Aggravated incest under section 18-6-302, C.R.S.; or

(I) An attempt to commit any of the offenses listed in sub-subparagraphs (A) to (H) of this subparagraph (I).

(II) The notation required pursuant to subparagraph (I) of this paragraph (b) shall be made when:

(A) Any record or file or both of official action is prepared relating to the commission or alleged commission of an offense enumerated in subparagraph (I) of this paragraph (b); or

(B) The name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of this paragraph (b) for which official action was taken appears on the criminal information or indictment.

(c) A criminal justice agency or custodian of criminal justice records shall make the notation "SEXUAL ASSAULT" on any record of official action and on the file containing such record when:

(I) Any employee of the court, officer of the court, or judicial officer notifies such agency or custodian of the name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of paragraph (b) of this subsection (4) when such victim's name is disclosed to or obtained by such employee or officer during

the course of proceedings related to such official action; or

(II) Such record or file contains the name of a victim of the commission or alleged commission of any such offense and the victim requests the custodian of criminal justice records to make such a notation.

(d) The provisions of this subsection (4) shall not apply to the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141, C.R.S.

(5) Nothing in this section shall be construed to limit the discretion of the district attorney to authorize a crime victim, as defined in section 24-4.1-302 (5), or a member of the victim's immediate family, as defined in section 24-4.1-302 (6), to view all or a portion of the presentence report of the probation department.

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(1.5) On the ground that disclosure would be contrary to the public interest, the custodian of criminal justice records shall deny access to the results of chemical biological substance testing to determine the genetic markers conducted pursuant to sections 16-11-102.4 and 16-23-104, C.R.S.

(2) to (4) Repealed.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it

shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

(8) The allowance or denial of the right to inspect criminal justice records that contain specialized details of security arrangements or investigations shall be governed by section 24-72-204 (2) (a) (VIII).

24-72-305.3. Private access to criminal history records of volunteers and employees of charitable organizations.

(1) (Deleted by amendment, L. 2001, p. 1233, § 1, effective June 5, 2001.)

(2) (a) As used in this subsection (2):

(I) "Authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under the "Volunteers for Children Act", contained in Public Law 105-251, as amended.

(II) "Bureau" means the Colorado bureau of investigation created in section 24-33.5-401.

(III) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(IV) "Convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(V) (Deleted by amendment, L. 2001, p. 1233, § 1, effective June 5, 2001.)

(V.2) "The elderly" means persons sixty years of age or older receiving care.

(V.5) "Individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.

(VI) "Provider" shall have the same meaning as set forth in 42 U.S.C. sec. 5119c and includes an owner of, an employee of, an applicant seeking employment with, or a volunteer with a qualified entity.

(VII) "Qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(b) For the purpose of implementing the provisions of the "Volunteers for Children Act", contained in Public Law 105-251, as amended, on and after July 1, 2000, each qualified entity in the state may contact an authorized agency for the purpose of

determining whether a provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. Such crimes shall include, but need not be limited to:

(I) Felony child abuse, as specified in section 18-6-401, C.R.S.;

(II) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(III) Any felony offenses involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(IV) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subparagraphs (I) to (IV) of this paragraph (b).

(c) (I) For purposes of this subsection (2), the bureau shall be designated an authorized agency. The executive director of the department of public safety shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the director of the department of public safety may promulgate all reasonable and necessary rules to implement this subsection (2).

(II) For purposes of this subsection (2):

(A) The department of human services, created in section 24-1-120, may serve as an authorized agency for those qualified entities that are regulated by the said department. The state board of human services shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of human services may promulgate all reasonable and necessary rules to implement this subsection (2).

(B) The department of public health and environment, created in section 24-1-119, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of health shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of health may promulgate all reasonable and necessary rules to implement this subsection (2).

(C) The department of education, created in section 24-1-115, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of education shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of education may promulgate all reasonable and necessary rules to implement this subsection (2).

(d) Any authorized agency reporting, receiving, or disseminating criminal history record information pursuant to this subsection (2) shall request such information only

through the bureau. The bureau, in responding to such request, shall access records that are maintained by or within this state and any other state or territory of the United States, any other nation, or any agency or subdivision of the United States including, but not limited to, the federal bureau of investigation in the United States department of justice.

24-72-305.4. Governmental access to criminal history records of applicants in regulated professions or occupations. (1) Any division, board, commission, or person responsible for the licensing, certification, or registration functions for any governmental entity, in addition to any other authority conferred by law, may use fingerprints to access, for comparison purposes, arrest history records of:

(a) Any applicant for licensure, registration, or certification to practice a profession or occupation;

(b) Any licensee, registrant, or person certified to practice a profession or occupation;

(c) Any prospective employee or any employee of a licensee, registrant, or person certified to practice an occupation or profession.

(2) The persons or entities authorized to access arrest history records pursuant to subsection (1) of this section may access records that are maintained by or within this state through the Colorado bureau of investigation.

(3) For the purposes of this section, "governmental entity" means the state and any of its political subdivisions, including entities governed by home rule charters, and any agency or institution of the state or any of its political subdivisions.

24-72-305.5. Access to records - denial by custodian - use of records to obtain information for solicitation. Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

24-72-305.6. County clerk and recorder access to criminal history records of election judges and employees. (1) A county clerk and recorder shall request the criminal history records from the public web site maintained by the Colorado bureau of investigation for all full-time, part-time, permanent, and contract employees of the county who staff a counting center and who have any access to electromechanical voting systems or electronic vote tabulating equipment. The county clerk and recorder shall request the

records not less than once each calendar year prior to the first election of the year.

(2) A county clerk and recorder may request, in his or her discretion, the criminal history records from the public web site maintained by the Colorado bureau of investigation for an election judge serving in the county.

(3) A county clerk and recorder authorized to access criminal history records pursuant to this section may access records that are maintained by or within this state directly through the public web site maintained by the Colorado bureau of investigation. A county clerk and recorder that does not have access or authorization to use a credit card for conducting business on behalf of the county in which the clerk and recorder serves may request that the county sheriff for the county access the criminal records from the public web site maintained by the Colorado bureau of investigation. Criminal records shall not be accessed pursuant to this section directly from the Colorado criminal justice computer system or the national criminal justice computer system.

24-72-306. Copies, printouts, or photographs of criminal justice records - fees authorized. (1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3 and may waive fees at their discretion. In addition, criminal justice agencies may charge a fee not to exceed twenty-five cents per standard page for a copy of a criminal justice record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a criminal justice record in a format other than a standard page. Where fees for certified copies or other copies, printouts, or photographs of criminal justice records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality in accordance with this subsection (1).

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may

charge for furnishing copies under subsection (1) of this section.

(3) The provisions of this section shall not apply to discovery materials that a criminal justice agency is required to provide in a criminal case pursuant to rule 16 of the Colorado rules of criminal procedure.

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

24-72-308. Sealing of arrest and criminal records other than convictions. (1) (a) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged or entered into a diversion agreement pursuant to section 18-1.3-101, C.R.S., and the statute of limitations for the offense for which the person was arrested that has the longest statute of limitations has run, in any case which was

completely dismissed, or in any case in which said person in interest was acquitted.

(II) Except as provided in subparagraph (III) of this paragraph (a), arrest or criminal records information may not be sealed if:

(A) An offense is not charged due to a plea agreement in a separate case;

(B) A dismissal occurs as part of a plea agreement in a separate case; or

(C) The defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal criminal records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated such order.

(III) A person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a case that was dismissed due to a plea agreement in a separate case, and if:

(A) The petition is filed ten years or more after the date of the final disposition of all criminal proceedings against the person in interest; and

(B) The person in interest has not been charged for a criminal offense in the ten years since the date of the final disposition of all criminal proceedings against the person in interest.

(b) (I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the petitioner is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the petitioner. The court's order shall specify the reasons for the denial of the petition. If the petition pertains to a dismissal that is not the result of a completion of a deferred disposition or a multi-case disposition, the court shall order a record sealed if the petition is sufficient on its face.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing and the petitioner shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner. If the petition pertains to a dismissal that is not the result of a completion of a deferred disposition or a multi-case disposition, the court shall order a record sealed if the petition is sufficient on its face.

(c) Except as provided for in section 18-1.3-101 (10) (c), C.R.S., after the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if

the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (f), the department of education may require a licensed educator or an applicant for an educator's license who files a petition to seal a criminal record to notify the department of education of the pending petition to seal. The department shall have the right to inquire into the

facts of the criminal offense for which the petition to seal is pending. The educator or applicant shall have no right to privacy or privilege that justifies his or her refusal to answer any questions concerning the arrest and criminal records information contained in the pending petition to seal.

(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

(1.5) For the purpose of protecting the author of any correspondence which becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing thereon, enter an order to seal any information, including, but not limited to, basic identification information contained in said correspondence. However, the court may, in its discretion, enter an order which allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(2) **Advisements.** (a) Whenever a defendant has appeared before the court and has charges against him or her dismissed or not filed, or whenever the defendant is acquitted, the court shall provide him or her with a written advisement of his or her rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (2):

(I) If a defendant's case is dismissed after a period of supervision by probation, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her criminal justice records pursuant to this section if he or she complies with the applicable provisions of this section.

(3) **Exceptions.** (a) This section shall not apply to records pertaining to:

(I) A class 1 or class 2 misdemeanor traffic offense;

(II) A class A or class B traffic infraction;

(III) A conviction for a violation of section 42-4-1301 (1) or (2), C.R.S.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(c) This section shall not apply to records pertaining to a conviction of an offense for which the factual basis involved unlawful sexual behavior, as defined in section 16-

22-102 (9), C.R.S.

(d) This section shall not apply to arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning the arrest and criminal justice information or criminal justice records is made by another criminal justice agency.

(e) This section shall not apply to records pertaining to a conviction of an offense concerning the holder of a commercial driver's license as defined in section 42-2-402, C.R.S., or the operator of a commercial motor vehicle as defined in section 42-2-402, C.R.S.

(f) If a person who seeks to have his or her arrest records sealed for charges that are not covered by paragraph (a) of this subsection (3), the fact that the person was charged for a crime covered in paragraph (a) of this subsection (3) as a part of the same arrest does not prohibit a court from sealing the arrest records related to the charges that are not covered in paragraph (a) of this subsection (3).

(4) A person may file a petition with the court for sealing of each case once every twelve-month period.

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011. (1) **Definitions.** For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) **Sealing of conviction records.** (a) (I) Subject to the limitations described in subsection (4) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if:

(A) The petition is filed ten or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted for a criminal offense in the ten or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later.

(II) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not

limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(III) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b) (I) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for his or her criminal history record.

(II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the defendant is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing, and the defendant shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (2) is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records. An order entered pursuant to this paragraph (c) shall be directed to

each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this paragraph (c), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. The defendant shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(d) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(e) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(f) (I) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (f), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted. An application may not be denied solely because of the applicant's refusal to disclose conviction records that have been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (f) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the

defendant's interest in privacy.

(g) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(h) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(i) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) **Advisements.** (a) Whenever a defendant is sentenced following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3):

(I) If a defendant is sentenced to probation following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4) (a) **Applicability.** Except as otherwise provided in paragraph (b) of this subsection (4), the provisions of this section shall apply only to conviction records pertaining to judgments of conviction entered on and after July 1, 2008, and prior to July 1, 2011, for:

(I) Any petty offense in violation of a provision of article 18 of title 18, C.R.S.;

(II) Any misdemeanor in violation of a provision of article 18 of title 18, C.R.S.;

(III) Any class 5 or class 6 felony in violation of a provision of article 18 of title

18, C.R.S.; except that the provisions of this section shall not apply to conviction records pertaining to a judgment of conviction for a class 5 or class 6 felony for the sale, manufacturing, or dispensing of a controlled substance, as defined in section 18-18-102 (5), C.R.S.; attempt or conspiracy to commit the sale, manufacturing, or dispensing of a controlled substance; or possession with the intent to manufacture, dispense, or sell a controlled substance;

(IV) Any offense that would be classified as a class 5 or 6 felony in violation of a provision of article 18 of title 18, C.R.S., if the offense were to have occurred on July 1, 2008.

(b) For any judgment of conviction entered prior to July 1, 2008, for which the defendant would otherwise qualify for relief under this section, the defendant may obtain an order from the court to seal conviction records if:

(I) The prosecuting attorney does not object to the sealing; and

(II) The defendant pays to the office of the prosecuting attorney all reasonable attorney fees and costs of the prosecuting attorney relating to the petition to seal prior to the entry of an order sealing the conviction records; and

(III) The defendant pays:

(A) The filing fee required by law; and

(B) An additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records.

(c) The additional filing fees collected under sub-subparagraph (B) of subparagraph (III) of paragraph (b) of this subsection (4) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

(d) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(5) **Rules of discovery - rules of evidence - witness testimony.** Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The rules of discovery or the rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

(6) A person may file a petition with the court for sealing of each case once every twelve-month period.

24-72-308.6. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011. (1) **Definitions.** For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) **Sealing of conviction records.** (a) (I) Subject to the limitations described in subsection (4) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if the petition is filed within the time frame described in subparagraph (II) of this paragraph (a).

(II) (A) If the offense is a petty offense or a class 2 or 3 misdemeanor in article 18 of title 18, C.R.S., the petition may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(B) If the offense is a class 1 misdemeanor in article 18 of title 18, C.R.S., the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(C) If the offense is a class 5 felony or class 6 felony drug possession offense described in section 18-18-403.5, C.R.S., as it existed prior to October 1, 2013, section 18-18-404, C.R.S., or section 18-18-405, C.R.S., as it existed prior to August 11, 2010, the petition may be filed seven years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(D) For all other offenses in article 18 of title 18, C.R.S., the petition may be filed ten years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(II.5) (A) If the offense is a petty drug offense in article 18 of title 18, C.R.S., the petition may be filed one year after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(B) If the offense is a level 2 or level 3 drug misdemeanor in article 18 of title 18, C.R.S., the petition may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(C) If the offense is a level 1 drug misdemeanor in article 18 of title 18, C.R.S., the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(D) If the offense is a level 4 drug felony, the petition may be filed seven years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(E) For all other felony drug offenses in article 18 of title 18, C.R.S., the petition

may be filed ten years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(III) (A) If a petition is filed for the sealing of a petty offense in article 18 of title 18, C.R.S., the court shall order the record sealed after the petition is filed, the filing fee is paid, and the criminal history filed with the petition as required by paragraph (b) of this subsection (2) documents to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later.

(B) If a petition is filed for the sealing of a class 1, class 2, or class 3 misdemeanor in article 18 of title 18, C.R.S., the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court shall order that the record be sealed after the defendant documents to the court that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged with or convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(C) If a petition is filed for the sealing of a class 5 or class 6 felony possession offense described in section 18-18-403.5, C.R.S., as it existed prior to October 1, 2013, section 18-18-404, C.R.S., or section 18-18-405, C.R.S., as it existed prior to August 11, 2010, the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(D) If a petition is filed for any offense in article 18 of title 18, C.R.S., that is not

covered by sub-subparagraphs (A) to (C) of this subparagraph (III), the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney objects to the petition, the court shall dismiss the petition. If the district attorney does not object, the court shall set the petition for a hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(III.5) (A) If a petition is filed for the sealing of a petty drug offense in article 18 of title 18, C.R.S., the court shall order the record sealed after the petition is filed, the filing fee is paid, and the criminal history filed with the petition as required by paragraph (b) of this subsection (2) documents to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later.

(B) If a petition is filed for the sealing of a level 1, level 2, or level 3 drug misdemeanor in article 18 of title 18, C.R.S., the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney may object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court shall order that the record be sealed after the defendant documents to the court that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) must document to the court that the defendant has not been charged with or convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(C) If a petition is filed for the sealing of a level 4 drug felony possession offense described in section 18-18-403.5, C.R.S., the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney may object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required

by paragraph (b) of this subsection (2) must document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(D) If a petition is filed for any other felony drug offense in article 18 of title 18, C.R.S., that is not covered by sub-subparagraphs (A) to (C) of this subparagraph (III.5), the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney may object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney objects to the petition, the court shall dismiss the petition. If the district attorney does not object, the court shall set the petition for a hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) must document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(IV) An order entered pursuant to this section shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this section, the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order and shall pay to the bureau any costs related to the sealing of his or her criminal conviction records that are in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(V) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(VI) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject

of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for the verified copy of his or her criminal history record.

(c) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(d) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(e) (I) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (e), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) The provisions of subparagraph (I) of this paragraph (e) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (e) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing, and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(f) The office of the state court administrator shall post on its web site a list of all

petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(g) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(h) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) **Advisements.** (a) Whenever a defendant is sentenced following a conviction of an offense described in paragraph (a) of subsection (2) of this section, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3):

(I) If a defendant is sentenced to probation following a conviction of an offense described in paragraph (a) of subsection (2) of this section, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole following a conviction for an offense described in paragraph (a) of subsection (2) of this section, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4) (a) **Applicability.** The provisions of this section shall apply only to conviction records pertaining to judgments of conviction entered on or after July 1, 2011.

(b) For any judgment of conviction entered prior to July 1, 2011, for which the defendant would otherwise qualify for relief under this section, the defendant may, after waiting the required waiting period and fulfilling all other statutory requirements under this section, obtain an order from the court to seal conviction records if:

(I) The district attorney does not object to the sealing; and

(II) The defendant pays to the office of the prosecuting attorney all reasonable attorney fees and costs of the prosecuting attorney relating to the petition to seal prior to

the entry of an order sealing the conviction records; and

(III) The defendant pays:

(A) The filing fee required by law; and

(B) An additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records.

(c) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(d) If the district attorney objects to the petition, the court shall dismiss the petition.

(5) **Rules of discovery - rules of evidence - witness testimony.** Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The Colorado rules of civil procedure related to discovery or the Colorado rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

(6) A person may file a petition with the court for sealing of each case once every twelve-month period.

24-72-308.7. Sealing of criminal conviction records information for offenses committed by victims of human trafficking. (1) **Definitions.** For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) **Sealing of conviction records.** (a) (I) A defendant may petition the district court of the district in which any conviction records pertaining to the defendant's conviction for prostitution, as described in section 18-7-201, C.R.S.; soliciting for prostitution, as described in section 18-7-202, C.R.S.; keeping a place of prostitution, as described in section 18-7-204, C.R.S.; public indecency, as described in section 18-7-301, C.R.S., or any corresponding municipal code or ordinance are located for the sealing of the conviction records, except for basic identifying information.

(II) If a petition is filed pursuant to subparagraph (I) of this paragraph (a) for the sealing of a record of conviction for prostitution, as described in section 18-7-201, C.R.S.; soliciting for prostitution, as described in section 18-7-202, C.R.S.; keeping a place of prostitution, as described in section 18-7-204, C.R.S., or public indecency, as described in section 18-7-301, C.R.S., the court shall order the record sealed after:

(A) The petition is filed;

(B) The filing fee is paid; and

(C) The defendant establishes by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been sold, exchanged, bartered, or leased

by another person, as described in section 18-3-501 or 18-3-502, C.R.S., for the purpose of performing the offense, or he or she was coerced by another person, as described in section 18-3-503, C.R.S., to perform the offense.

(III) An order entered pursuant to this section shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this section, the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order and shall pay to the bureau any costs related to the sealing of his or her criminal conviction records that are in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(IV) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records does not vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check is authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(V) A defendant may petition the court for the sealing of conviction records pursuant to this section only once during any twelve-month period. The court shall dismiss a second or subsequent petition filed within any twelve-month period.

(b) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed.

(c) Except as otherwise provided in subparagraph (IV) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(d) Except as otherwise provided in subparagraph (IV) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(e) (I) Except as otherwise provided in subparagraph (IV) of paragraph (a) of this subsection (2), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an

applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) The provisions of subparagraph (I) of this paragraph (e) do not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners has a right to inquire into the moral and ethical qualifications of an applicant, and the applicant does not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (e), the department of education may require a licensed educator or an applicant for an educator's license who files a petition to seal a criminal record to notify the department of education of the pending petition to seal. The department has the right to inquire into the facts of the criminal offense for which the petition to seal is pending. The educator or applicant has no right to privacy or privilege that justifies his or her refusal to answer any questions concerning the arrest and criminal records information contained in the pending petition to seal.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing, and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(f) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(g) Nothing in this section authorizes the physical destruction of any conviction records.

(h) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) **Rules of discovery - rules of evidence - witness testimony.** Court orders sealing records of official actions pursuant to this section do not limit the operations of:

(a) The Colorado rules of civil procedure related to discovery or the Colorado

rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

24-72-308.8. Sealing of criminal conviction records information for offenses involving theft of public transportation services. (1) If a person was convicted of theft of public transportation services by fare evasion as described in section 18-4-802, C.R.S., as it existed prior to June 8, 2012, and the person has completed the sentence, including payment of the fine and surcharge, for the conviction as of June 8, 2012, the court that entered the conviction shall seal the conviction by January 1, 2013.

(2) A person described in subsection (1) of this section that wants his or her conviction sealed prior to January 1, 2013, may motion the court in the case in which the conviction was entered for an order sealing the record of the conviction. The person shall provide all information as required by the court in the motion. Upon receipt of the motion, the court shall verify that the person has completed his or her sentence, including payment of the fine and surcharge, and, if the sentence has been completed, the court shall enter an order sealing the conviction.

(3) A person convicted of theft of public transportation services by fare evasion as described in section 18-4-802, C.R.S., as it existed prior to June 8, 2012, who did not complete the sentence for the conviction prior to June 8, 2012, may motion the court in the case in which the conviction was entered for an order sealing the record of the conviction after he or she completes the sentence, including payment of the fine and surcharge, for the conviction. The person shall provide all information as required by the court in the motion. Upon receipt of the motion, the court shall verify that the person has completed his or her sentence, and, if the sentence has been completed, the court shall enter an order sealing the conviction.

(4) Upon the entry of an order to seal conviction records pursuant to this section, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant. Inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant. Employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted. Notwithstanding the provisions of this section, the Colorado state board of law examiners may make further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado

state board of law examiners has a right to inquire into the moral and ethical qualifications of an applicant, and the applicant does not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(5) The office of the state court administrator shall post on its web site no later than July 1, 2012, a statement that all records for convictions of theft of public transportation services by fare evasion for all persons who have completed their sentences shall be sealed no later than January 1, 2013. The office of the state court administrator shall remove the post from its web site thirty days after the date of the initial posting.

24-72-308.9. Sealing of criminal conviction records information for petty offenses and municipal offenses for convictions. (1) **Definitions.** For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) **Sealing of conviction records.** (a) (I) A defendant may petition the district court of the district in which any conviction records pertaining to the defendant for a petty offense or municipal violation are located for the sealing of the conviction records, except basic identifying information, if:

(A) The petition is filed three or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted for a felony, misdemeanor, or misdemeanor traffic offense in the three or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later; and

(C) The conviction records to be sealed are not for a misdemeanor traffic offense committed either by a holder of a commercial learner's permit or a commercial driver's license, as defined in section 42-2-402, C.R.S., or by the operator of a commercial motor vehicle as defined in section 42-2-402, C.R.S.

(II) Upon filing the petition, the defendant shall pay the filing fee required by law and an additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records. The additional filing fees collected under this subparagraph (II) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

(III) A petition to seal records pursuant to this section may only be filed once during a twelve-month period. The court shall immediately dismiss a second or subsequent petition filed within twelve months of another petition.

(IV) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency,

prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new felony, misdemeanor, or misdemeanor traffic offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(V) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b) (I) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for his or her criminal history record.

(II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the defendant is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing, and the defendant shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (2) is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the

conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records. An order entered pursuant to this paragraph (c) must be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this paragraph (c), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. The defendant shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(d) Except as otherwise provided in subparagraph (III) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(e) Except as otherwise provided in subparagraph (III) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(f) (I) Except as otherwise provided in subparagraph (III) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (f), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in response to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (f) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(g) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(h) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(i) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) **Advisements.** (a) Whenever a defendant is sentenced following a conviction of a petty or municipal offense, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3), if a defendant is sentenced to probation following a conviction of a petty or municipal offense, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(5) **Rules of discovery - rules of evidence - witness testimony.** Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The rules of discovery or the rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

24-72-309. Violation - penalty. Any person who willfully and knowingly violates

the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

PART 4

JUDICIAL DISCIPLINARY HEARINGS

24-72-401. Commission on judicial discipline - confidentiality of records and procedures. The record of an investigation conducted by the commission on judicial discipline or by masters appointed by the supreme court at the request of the commission shall contain all papers filed with and all proceedings before the commission or the masters. The record shall be confidential and shall remain confidential after filing with the supreme court. A recommendation of the commission for the removal or retirement of a justice or judge shall not be confidential after it is filed with the supreme court.

24-72-402. Violation - penalty. Any member of the commission, any master appointed by the supreme court, or anyone providing assistance to such commission or such masters who willfully and knowingly discloses the contents of any paper filed with, or any proceeding before, such commission or such masters, or willfully and knowingly discloses the contents of any recommendation of the commission before such recommendation is filed with the supreme court is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars. This section shall not apply to any necessary communication between the members of the commission or the masters appointed by the supreme court or anyone employed to aid such commission or such masters in the filing or documentation of any paper filed with, or any proceedings before, such commission or such masters or the preparation of the recommendation of such commission.

PART 5

CREATION OF PRIVACY POLICIES BY GOVERNMENTAL ENTITIES

24-72-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Governmental entity" means the state and any state department, agency, or institution of the state.

(2) "Personally identifiable information" means information about an individual collected by a governmental entity that could reasonably be used to identify such individual, including, but not limited to, first and last name, residence or other physical address, electronic mail address, telephone number, birth date, credit card information, and social security number. Notwithstanding any provision to the contrary, "personally identifiable information" shall not include information collected in furtherance of any regulatory, investigative, or criminal justice purpose, information collected in furtherance of litigation in which the state is a party, or information that is required to be collected pursuant to any state or federal statute or regulation.

24-72-502. Creation of a privacy policy for governmental entities. (1) Each governmental entity of the state shall create a privacy policy for the purpose of standardizing within such governmental entity the collection, storage, transfer, and use of personally identifiable information by such governmental entity. The policy of each governmental entity shall address, but shall not be limited to, the following:

(a) A general statement declaring support for the protection of individual privacy;

(b) A provision for the minimization of the collection of personally identifiable information to the least amount of information required to complete a particular transaction;

(c) Clear notice of the applicability of the "Colorado Open Records Act" pursuant to part 2 of this article;

(d) A method for feedback from the public on compliance with the privacy policy; and

(e) A statement that the policy extends to the collection of all personally identifiable information, regardless of the source or medium.

(2) (a) Any governmental entity that operates a world wide web site as of August 7, 2002, shall establish and publish on its web site a privacy policy pursuant to this part 5 no later than July 1, 2003.

(b) Any governmental entity that does not operate a world wide web site as of August 7, 2002, and begins operation of a web site before July 1, 2003, shall establish and publish on its web site a privacy policy pursuant to this part 5 by July 1, 2003.

(c) In no event shall a governmental entity be permitted to operate a world wide web site after July 1, 2003, without first establishing a privacy policy pursuant to this part 5. The privacy policy shall be published on such governmental entity's web site as of the first day of operation of such web site.

(3) Nothing in this section shall be construed to create a private cause of action based on alleged violations of this section.

ARTICLE 72.1

Secure and Verifiable Identity Documents

24-72.1-101. Short title. This article shall be known and may be cited as the "Secure and Verifiable Identity Document Act".

24-72.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Children" means children as defined by 42 U.S.C. sec. 1786 (b).

(2) "Infants" means infants as defined by 42 U.S.C. sec. 1786 (b).

(3) "Public entity" means an agency, department, board, division, bureau, commission, council, or political subdivision of the state.

(4) "Public official" means an elected or appointed official, an employee, or an agent of a public entity.

(5) "Secure and verifiable document" means a document issued by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.

24-72.1-103. Identity documents - verifiable. (1) Except as provided in subsection (3) of this section, a public entity that provides services shall not accept, rely upon, or utilize an identification document to provide services unless it is a secure and verifiable document.

(2) Except as provided in subsection (3) of this section, a public entity that is issuing an identification card, license, permit, or official document shall not authorize acceptance of an identification document, nor shall a public official acting in an official capacity accept the holder's identification document before issuing official documents, unless the identification document is a secure and verifiable document.

(3) The department of revenue may issue a driver's license, minor driver's license, instruction permit, or identification card in accordance with part 5 of article 2 of title 42, C.R.S., but the license, permit, or card is not a secure and verifiable document.

24-72.1-104. Records. Information gathered pursuant to section 24-72.1-105 (2) (a) shall be a public record accessed pursuant to section 24-72-306 unless the subject of the information is a juvenile or the information concerns an ongoing criminal investigation. Such records shall be retained for three years, but may be disposed of after

three years.

24-72.1-105. Violations - immunity. (1) Actions taken in knowing violation of this article shall not be protected by governmental immunity provided to public employees by article 10 of this title.

(2) A peace officer who, in the performance of the officer's duties, utilizes identification that is not secure and verifiable shall not forfeit governmental immunity pursuant to this section if such officer:

(a) Gathers all information from such identification; and

(b) If feasible, according to any applicable law enforcement agency guidelines, gathers fingerprint information from such person and stores such fingerprints for at least one year as a criminal justice record.

24-72.1-106. Applicability. This article shall not apply to a person reporting a crime; a public entity or official accepting a crime report, conducting a criminal investigation, accepting an application for the provision of services or providing services to infants and children born in the United States pursuant to 42 U.S.C. sec. 1786, or providing emergency medical service; a peace officer in the performance of the officer's duties and within the scope of the officer's employment if such officer complies with section 24-72.1-105 (2); or instances when a federal law mandates acceptance of a document.

24-72.1-107. State auditor - report. (Repealed)

ARTICLE 72.3

Prohibiting Inclusion of Social Security Number

24-72.3-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Public entity" means an agency, department, board, division, bureau, commission, council, authority, special district, or political subdivision of the state or a local government.

24-72.3-102. Prohibition - inclusion of social security number - requiring social security number over the phone, internet, or mail - exceptions. (1) A public entity shall not issue a license, permit, pass, or certificate that contains the holder's social security number, unless the issuing authority determines inclusion of the social security number is necessary to further the purpose of the license, pass, or certificate or inclusion is required by federal or state law.

(2) A public entity shall not request a person's social security number over the phone, internet, or via mail unless the public entity determines receiving the social security number is required by federal law or is essential to the provision of services by the public entity.

ARTICLE 72.4

Revenue and Expenditure
Web-based System

24-72.4-101. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Taxpayers should be able to easily access the details of the state's finances, including how much revenue the state receives and how that revenue is spent;

(b) On April 2, 2009, the governor issued an executive order that created the transparency online project;

(c) The transparency online project is a free, searchable web-based system providing easy access to information about the state's revenues and expenditures;

(d) The transparency online project is an important first step in providing a more transparent and accountable state government; and

(e) The purpose of this legislation is to improve the system created by the executive order.

(2) Now, therefore, it is the intent of the general assembly that the web-based system established by the governor's executive order be modified as set forth in this article.

(3) (a) The general assembly further finds and declares that:

(I) Only a limited number of the department of transportation's transactions are included in the state's official book of record and, accordingly, most of its revenues and expenditures are not included in the web-based system;

(II) Because of accounting and information technology differences, it is not feasible to fully assimilate the department of transportation into the web-based system; and

(III) Taxpayers should still be able to access the details of the department of transportation's finances.

(b) Now, therefore, it is the intent of the general assembly that the department of transportation be required to create and maintain a searchable, on-line revenue and expenditure database and that such information should be accessible through the web-based system.

24-72.4-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Challenger" means an individual who challenges an exclusion of information from the web-based system by sending written notice to a state agency in accordance with section 24-72.4-103 (2) (a).

(1.2) "Chief information officer" means the chief information officer appointed pursuant to section 24-37.5-103.

(1.3) "On-line database" means the searchable, on-line revenue and expenditure database developed, maintained, and made publicly available by the department of transportation pursuant to section 24-72.4-105.

(1.4) "State agency" means any department, division, board, bureau, commission, institution, or agency of the state for which account balances are maintained on the state's official book of record.

(1.6) "State's official book of record" means the electronic database commonly known as the Colorado financial reporting system that is maintained by the office of information technology on behalf of the state controller pursuant to the authority set forth in section 24-30-202.

(1.8) "Unstructured data field" means a data element in the state's official book of record for which the content is not selected from a predetermined set of options and the preparer of the transaction is allowed to enter any combination of characters or symbols.

(2) "Web-based system" means the searchable web-based system that provides access to descriptions of revenues and expenditures recorded in the state's official book of record that, in accordance with executive order 007-09, is developed and maintained by the chief information officer, in consultation with the state controller.

24-72.4-103. Web-based system - enhancements - procedure for challenging exclusions. (1) The chief information officer shall modify the web-based system to meet the following requirements:

(a) Except as set forth in paragraphs (g) and (i) of this subsection (1), the state expenditures and revenues data included in the web-based system shall be the expenditure and revenue data included in the state's official book of record;

(b) The web-based system shall be accessible from the web site maintained by the state, and each state agency with a web site shall provide a link on the web site home page to the system;

(c) The information on the web-based system shall be updated every five business days to include new expenditure and revenue data;

(d) The web-based system reports shall be available for download in a structured data format, such as extensible markup language;

(e) The web-based system shall include a method for users to provide feedback about the system;

(f) The web-based system shall include archived revenue and expenditure data for the ten prior state fiscal years; except that no data shall be required for any state fiscal year prior to July 1, 2009, and, for the 2009-10 state fiscal year only, no state revenue data shall be required to be archived;

(g) The web-based system shall not include the following information:

(I) Any information that is not a public record or that is exempt from disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this title, or pursuant to part 3 of article 72 of this title;

(II) Any information that is confidential pursuant to state or federal law;

(III) Any information contained in an unstructured data field; or

(IV) Any information that the chief financial officer of a state agency or the director or head of a state agency requests to not be disclosed because the potential injury to the public interest arising from the disclosure of such information on the web-based system outweighs the public interest in having such information publicly available on the web-based system. For purposes of this subparagraph (IV), the public interest arising from the disclosure of information shall include the protection of the privacy, safety, and security of individuals.

(h) For any information excluded from the web-based system pursuant to paragraph (g) of this subsection (1), the web-based system shall include:

(I) A description of the information excluded;

(II) The basis for exclusion; and

(III) The state agency that requested the exclusion;

(i) Regardless of the form of the data in the state's official book of record, the web-based system may provide access to aggregated information where:

(I) Access to each individual transaction is likely to hinder, rather than foster, the goal of accountability and transparency;

(II) An individual transaction includes information that is only partially excludable pursuant to paragraph (g) of this subsection (1); or

(III) An accounting code contained in the state's official book of record includes both includable and excludable transactions pursuant to paragraph (g) of this subsection (1); and

(j) The web-based system shall include a link to the on-line database.

(2) (a) An individual may challenge the exclusion of information from the web-based system pursuant to paragraph (g) of subsection (1) of this section by sending written notice to the state agency that requested the exclusion. The notice shall set forth the basis for challenging the exclusion and shall cite this section.

(b) Within thirty calendar days of receiving a challenge to an exclusion pursuant to paragraph (a) of this subsection (2), the state agency receiving the challenge shall respond in writing to the challenger. In the response, the state agency may:

(I) Agree to withdraw the exclusion;

(II) Deny the challenge; or

(III) Agree to withdraw the exclusion, in part, and deny the challenge, in part.

(c) If, in response to the challenge, the state agency agrees to withdraw the exclusion, in whole or in part, then the state agency shall inform the state controller in writing within two working days of the date the response is sent to a challenger pursuant to paragraph (b) of this subsection (2), and the state controller shall make the appropriate information available on the web-based system promptly, which in no case shall be later than ten working days of receipt.

(d) If the state agency denies a challenge brought pursuant to paragraph (a) of this subsection (2), in whole or in part, or fails to respond to a challenge in writing within thirty calendar days, then a challenger may apply to the district court for the city and county of Denver for an order directing the state agency denying the challenge to show cause why the challenged exclusion is proper; except that an action may not be initiated pursuant to this paragraph (d) if a state agency has first initiated an action pursuant to paragraph (e) of this subsection (2) with respect to the same exclusion. Upon a finding that information was improperly excluded from the web-based system, the court shall order the state agency to withdraw the exclusion and the state controller to make the excluded information available on the web-based system. In order to prevail in an application brought under this paragraph (d), a challenger shall bear the burden of proving by a preponderance of the evidence that the office or agency improperly excluded information from the web-based system.

(e) If the state agency, acting in good faith and after receiving notice of a challenge pursuant to paragraph (a) of this subsection (2), is unable to determine whether exclusion of information on the web-based system is proper pursuant to paragraph (g) of subsection (1) of this section, the state agency may apply to the district court for an order permitting the state agency to exclude information from the web-based system or for the court to determine that the exclusion is prohibited. In an action brought pursuant to this paragraph (e), the burden of proof shall be upon the state agency asserting the exclusion to prove by a preponderance of the evidence that the information may be properly excluded from the web-based system. A challenger shall have notice of the action served upon him or her in the manner provided for service of process by the Colorado rules of

civil procedure and shall have the right to appear and be heard.

(f) (I) Except as set forth in subparagraph (II) of this paragraph (f), if a court determines that a state agency improperly excluded information from the web-based system, the court shall award reasonable attorney fees and costs to a challenger who appears in the court proceeding.

(II) The attorney fees provision of subparagraph (I) of this paragraph (f) shall not apply in cases brought pursuant to paragraph (e) of this subsection (2) if the court finds that the state agency acted in good faith and, after exercising reasonable diligence and making reasonable inquiry, was unable to determine if exclusion from the web-based system was proper without a ruling by the court.

24-72.4-104. Information in web-based system - limit on duty. (1) The chief information officer and the state controller may reasonably rely upon representations by a state agency in determining what information to include in the web-based system, and neither the chief information officer nor the state controller shall have a duty to independently review the information for compliance with this article prior to posting the information on the web-based system.

(2) The limitation on duty set forth in subsection (1) of this section shall be in addition to any limitation on duty and liability provided by the "Colorado Governmental Immunity Act", article 10 of this title.

24-72.4-105. Department of transportation - revenue and expenditure - on-line database - link to web-based system. (1) No later than July 1, 2012, the department of transportation shall develop, maintain, and make publicly available a searchable, on-line revenue and expenditure database.

(2) The on-line database must:

(a) Include the following information for all revenues received by the department of transportation:

(I) The amount received;

(II) The date of receipt;

(III) The source of the moneys; except that the identity of an individual making a payment to the department of transportation should not be included;

(IV) The reason for the payment;

(V) The fund in which the moneys are deposited; and

(VI) The program for which the moneys are received;

(b) (I) Except as set forth in subparagraph (II) of this paragraph (b), include the following information for each expenditure made by the department of transportation:

(A) The amount of moneys expended;

(B) The date of the transaction;

(C) The vendor that received the payment;

(D) The purchase category; and

(E) The fund from which the expenditure was made;

(II) Include only the following information about payments made to each employee of the department of transportation:

(A) The personnel area of the employee;

(B) The employee's job title; and

(C) The gross year-to-date payments made to the employee;

(c) Be searchable;

(d) Be updated at least every five business days to include new expenditure and revenue data;

(e) Beginning on July 1, 2013, include archived revenue and expenditure data for the prior state fiscal year only.

(3) The on-line database must not include:

(a) Any information that is not a public record or that is exempt from disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this title, or pursuant to part 3 of article 72 of this title; or

(b) Any information that is confidential pursuant to state or federal law.

(4) The department of transportation may include any other information that the department determines will increase transparency.

GOVERNMENTAL ACCESS TO NEWS INFORMATION

ARTICLE 72.5

Governmental Access to News Information

24-72.5-101. Legislative declaration. The general assembly finds that an informed citizenry, which results from the free flow of information between citizens and the mass media, and the preservation of news information sources for the mass media is of vital concern to all people of the state of Colorado and that the interest of the state in such area is so great that the state shall retain jurisdiction over the use of any subpoena power or the exercise of any other authority by any governmental entity to obtain news information or the identification of the source of such information within the knowledge or possession of newspersons, which is hereby declared to be a matter of statewide concern.

24-72.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Governmental entity" means the state and any state agency or institution, county, city and county, incorporated city or town, school district, special improvement district, authority, and every other kind of district, instrumentality, or political subdivision of the state organized pursuant to law. "Governmental entity" shall include entities governed by home rule charters.

(2) "Mass medium" means any publisher of a newspaper or periodical; wire service; radio or television station or network; news or feature syndicate; or cable television system.

(3) "News information" means any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports, and the contents and sources thereof, obtained by a newsperson while engaged as such, regardless of whether such items have been provided to or obtained by such newsperson in confidence.

(4) "Newsperson" means any member of the mass media and any employee or independent contractor of a member of the mass media who is engaged to gather, receive, observe, process, prepare, write, or edit news information for dissemination to the public through the mass media.

(5) "Press conference" means any meeting or event called for the purpose of issuing a public statement to members of the mass media, and to which members of the mass media are invited in advance.

(6) "Proceeding" means any investigation, hearing, or other process for obtaining information conducted by, before, or under the authority of any executive or administrative body, panel, or officer of the state of Colorado or any city, county, city and county, or other political subdivision of the state. Such term shall not include any investigation, hearing, or other process for obtaining information conducted by, before, or under the authority of the general assembly.

(7) "Source" means any person from whom or any means by or through which news information is received or procured by a newsperson, regardless of whether such newsperson was requested to hold confidential the identity of such person or means.

24-72.5-103. Compelled disclosure of news information - privilege. (1) Notwithstanding any other provision of law to the contrary, and except as otherwise provided by section 24-72.5-104, no newsperson shall, without the express consent of such newsperson, be compelled to disclose, be examined concerning refusal to disclose, or be subject to any process to compel disclosure or to impose any sanction for nondisclosure in connection with any proceeding of a governmental entity for refusal to disclose any news information received, observed, procured, processed, prepared, written, or edited by a newsperson, while acting in the capacity of a newsperson; except that the

privilege of nondisclosure shall not apply to the following:

(a) News information received at a press conference;

(b) News information that has actually been published or broadcasted through the mass media;

(c) News information based on a newsperson's personal observation of the commission of an act which, under any statute, law, or ordinance, is deemed to be a criminal offense if substantially similar news information cannot reasonably be obtained by any other means;

(d) News information based on a newsperson's personal observation of the commission of a class 1, 2, or 3 felony.

24-72.5-104. Limit of nondisclosure privilege for newsperson. (1) Notwithstanding the privilege of nondisclosure established in section 24-72.5-103, a governmental entity otherwise authorized by law to issue or obtain subpoenas may subpoena a newsperson in order to obtain news information by establishing, by a preponderance of the evidence:

(a) That the news information is directly relevant to a substantial issue involved in the proceeding;

(b) That the news information cannot be obtained by any other reasonable means; and

(c) That a strong interest of the party seeking to subpoena the newsperson outweighs the interests under the first amendment to the United States constitution of such newsperson in not responding to a subpoena and of the general public in receiving news information.

24-72.5-105. Waiver of privilege. The privilege of nondisclosure established in section 24-72.5-103 may be waived only by the voluntary testimony or disclosure of a newsperson that directly addresses the news information or identifies the source of such news information sought by a governmental entity. A publication or broadcast of a news report through the mass media concerning the subject area of the news information sought, but which does not directly address the news information sought by such governmental entity, shall not be deemed a waiver of the privilege of nondisclosure as to such specific news information.

24-72.5-106. Ability to obtain search warrant not affected. Nothing in this article shall preclude the issuance of a search warrant pursuant to the federal "Privacy Protection Act of 1980", 42 U.S.C. sec. 2000aa.

STATE FUNDS

ARTICLE 75

State Funds

PART 1

APPROPRIATIONS

24-75-101. Deficiency in revenue. (1) The following appropriations shall be appropriations of the first class and shall be first paid out of the revenue of the state against which they are chargeable:

(a) All appropriations made by the general assembly for the executive, legislative, and judicial departments of the state government;

(b) All appropriations made by the general assembly for the institutions of higher education and for the penal, charitable, and eleemosynary institutions of the state government;

(c) All interests on the public debt of the state government;

(d) All appropriations of funds derived from state continuing mill levies for the support of penal, eleemosynary, and educational institutions and other state purposes, other than the general revenue fund, shall be appropriations of the first class and shall be expended as such for the purposes for which levied and appropriated.

(2) All other appropriations made by the general assembly shall be appropriations of the second class.

(3) In case there are insufficient revenues to pay all appropriations made by the general assembly in full, the appropriations of the first class, designated in subsection (1) of this section, shall be first paid in full and the balance of revenue available shall be thereafter prorated among the second class appropriations designated in subsection (2) of this section.

24-75-102. When appropriations expended - balance. (1) (a) Except as otherwise provided by law, including paragraph (b) of this subsection (1), all moneys 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, 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).

(b) (I) Appropriations for the superfund, brownfields, and natural resource damage programs administered by the department of public health and environment pursuant to article 15 of title 25, C.R.S., shall be encumbered within eighteen months after the beginning of the fiscal year for which they were appropriated.

(II) As used in this paragraph (b), "superfund" means the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", 42 U.S.C. sec. 9601 et seq., as amended.

(2) and (3) Repealed.

24-75-103. Exceptions to transfer of balances. The provisions of section 24-75-102 shall not apply to any appropriation where, as a part of the object intended by or as preliminary to the expenditure of the appropriation, condemnation proceedings or other litigation has been commenced or where the expenditure of the money appropriated has been delayed by proceedings or litigation by third persons in resistance of the object of the appropriation.

24-75-104. Gifts and bequests to state institutions of higher education - effect. (1) All endowments, gifts, and bequests made to any state institution of higher education, and the income therefrom, shall belong to and be used only by such institution and shall be subject to state audit. In appropriating state funds to such institution of higher education, neither principal nor interest of such gifts shall be used to reduce such appropriation, and both principal and interest shall be in addition to any funds appropriated for such institution.

(2) Nothing in subsection (1) of this section shall be construed to commit the state of Colorado to continuing the levels of programs attained as results of such endowments, gifts, and bequests upon their expiration.

(3) (a) On January 30, 1997, and January 30 of each year thereafter, each state institution of higher education shall submit to the governor and general assembly a complete listing, in accordance with generally accepted accounting principles, of all endowments, gifts, and bequests made to or expenditures in excess of two hundred fifty dollars made on behalf of said state institution of higher education during the immediately preceding state fiscal year.

(b) Repealed.

24-75-105. Transfers required to implement conditional and centralized

appropriations - repeal. (1) Transfers of appropriations which are authorized in the 1990-91 and subsequent general appropriation acts and are required to implement appropriations conditioned on the distribution of the appropriation among, or the transfer of the appropriation between, departments, agencies, or programs, including centralized appropriations, are expressly authorized.

(2) This section is repealed, effective September 1, 2014.

24-75-106. Transfers between departments of health care policy and financing and human services for materially similar items of appropriation for medicaid programs - limitation - repeal. (1) Notwithstanding the effect of the "M" provision in the 1990-91 and subsequent general appropriation acts, the governor may transfer unlimited amounts of general fund appropriations and reappropriated funds to and from the departments of health care policy and financing and human services when required by changes from the appropriated levels in the amount of medicaid cash funds earned through programs or services provided under the supervision of the department of human services or the department of health care policy and financing if the transfer of appropriations is between one or more materially similar items of appropriation and is for purposes other than department administrative costs associated with programs or services.

(2) This section is repealed, effective September 1, 2014.

24-75-106.5. Transfers between departments of health care policy and financing and human services for corresponding items of appropriation - limitations - repeal. (1) Subject to the provisions of subsection (2) of this section, upon approval of the governor:

(a) The executive director of the department of health care policy and financing may transfer general fund or reappropriated funds spending authority from one or more items of appropriation made to that department in the annual general appropriations act to one or more corresponding items of appropriation made to the department of human services in the act.

(b) The executive director of the department of human services may transfer general fund or reappropriated funds spending authority from one or more items of appropriation made to that department in the annual general appropriations act to one or more corresponding items of appropriation made to the department of health care policy and financing in the act.

(2) The governor may approve a transfer of spending authority between one or more corresponding items of appropriation of the departments of health care policy and financing and human services pursuant to subsection (1) of this section only if:

(a) Authority for the transfer of spending authority has been expressly granted in a

footnote in the annual general appropriations act;

(b) The amount of spending authority to be transferred does not exceed the maximum amount, if any, specified in the footnote authorizing the transfer; and

(c) The transfer is not otherwise authorized pursuant to section 24-75-106.

(3) The transfers authorized by this section shall:

(a) Be in addition to any other transfers between the departments of health care policy and financing and human services authorized by law; and

(b) Apply to the 2008-09 and subsequent general appropriations acts.

(4) The governor shall report to the joint budget committee no later than October 1 after the close of the fiscal year on any transfers approved by the governor pursuant to this section.

(5) This section is repealed, effective September 1, 2014.

24-75-107. Cash fund transfers pursuant to sections 24-75-105 and 24-75-106 - repeal. (1) All transfers pursuant to sections 24-75-105 and 24-75-106 which involve cash funds shall be consistent with statutes governing the use of cash funds.

(2) This section is repealed, effective September 1, 2014.

24-75-107.5. Transfers of spending authority - cash fund appropriations and reappropriated funds - repeal. (Repealed)

24-75-108. Intradepartmental transfers between appropriations - repeal. (1) Upon approval by the governor, the head of a principal department of state government may, on or after May 1 of any fiscal year and before the forty-fifth day after the close of such fiscal year, transfer moneys from one item of appropriation made to the principal department in the general appropriation act to another item of appropriation made to the same principal department in said act; except that such transfers shall be made only between appropriations for like purposes. All transfers made pursuant to this section shall be between appropriations made for the expiring fiscal year.

(2) None of the following transfers shall be deemed to be between like purposes within the meaning of subsection (1) of this section:

(a) and (b) (Deleted by amendment, L. 2010, (HB 10-1119), ch. 340, p. 1574, § 10, effective August 11, 2010.)

(c) Transfers from any item of appropriation into a lease purchase item;

(d) Transfers between governing boards of institutions of higher education;

(e) Transfers between capital construction projects; except that transfers between specific maintenance projects or between controlled maintenance projects may be made

as authorized in the general appropriation act;

(f) Transfers made to match federal funds for a program which has not been authorized by law;

(g) Transfers of cash-spending authority which operate to increase appropriations of moneys out of one cash fund by decreasing appropriations of moneys out of a different cash fund in a corresponding amount if such transfers increase the total spending authority for all fund sources within a program. A transfer of cash spending authority shall not authorize a transfer of cash between cash funds.

(3) (a) (Deleted by amendment, L. 2010, (HB 10-1119), ch. 340, p. 1574, § 10, effective August 11, 2010.)

(b) Any savings realized from an energy cost-savings contract pursuant to section 24-30-2003 may be transferred to an operating expense item for the purpose of making an annual payment on a lease-purchase agreement under such contract.

(4) All transfers within a department or within an office involving cash funds shall be consistent with statutes governing the use of such cash funds.

(5) Transfers between items of appropriation made to the judicial department may be made, upon approval by the chief justice of the Colorado supreme court, to the same extent and subject to the same limitations as transfers within a principal department as authorized by subsections (1) to (4) of this section. Transfers between items of appropriation made to the judicial department shall also be subject to the limitation in section 24-75-110.

(6) Transfers between items of appropriation made to the office of the governor, including the office of state planning and budgeting, may be made, upon approval by the governor, to the same extent and subject to the same limitations as transfers within a principal department as authorized by subsections (1) to (4) of this section.

(7) The transfers authorized by this section shall be in addition to any other transfers within a department or within an office which are authorized by law or which are authorized in the general appropriation act and are required to implement appropriations conditioned on the distribution or transfer of the appropriated amounts.

(8) The total amount of moneys transferred between items of appropriation made to principal departments of state government and to the office of the governor pursuant to this section, other than transfers within a principal department from an operating expense item to a utilities item, from a utilities item to an operating expense item pursuant to paragraph (b) of subsection (3) of this section, or from a utilities item to a utilities item, shall not exceed five million dollars.

(9) The governor shall report to the joint budget committee no later than October 1 after the close of the fiscal year on the transfers approved by the governor and by the chief justice pursuant to this section and section 24-75-106 and on overexpenditures allowed under section 24-75-109.

(10) The transfers authorized by this section shall apply to the 1990-91 and

subsequent general appropriation acts.

(11) This section is repealed, effective September 1, 2020.

(12) As used in this section, "utilities" means water, sewer service, electricity, or other fuel sources, equipment purchased for the purpose of utility cost savings, payments made to private companies for services rendered or equipment installed for the purpose of reducing utility costs, lease-purchase payments to private companies for the purpose of reducing utility costs, and all heating fuels.

24-75-109. Controller may allow expenditures in excess of appropriations - limitations - appropriations for subsequent fiscal year restricted - repeal. (1) For the purpose of closing the state's books, and subject to the provisions of this section, the controller may, on or after May 1 of any fiscal year and before the forty-fifth day after the close thereof, upon approval of the governor, allow any department, institution, or agency of the state, including any institution of higher education, to make an expenditure in excess of the amount authorized by an item of appropriation for such fiscal year if:

(a) The overexpenditure is for medicaid programs; or

(a.5) The overexpenditure is by the department of health care policy and financing for the children's basic health plan established pursuant to article 8 of title 25.5, C.R.S.; except that, to the extent that the overexpenditure allowed pursuant to this paragraph (a.5) is from the general fund, the overexpenditure from the general fund shall not exceed two hundred fifty thousand dollars in any fiscal year; or

(a.6) The overexpenditure is by the department of health care policy and financing for the required state contribution payment pursuant to the federal "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Pub.L. 108-173; or

(b) The overexpenditure is by the department of human services for any purpose other than medicaid programs, but the total of all overexpenditures allowed pursuant to this paragraph (b) shall not exceed one million dollars in any fiscal year; or

(c) The overexpenditure is for any purpose of a department, institution, or agency of the executive branch other than the department of human services, but the total of all overexpenditures allowed pursuant to this paragraph (c) shall not exceed three million dollars in any fiscal year; or

(c.5) The overexpenditure is for the workers' compensation self-insurance program of the department of human services established pursuant to section 8-44-203, C.R.S.; or

(d) The overexpenditure is for any purpose of the judicial department, but overexpenditures allowed pursuant to this paragraph (d) shall be subject to the limitation in section 24-75-110; or

(e) The overexpenditure is by the department of corrections for the purchase of pharmaceuticals and the purchase of medical services from other medical facilities as part

of the medical services subprogram for department institutions. The overexpenditure authorized by this paragraph (e) shall only be allowed for the 2001-02 fiscal year.

(1.5) For the purposes of this section, an overexpenditure includes any instance in which the total expenditures charged to a specific line item of appropriation are in excess of the total spending authority appropriated for that line item and any instance in which sufficient cash or cash-exempt reserves have not been earned to cover related expenditures and there is no statutory fund balance to cover such expenditures.

(2) Overexpenditures allowed pursuant to subsection (1) of this section shall be subject to the following requirements:

(a) Except as specifically provided in this section, overexpenditures shall be consistent with all statutory provisions applicable to the program, function, or purpose for which the overexpenditure is made, including the provisions of appropriation acts.

(b) No overexpenditure shall be allowed in excess of the unencumbered balance of the fund from which the overexpenditure is made as of the date of the expenditure.

(3) For any overexpenditure, whether or not allowed by the controller in accordance with subsection (1) of this section, the controller shall restrict, in an amount equal to said overexpenditure, the corresponding item or items of appropriation that are made in the general appropriation act for the fiscal year following the fiscal year for which the overexpenditure that is allowed occurs. For the purposes of determining such corresponding item or items of appropriation, the controller shall consider, in order of importance, the fund from which the overexpenditure was allowed, the department, institution, or agency that was allowed to make the overexpenditure, and the purpose for which the overexpenditure was allowed. The department, institution, or agency shall not be allowed to expend any amount restricted pursuant to this subsection (3) unless such restriction is released in accordance with subsection (4) of this section.

(4) (a) The department, institution, or agency whose appropriation is restricted may request a supplemental appropriation for the fiscal year in which the overexpenditure occurred for the amount of any overexpenditure allowed pursuant to this section. If a supplemental appropriation is enacted for the overexpenditure or some portion thereof, the restriction on the succeeding fiscal year's appropriation shall be released in the amount of the supplemental appropriation enacted.

(b) If the amount of the restriction imposed pursuant to subsection (3) of this section was based on an estimate of the amount of the overexpenditure and the amount of such restriction exceeds the actual amount of the overexpenditure, the controller shall release that portion of the restricted amount that exceeds the actual amount of the overexpenditure.

(5) The limitation on general fund appropriations and the requirement for a general fund reserve contained in section 24-75-201.1 shall not apply to overexpenditures from the general fund for medicaid programs allowed pursuant to paragraph (a) of subsection (1) of this section or to supplemental general fund appropriations for medicaid

programs enacted pursuant to subsection (4) of this section. Overexpenditures for all other purposes allowed pursuant to subsection (1) of this section and supplemental general fund appropriations for all other purposes enacted pursuant to subsection (4) of this section shall be considered appropriations for the fiscal year in which the overexpenditure was allowed and shall accordingly be subject to the limitations and requirements of section 24-75-201.1.

(6) The controller may allow overexpenditures pursuant to this section only for the fiscal years beginning July 1, 1998, July 1, 1999, July 1, 2000, July 1, 2001, July 1, 2002, July 1, 2003, July 1, 2004, July 1, 2005, July 1, 2006, July 1, 2007, July 1, 2008, July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012, and July 1, 2013, and this section is repealed, effective September 1, 2014.

24-75-110. Limitation on judicial department - repeal. (1) The total amount of moneys transferred between items of appropriation made to the judicial department pursuant to section 24-75-108 and overexpenditures by the judicial department allowed pursuant to section 24-75-109 shall not exceed one million dollars in any fiscal year.

(2) This section is repealed, effective September 1, 2014.

24-75-111. Additional authority for controller to allow expenditures in excess of appropriations - limitations - appropriations for subsequent fiscal year restricted. (1) For fiscal years commencing on or after July 1, 1997, in addition to any overexpenditure allowed pursuant to section 24-75-109, the controller may allow any department, institution, or agency of the state, including any institution of higher education, to make an expenditure in excess of the amount authorized by an item of appropriation for such fiscal year if:

(a) The overexpenditure is for any purpose of a department, institution, or agency of the state; and

(b) (I) The overexpenditure is necessary due to unforeseen circumstances arising while the general assembly is not meeting in regular or special session during which such overexpenditure can be legislatively addressed; or

(II) The overexpenditure is made from the health care supplemental appropriations and overexpenditures account as authorized in section 24-22-115 (4); and

(c) (I) If the overexpenditure is in regard to an operating budget item and is requested by a department, institution, or agency of the state other than the department of law, the department of the treasury, the department of state, the judicial department, or the legislative department:

(A) The request for the overexpenditure has been submitted to the office of state planning and budgeting for approval and the office of state planning and budgeting has

approved the overexpenditure, in whole or in part; and

(B) Upon approval by the office of state planning and budgeting, the request for the overexpenditure has been submitted to the joint budget committee of the general assembly for approval; and

(C) The request for the overexpenditure has been approved, in whole or in part, by a majority vote of the members of the joint budget committee and the controller has received written confirmation of such approval from the joint budget committee; or

(II) If the overexpenditure is in regard to an operating budget item and is requested by the department of law, the department of the treasury, the department of state, the judicial department, or the legislative department:

(A) The request for the overexpenditure has been submitted to the joint budget committee of the general assembly for approval; and

(B) The request for the overexpenditure has been approved, in whole or in part, by a majority vote of the members of the joint budget committee and the controller has received written confirmation of such approval from the joint budget committee; or

(III) If the overexpenditure is in regard to a capital construction budget item and is requested by a department, institution, or agency of the state other than the department of law, the department of the treasury, the department of state, the judicial department, or the legislative department:

(A) The request for the overexpenditure has been submitted to the office of state planning and budgeting for approval and the office of state planning and budgeting has approved the overexpenditure, in whole or in part; and

(B) Upon approval by the office of state planning and budgeting, the request for the overexpenditure has been submitted to the capital development committee of the general assembly for consideration; and

(C) Upon the issuance of a written recommendation regarding the overexpenditure by the capital development committee, the request for the overexpenditure has been submitted to the joint budget committee of the general assembly for approval; and

(D) The request for the overexpenditure has been approved, in whole or in part, by a majority vote of the members of the joint budget committee and the controller has received written confirmation of such approval from the joint budget committee; or

(IV) If the overexpenditure is in regard to a capital construction budget item and is requested by the department of law, the department of the treasury, the department of state, the judicial department, or the legislative department:

(A) The request for the overexpenditure has been submitted to the capital development committee of the general assembly for consideration; and

(B) Upon the issuance of a written recommendation regarding the overexpenditure by the capital development committee, the request for the overexpenditure has been submitted to the joint budget committee of the general assembly for approval; and

(C) The request for the overexpenditure has been approved, in whole or in part, by

a majority vote of the members of the joint budget committee and the controller has received written confirmation of such approval from the joint budget committee.

(2) Any department, institution, or agency of the state requesting an overexpenditure pursuant to subsection (1) of this section shall make the request in such form and shall include in the request such information as may be required by the office of state planning and budgeting, the capital development committee, and the joint budget committee, as applicable.

(3) Overexpenditures allowed pursuant to subsection (1) of this section shall be subject to the following requirements:

(a) Overexpenditures shall be consistent with all statutory provisions applicable to the program, function, or purpose for which the overexpenditure is made, including the provisions of appropriation acts.

(b) No overexpenditure shall be allowed in excess of the unencumbered balance of the fund from which the overexpenditure is made as of the date of the overexpenditure.

(4) (a) For any overexpenditure allowed by the controller in accordance with subsection (1) of this section that is in regard to an operating budget item, the controller shall restrict, in an amount equal to said overexpenditure, the corresponding item or items of appropriation that are made in the general appropriation act for the fiscal year following the fiscal year for which the overexpenditure is allowed. For the purposes of determining such corresponding item or items of appropriation, the controller shall consider, in order of importance, the fund from which the overexpenditure was allowed, the department, institution, or agency that was allowed to make the overexpenditure, and the purpose for which the overexpenditure was allowed.

(b) For any overexpenditure allowed by the controller in accordance with subsection (1) of this section that is in regard to a capital construction budget item, the controller shall restrict, in an amount equal to said overexpenditure, an item or items of appropriation that are made in the general appropriation act for the fiscal year following the fiscal year for which the overexpenditure is allowed and that are made for the following purposes in the order specified: The capital construction budget item for which the overexpenditure was allowed; any other capital construction budget item of the department, institution, or agency that was allowed to make the overexpenditure; any operating budget item relating to the administration of the department, institution, or agency that was allowed to make the overexpenditure; and any other operating budget item of the department, institution, or agency that was allowed to make the overexpenditure. For the purposes of determining the item or items of appropriation for operating budget items to be restricted, the controller shall restrict the item or items of appropriation that would be the least disruptive to the operations of the department, institution, or agency.

(c) The department, institution, or agency shall not be allowed to expend any amount restricted pursuant to this subsection (4) unless such restriction is released in

accordance with subsection (5) of this section.

(5) The joint budget committee of the general assembly shall introduce a supplemental appropriation for the fiscal year in which the overexpenditure occurred for the amount of any overexpenditure allowed pursuant to this section. If a supplemental appropriation is enacted for the overexpenditure or some portion thereof, the restriction on the succeeding fiscal year's appropriation shall be released in the amount of the supplemental appropriation enacted.

(6) Overexpenditures allowed pursuant to the provisions of subsection (1) of this section and supplemental general fund appropriations enacted pursuant to subsection (5) of this section shall be considered appropriations for the fiscal year in which the overexpenditure was allowed and shall accordingly be subject to the limitations and requirements of section 24-75-201.1.

24-75-112. Annual general appropriation act - headnote definitions - general provisions - footnotes. (1) As used in the annual general appropriation act, the following definitions and general provisions shall apply for the headnote terms preceding and specifying the purpose of certain line items of appropriation:

(a) (I) "Capital outlay" means:

(A) Equipment, furniture, motor vehicles, software, and other items that have a useful life of one year or more;

(B) Alterations and replacements, meaning major and extensive repair, remodeling, or alteration of buildings, the replacement thereof, or the replacement and renewal of the plumbing, wiring, electrical, fiber optic, heating, and air conditioning systems therein;

(C) New structures, meaning the construction of entirely new buildings, including the value of materials and labor, either state-supplied or supplied by contract; or

(D) Nonstructural improvements to land, meaning the grading, leveling, drainage, irrigation, and landscaping thereof and the construction of roadways, fences, ditches, and sanitary and storm sewers.

(II) "Capital outlay" does not include those things defined as capital construction by section 24-75-301 (1).

(b) "Centralized appropriation" means the appropriation of funds to an executive director of a department or a central administrative program intended for subsequent allocation and expenditure at and among a department's divisions, programs, agencies, or long bill groups in order to reflect the amount of such resources actually used in each program or division. Such centralized appropriations may include salary survey, merit pay or anniversary increases, senior executive service, shift differential, group health and life insurance, capital outlay, ADP capital outlay, information technology asset maintenance, legal services, purchase of services from computer center, multiuse network payments,

vehicle lease payments, leased space, lease purchase, payment to risk management and property funds, short-term disability insurance, utilities, communications services payments, amortization equalization disbursements, supplemental amortization equalization disbursements, administrative law judge services, and centralized ADP. As provided in paragraph (l) of this subsection (1), capital outlay is included within the appropriation for "operating expenses".

(c) "Communications services payments" means payments to the office of information technology created in section 24-37.5-103 for the cost of services from the state's public safety communications infrastructure.

(d) (I) Except as otherwise provided in subparagraph (IV) of this paragraph (d), "full-time equivalent" or "FTE" means the budgetary equivalent of one permanent position continuously filled full time for an entire fiscal year by elected state officials or by state employees who are paid for at least two thousand eighty hours per fiscal year, with adjustments made to:

(A) Include in such time computation any sick, annual, administrative, or other paid leave;

(B) Exclude from such time computation any overtime or shift differential payments made in excess of regular or normal hours worked and any leave payouts upon termination of employment; and

(C) Account for the actual number of work hours in a given fiscal year.

(II) "Full-time equivalent" or "FTE" does not include contractual, temporary, or permanent seasonal positions.

(III) As used in this paragraph (d), "state employee" means a person employed by the state, whether or not such person is a classified employee in the state personnel system.

(IV) For purposes of higher education professional personnel and assistants in resident instruction and professional personnel in organized research and activities relating to instruction, "full-time equivalent" or "FTE" means the equivalent of one permanent position continuously filled for a nine-month or ten-month academic year.

(V) The number of FTE specified in a particular item of appropriation is the number utilized to calculate the amount appropriated and necessary to fund any combination of part-time positions or full-time positions equal to such number for the fiscal year to which the annual general appropriation act pertains in accordance with the definition contained in subparagraphs (I) and (II) of this paragraph (d) and is not a limitation on the number of FTE that may be employed. No department shall make a material change in the number of FTE specified in a particular item of appropriation prior to notifying the joint budget committee in writing of such change.

(e) "Health, life, and dental" means the state contribution for group benefits plans pursuant to section 24-50-609. These contribution amounts shall be effective in accordance with section 24-50-104 (4) (d) (II).

(f) "Indirect cost assessment" means reimbursements made to an agency of the state from federal funds, other nonstate funds, cash funds, or reappropriated funds for the indirect expenses that have been incurred by the state in operating such programs. These recoveries are made by the departments using the approved indirect cost rate, as required by the state fiscal rules.

(g) "Leased space" means the use and acquisition of office facilities and office and parking space pursuant to a rental agreement.

(h) "Lease purchase" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

(i) "Legal services" means the purchase of legal services from the department of law; however, up to ten percent of the amount appropriated for legal services may instead be expended for operating expenses, contractual services, and tuition for employee training.

(j) "Motor vehicle" means a motor truck designated three-quarters of one ton or less, automobile, or other self-propelled vehicle.

(k) "Multiuse network payments" means payments to the department of personnel for the cost of administration and the use of the state's telecommunications network.

(l) "Operating expenses" means those supplies, materials, items, services, and travel-related expenses needed to administer the programs delegated to the departments, except for personal services, legal services, or capital construction.

(m) "Personal services" means:

(I) All salaries and wages, including overtime, whether to full-time, part-time, or temporary employees of the state, and also includes the state's contribution to the public employees' retirement association and the state's share of federal medicare tax paid for state employees;

(II) Professional services, meaning services requiring advanced study in a specialized discipline that are rendered or performed by firms or individuals for the state other than for employment compensation as an employee of the state, including but not limited to accounting, consulting, architectural, engineering, physician, nurse, specialized computer, and construction management services. No appropriation for such services shall be expended on the provision of legal services by the department of law or by a private attorney or law firm prior to notifying the joint budget committee in writing of such change. Payments for professional services shall be in compliance with section 24-30-202 (2) and (3).

(III) Temporary services, meaning clerical, administrative, and casual labor rendered or performed by firms or individuals for the state other than for employment compensation as an employee of the state. Payments for temporary services shall be in compliance with section 24-30-202 (2) and (3).

(IV) Tuition, meaning payments for graduate or undergraduate courses taken by

state employees at institutions of higher education; or

(V) Payments for unemployment claims or insurance as required by the department of labor and employment.

(n) "Pueblo data entry center payments" means payments to the department of personnel for the cost of data entry services from the data entry center.

(o) "Purchase of services from computer center" means the purchase of automated data processing services from the general government computer center.

(p) "Short-term disability" means the state contribution for employee short-term disability pursuant to section 24-50-603 (13).

(q) "Utilities" means water, sewer service, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels.

(r) "Vehicle lease payments" means the annual payments to the department of personnel for the cost of administration, repayment of a loan from the state treasury, and lease-purchase payments for new and replacement vehicles.

(2) (a) When it is not feasible, due to the format of the annual general appropriation act, to set forth fully in the line item description the purpose of an item of appropriation or a condition or limitation on the item of appropriation, the footnotes at the end of each section of the annual general appropriation act are provisions that set forth such purposes, conditions, or limitations. Such provisions are intended to be binding portions of the items of appropriation to which they relate to the extent that those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with the Colorado supreme court decision in Colorado General Assembly v. Owens, 136 P.3d 262 (Colo. 2006), conditions reserving to the general assembly powers of close supervision over the appropriation.

(b) The footnotes may also contain an explanation of any assumptions used in determining a specific amount of an appropriation. However, such footnotes shall not contain any provision of substantive law or any provision requiring or requesting that any administrative action be taken in connection with any appropriation. Footnotes may set forth any other statement of explanation or expression of legislative intent relating to any appropriation.

(3) Where no purpose is specified or where a special program is specified, the appropriation shall be for operating expenses and personal services.

(4) Expenditures of funds appropriated for the purchase of goods and services shall be in accord with section 17-24-111, C.R.S., which requires institutions, agencies, and departments to purchase such goods and services as are produced by the division of correctional industries from said division.

24-75-113. 2010 bills to increase state revenue - prohibition on hiring of new state employees. (1) No moneys derived from the increase in state revenues resulting

from the passage of House Bill 10-1190, enacted in 2010, shall be appropriated for the purpose of funding additional full-time equivalent state employees.

(2) No moneys derived from the increase in state revenues resulting from the passage of House Bill 10-1191, enacted in 2010, shall be appropriated for the purpose of funding additional full-time equivalent state employees.

(3) Repealed.

(4) No moneys derived from the increase in state revenues resulting from the passage of House Bill 10-1193, enacted in 2010, shall be appropriated for the purpose of funding additional full-time equivalent state employees, except for any full-time equivalent state employees necessary to enforce the provisions of said House Bill 10-1193.

(5) No moneys derived from the increase in state revenues resulting from the passage of House Bill 10-1194, enacted in 2010, shall be appropriated for the purpose of funding additional full-time equivalent state employees.

(6) Repealed.

PART 2

GENERAL FUND

24-75-201. General fund - general fund surplus - custodial moneys. (1) There is hereby created and established the general fund, to which shall be credited and paid all revenues and moneys not required by the state constitution or the provisions of any law to be credited and paid into a special fund. The surplus fund created before June 30, 1971, is hereby merged into the general fund. Any unrestricted balance remaining in the general fund at the end of any fiscal year shall be designated as the general fund surplus.

(2) (a) The general fund surplus shall be determined based upon the accrual system of accounting, as enunciated by the governmental accounting standards board; except that:

(I) 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.

(II) General fund revenues shall be restricted only upon the issuance of a commitment voucher to the state controller by the department of health care policy and financing for the payment of a sufficient claim that warrants reimbursement in accordance with the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S., from general fund revenues appropriated for any nonadministrative expenditure that qualifies

for federal financial participation under Title XIX of the federal "Social Security Act", except for expenditures under the program for the medically indigent, article 3 of title 25.5, C.R.S., or for the contributions required by 42 U.S.C. sec. 1396u-5 (c).

(III) (A) General fund revenues shall be restricted only upon actual payment on the first working day of July of monthly salaries of state employees for the month of June from general fund revenues.

(B) General fund revenues shall be restricted only upon actual payment in July of any bimonthly salaries of state employees for which all or a portion thereof is for work performed during the month of June from general fund revenues.

(C) For purposes of this subparagraph (III), "state employee" means a person employed by the state whether or not a classified employee in the state personnel system.

(IV) (A) For the state fiscal year commencing July 1, 2010, and each state fiscal year thereafter, general fund revenues shall be restricted only upon payment for the purchase of services in July from the office of information technology created in section 24-37.5-103 in an amount reported to state agencies by the office of information technology as required in sub-subparagraph (B) of this subparagraph (IV). State agencies shall report to the office of information technology by June 30, 2010, the amounts for positions that restricted general fund revenues in the 2009-10 fiscal year.

(B) The office of information technology created in section 24-37.5-103 shall calculate and report to state agencies by June 30, 2011, and each June 30 thereafter, according to the office of information technology's accepted billing methodology, the amount of information technology billings related to the current costs that are comparable to the general fund personal services payments for work performed by information technology employees of any state agency in June 2010. The calculation shall be limited to amounts for positions that would have restricted general fund revenues in the state fiscal year that commences July 1, 2010, if not for those revenues subsequently being reappropriated due to the consolidation of information technology services required by Senate Bill 08-155, enacted in 2008.

(b) (Deleted by amendment, L. 2003, pp. 1899, 2638, §§ 1, 1, effective July 1, 2003.)

(3) (a) Custodial moneys do not include moneys granted by the federal government to the state for the support of general or essential state government services of the type for which expenditures are made in the most recently approved annual general appropriation act, including, but not limited to, additional payments received by the state under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", as amended, (Pub.L. 108-27), received by the state on or after April 30, 2004.

(b) Nothing in this subsection (3) shall cause federal relief payments under the federal "Jobs and Growth Tax Relief Reconciliation Act of 2003", as amended, (Pub.L. 108-27), received by the state prior to April 30, 2004, to be credited or transferred to the general fund or any other fund of the state or to be subject to annual appropriation by the

general assembly.

(c) All federal moneys described in paragraph (a) of this subsection (3) shall be credited and paid to the general fund unless otherwise provided by law and shall be subject to annual appropriation by the general assembly.

24-75-201.1. Restriction on state appropriations - legislative declaration - definitions - repeal. (1) (a) (I) For the fiscal year 1978-79 and each fiscal year thereafter ending with the fiscal year 1990-91, state general fund appropriations shall be limited to seven percent over the previous year plus such moneys as are necessary for reappraisals of any class or classes of taxable property for property tax purposes as required by section 39-1-105.5, C.R.S. The base for the calculation of the limitation on the increase in general fund appropriations for the fiscal year 1986-87 shall be state general fund appropriations for the fiscal year 1985-86 plus the amount appropriated for tax relief and for the cost of bringing civil actions pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" for the fiscal year 1985-86.

(II) Except as otherwise provided for in subparagraphs (III) and (IV) of this paragraph (a), for the fiscal year 1991-92 and each fiscal year thereafter ending with the fiscal year 2008-09, the total state general fund appropriations shall be limited to such moneys as are necessary for reappraisals of any class or classes of taxable property for property tax purposes as required by section 39-1-105.5, C.R.S., plus the lesser of:

(A) An amount equal to five percent of Colorado personal income; or

(B) Six percent over the total state general fund appropriations for the previous fiscal year.

(II.5) Except as otherwise provided in subparagraphs (III) and (IV) of this paragraph (a), for the fiscal year 2009-10 and each fiscal year thereafter, the total state general fund appropriations shall be limited to such moneys as are necessary for reappraisals of any class or classes of taxable property for property tax purposes as required by section 39-1-105.5, C.R.S., plus an amount equal to five percent of Colorado personal income.

(III) The limitation on the level of state general fund appropriations set forth in subparagraphs (II) and (II.5) of this paragraph (a) shall not apply to:

(A) Any state general fund appropriation which, as a result of any requirement of federal law, is made for any new program or service or for any increase in the level of service for an existing program beyond the existing level of service;

(B) Any state general fund appropriation which, as a result of any requirement of a final state or federal court order, is made for any new program or service or for any increase in the level of service for an existing program beyond the existing level of service; or

(C) Any state general fund appropriation of any moneys which are derived from

any increase in the rate or amount of any tax or fee which is approved by a majority of the registered electors of the state voting at any general election.

(IV) (A) The limitation on the level of state general fund appropriations as set forth in subparagraphs (II) and (II.5) of this paragraph (a) may be exceeded for a given fiscal year upon the declaration of a state fiscal emergency by the general assembly. A state fiscal emergency may be declared by the passage of a joint resolution which is approved by a two-thirds majority vote of the members of both houses of the general assembly and which is approved by the governor in accordance with section 39 of article V of the state constitution.

(B) Any funds appropriated in a given fiscal year which exceed the limitation on state general fund appropriations established by subparagraphs (II) and (II.5) of this paragraph (a) because of the declaration of a state fiscal emergency by the general assembly pursuant to sub-subparagraph (A) of this subparagraph (IV) shall not be included in the calculation of the maximum level of state general fund appropriations pursuant to sub-subparagraph (B) of subparagraph (II) of this paragraph (a) for subsequent fiscal years.

(V) No state cash fund appropriation which either supplants any state general fund appropriation or, if not made, would necessitate a state general fund appropriation shall be made in order to circumvent the limitation on the level of state general fund appropriations set forth in subparagraphs (II) and (II.5) of this paragraph (a). The provisions of this subparagraph (V) shall not apply to any state cash fund appropriation:

(A) Which authorizes an increase in expenditures necessary to offset an increase in costs to provide an existing program or service due to inflation or any increase in the number of recipients which does not result from any requirement of state law which either enlarges an existing class of recipients or adds a new class of recipients; or

(B) Which is funded by user charges that do not exceed the cost of the goods or services provided, and the purchase of such goods or services by the user is voluntary.

(VI) If the general assembly significantly restructures the method by which elementary, secondary, or postsecondary education in this state is financed, the general assembly shall examine the limitation on the level of state general fund appropriations set forth in this section and shall determine whether said limitation should be modified in light of such restructuring.

(VII) For purposes of this paragraph (a), unless the context otherwise requires:

(A) "Colorado personal income" means the total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce, for the calendar year preceding the calendar year immediately preceding a given fiscal year.

(B) "Increase in the level of service for an existing program" does not include any increase in expenditures necessary to offset an increase in costs to provide such service due to inflation or any increase in the number of recipients of such service unless such

increase results from any requirement of federal law which either enlarges an existing class of recipients or adds a new class of recipients.

(C) "Requirement of federal law" means any federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which either requires the state to take action or does not directly require the state to take action but will, according to federal law, result in the loss of federal funds if state action is not taken to comply with such federal action.

(D) "State cash fund appropriation" means any appropriation of moneys which are not general fund moneys and which are the result of the collection of any fee authorized by law.

(b) For the fiscal year 1984-85, any amount of general fund revenues in excess of seven percent plus such moneys as are necessary for reappraisals of any class or classes of taxable property for property tax purposes as required by section 39-1-105.5, C.R.S., and after retention of unrestricted general fund year-end balances of one hundred million dollars, shall be placed in a special reserve fund to be utilized for tax relief, for capital construction as defined in section 24-30-1301 (1), for construction, maintenance, and repair of highways, for water projects, and for the cost of bringing civil actions pursuant to the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980".

(c) (I) to (IV) Repealed.

(V) For the fiscal year 1989-90 and each fiscal year thereafter ending with the fiscal year 1990-91, fifty percent of general fund revenues in excess of general fund appropriations, after retention of the reserve as required by paragraph (d) of this subsection (1), shall be transferred to the capital construction fund as of the last day of the fiscal year. The general assembly may appropriate such funds for capital construction purposes during the regular legislative session next following the actual transfer of moneys thereto; except that, for the fiscal year 1989-90 only, the general assembly may appropriate such funds during the regular legislative session held in 1990 for the purpose of alleviating prison overcrowding for the fiscal year 1989-90 or for any future fiscal year and may appropriate such funds for any other capital construction purposes during the regular legislative session next following the actual transfer of moneys to the capital construction fund. General fund revenues in excess of general fund appropriations and the required reserve which are not transferred to the capital construction fund as specified in this subparagraph (V) shall be available for appropriation for the fiscal year in which the excess is realized or for any future fiscal year, subject to the limitation on general fund appropriations set forth in paragraph (a) of this subsection (1). For the purposes of applying this subparagraph (V) to the fiscal years 1990-91 and 1991-92, the required reserve shall be considered four percent of the amount appropriated for expenditure from the general fund, notwithstanding the actual percentage reserve requirement specified in subparagraph (IV) of paragraph (d) of this subsection (1).

(c.5) (I) (Deleted by amendment, L. 2002, p. 1005, § 1, effective August 7, 2002.)

(II) (Deleted by amendment, L. 2009, (SB 09-228), ch. 410, p. 2257, § 7, effective July 1, 2009.)

(d) Except as otherwise provided in paragraph (e) of this subsection (1), for each fiscal year, unrestricted general fund year-end balances shall be retained as a reserve in the following amounts:

(I) For fiscal years 1985-86 and 1986-87, five percent of the amount appropriated for expenditure from the general fund for the fiscal year;

(II) For the fiscal year 1987-88, six percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(III) For the fiscal year 1988-89 and each fiscal year thereafter ending with the fiscal year 2011-12, except for the fiscal years 1990-91, 1991-92, 1992-93, 2001-02, 2002-03, 2003-04, 2006-07, 2008-09, 2009-10, and 2010-11, as provided in subparagraphs (IV), (V), (VI), (VII), (VIII), (IX), (X), (XI), and (XI.5) of this paragraph (d), four percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(IV) For the fiscal years 1990-91 and 1991-92, three percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent for the fiscal year 1990-91, as provided in this subparagraph (IV), may be appropriated only for the purpose of alleviating prison overcrowding, and any such appropriation shall not be subject to the limitation on general fund appropriations set forth in paragraph (a) of this subsection (1). The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent for the fiscal year 1991-92, as provided in this subparagraph (IV), may be appropriated for any lawful purpose.

(V) For the fiscal year 1992-93, three percent of the amount appropriated for expenditure from the general fund for that fiscal year reduced by fourteen million dollars. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to the amount provided in this subparagraph (V) may be appropriated during the fiscal year 1992-93 for any lawful purpose.

(VI) For the fiscal year 2001-02, no percentage of the amount appropriated for expenditure from the general fund for that fiscal year, as no reserve shall be required for said fiscal year. The additional amount of general fund moneys made available for appropriation by the elimination of the required reserve from four percent for the fiscal year 2001-02, as provided in this subparagraph (VI), may be appropriated for any lawful purpose.

(VII) For the fiscal year 2002-03, three percent of the amount appropriated for

expenditure from the general fund for that fiscal year reduced by thirty-one million one hundred seventy-five thousand dollars and as further reduced by the amount of general fund moneys comprising such reserve that are disbursed pursuant to section 24-75-201.5 (1) (d) (III) (A). The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent reduced by thirty-one million one hundred seventy-five thousand dollars may be appropriated during the fiscal year 2002-03 for any lawful purpose.

(VIII) For the fiscal year 2003-04, four percent of the amount appropriated for expenditure from the general fund for that fiscal year reduced by the amount of general fund moneys comprising such reserve that are disbursed pursuant to section 24-75-201.5 (1) (e).

(IX) For the fiscal year 2006-07, if the resources of the general fund are inadequate to meet the reserve required by subparagraph (III) of this paragraph (d), the state controller shall accrue a transfer from the capital construction fund to the general fund in the amount necessary to meet the reserve requirement of subparagraph (III) of this paragraph (d) up to thirty million dollars. The requirements of this subparagraph (IX) shall be applied before the requirements of section 39-26-123 (4) (a) (VI) (B), C.R.S.

(X) For the fiscal year 2008-09:

(A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (X), two percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to two percent may be appropriated during the fiscal year 2008-09 for any lawful purpose.

(B) If the revenue estimate prepared for the fiscal year 2008-09 in accordance with section 24-75-201.3 (2) in June of 2009 indicates that general fund expenditures for that fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by sub-subparagraph (A) of this subparagraph (X), upon written order, the governor may further reduce the required reserve from two percent to either a lower percentage or to a zero percentage as is necessary to cover to the greatest extent possible any appropriations then in effect made from the general fund for which general fund moneys would not otherwise be available comprising such reserve.

(XI) For the fiscal year 2009-10, two percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to two percent may be appropriated during the fiscal year 2009-10 for any lawful purpose.

(XI.5) For the fiscal year 2010-11, two and three-tenths percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the

required reserve from four percent to two and three-tenths percent may be appropriated during the fiscal year 2010-11 for any lawful purpose. Notwithstanding any provision of law to the contrary, on the date on which the state controller publishes the comprehensive annual financial report of the state for the fiscal year 2010-11, the state treasurer shall transfer the general fund surplus designated in accordance with section 24-75-201 (1) for the fiscal year 2010-11, which represents the unrestricted general fund balance after the applicable amount of reserve required pursuant to this subparagraph (XI.5), as follows:

(A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (XI.5), the general fund surplus shall be transferred to the state education fund created in section 17 (4) of article IX of the state constitution.

(B) An amount equal to the additional estimated revenue shall be transferred to the state public school fund created in section 22-54-114, C.R.S.; except that the transfer pursuant to this sub-subparagraph (B) shall not exceed sixty-seven million five hundred thousand dollars. For purposes of this sub-subparagraph (B), "additional estimated revenue" means the amount by which the June 2011 estimate of general fund revenue prepared by the office of state planning and budgeting for the 2010-11 fiscal year exceeds the March 2011 estimate of general fund revenue prepared by the office of state planning and budgeting for the 2010-11 fiscal year.

(XII) For the fiscal year 2012-13, five percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(XIII) For the fiscal year 2013-14, five percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(XIV) For the fiscal year 2014-15, five and one-half percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(XV) For the fiscal year 2015-16, six percent of the amount appropriated for expenditure from the general fund for that fiscal year;

(XVI) For the fiscal year 2016-17 and each fiscal year thereafter, at least six and one-half percent of the amount appropriated for expenditure from the general fund for that fiscal year.

(e) (I) The initial reserve requirement is suspended and does not apply until the third fiscal year that begins after the personal income trigger occurs. The reserve requirement is five percent of the amount appropriated for expenditure for each fiscal year that the initial reserve requirement is suspended.

(I.5) For purposes of determining whether the personal income trigger occurs, the following estimates reported by the bureau of economic analysis in the United States department of commerce are used:

(A) For the later calendar year, the first available estimate reported by the bureau after the end of the calendar year; and

(B) For the earlier calendar year, the revised estimate that is available at the same time as the estimate set forth in sub-subparagraph (A) of this subparagraph (I.5).

(II) The reserve requirements set forth in subparagraphs (XV) and (XVI) of paragraph (d) of this subsection (1) are each suspended by the same number of fiscal years that the initial reserve requirement is suspended pursuant to subparagraph (I) of this paragraph (e).

(III) As used in this paragraph (e), unless the context otherwise requires:

(A) "Colorado personal income" means the total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce.

(B) "Initial reserve requirement" means the reserve requirement set forth in subparagraph (XIV) of paragraph (d) of this subsection (1).

(C) "Personal income trigger" means an increase in annual Colorado personal income from one calendar year, starting with 2011, to the next calendar year thereafter by an amount equal to five percent or more.

(D) "Reserve requirement" means the minimum unrestricted general fund year-end balance for the fiscal year.

(2) The basis for the calculation of the reserve as specified in this section includes all appropriations for expenditure from the general fund for such fiscal year, except for any appropriations for expenditure from the general fund due to a state fiscal emergency as provided for in subparagraph (IV) of paragraph (a) of subsection (1) of this section.

(3) Any reimbursement made by a county to the state for the cost incurred by the state in reappraising any class or classes of taxable property for property tax purposes for which reimbursement is required by section 39-1-105.5, C.R.S., shall be made to the state treasurer, who shall, upon receipt thereof, credit the amount of such reimbursement to the state general fund.

(4) Repealed.

24-75-201.2. Restriction on state spending - unrestricted general fund year-end balances. (1) (a) For purposes of determining unrestricted general fund year-end balances as required in section 24-75-201.1 at the end of any fiscal year, moneys budgeted or allocated for possible state liability, pending the determination of a legal action, shall not be included.

(b) Moneys budgeted or allocated for possible state liability, pending determination of a legal action, may be utilized for such purpose without regard to the restrictions on and requirements for expenditures established in section 24-75-201.1.

(2) For purposes of determining the unrestricted general fund year-end balances as required in section 24-75-201.1, the year-end balance of the federal revenue sharing trust fund and all moneys received from the general and special revenue programs of the federal government shall be included in said balances.

24-75-201.3. Procedures relating to revenue estimates.

(1) (Deleted by amendment, L. 2013.)

(2) No later than June 20 prior to the beginning of each fiscal year, and no later than September 20, December 20, and March 20 within each fiscal year, the governor, with the assistance of the controller, the office of state planning and budgeting, and the governor's revenue-estimating advisory group, shall make an estimate of general fund revenues for such fiscal year. Copies of each such revenue estimate must be promptly transmitted to the general assembly. Such revenue estimates are used in the implementation of section 24-75-201.5 but are not binding on the general assembly in determining the amount of general funds available for appropriation for the next ensuing fiscal year.

24-75-201.5. Revenue shortfalls - required actions by the governor with respect to the reserve. (1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), whenever the revenue estimate for the current fiscal year, prepared in accordance with section 24-75-201.3 (2), indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall formulate a plan for reducing such general fund expenditures so that said reserve, as of the close of the fiscal year, will be at least one-half of the amount required by said section 24-75-201.1 (1) (d). The governor shall promptly notify the general assembly of such plan. Such plan shall be promptly implemented by the governor, using the procedures set forth in section 24-2-102 (4) or 24-50-109.5 or any other lawful means.

(b) Repealed.

(c) (I) Notwithstanding and in lieu of the provisions of paragraph (a) of this subsection (1), for the fiscal year 2001-02 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2), in June of 2002, indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available for expenditure for such fiscal year, the state treasurer and the controller, upon the written order of the governor, shall transfer to the general fund, from time to time during the period beginning on June 20, 2002, and ending on June 30, 2002, from the tobacco litigation settlement trust fund created in section 24-22-115.5 (2), the unclaimed property trust fund created in section 38-13-116.5, C.R.S., or the major medical insurance fund created in section 8-46-202 (1) (a), C.R.S., or from all of such funds, such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose.

(II) Effective July 1, 2002, the state treasurer and the controller shall transfer moneys from the general fund to the tobacco litigation settlement trust fund and the major medical insurance fund in order to restore to said funds any amount transferred therefrom

pursuant to subparagraph (I) of this paragraph (c).

(d) (I) For the fiscal year 2002-03 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2), in June, September, or December of 2002 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall either:

(A) Formulate and implement a plan pursuant to paragraph (a) of this subsection (1);

(B) Upon written order, direct the state treasurer and controller to transfer, and said state treasurer and controller shall transfer, to the general fund, from time to time during the period beginning on July 1, 2002, and ending January 1, 2003, from any or all of the funds described in subparagraph (II) of this paragraph (d), such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose and to ensure that said reserve during said period will be at least one-half of the amount required by section 24-75-201.1 (1) (d); or

(C) Both formulate and implement a plan pursuant to paragraph (a) of this subsection (1) and issue a written order pursuant to sub-subparagraph (B) of this subparagraph (I) to ensure that said reserve during said period will be at least one-half of the amount required by section 24-75-201.1 (1) (d).

(II) The transfer or transfers described in subparagraph (I) of this paragraph (d) shall be made from one or more of the following funds:

(A) The employment support fund created in section 8-77-109 (1), C.R.S.;

(B) The tobacco litigation settlement trust fund created in section 24-22-115.5 (2);

(C) The unclaimed property trust fund created in section 38-13-116.5, C.R.S.;

(D) The major medical insurance fund created in section 8-46-202 (1) (a), C.R.S., not to exceed seventy-five million dollars.

(III) For the fiscal year 2002-03 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June of 2003 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by section 24-75-101.1 (1) (d), the governor shall, from time to time during the period beginning on June 20, 2003, and ending on June 30, 2003:

(A) Upon written order, direct the treasurer to disburse an amount of general fund moneys otherwise comprising such reserve as is necessary to cover any appropriations then in effect made from the general fund for which general fund revenues would not otherwise be available, not to exceed one hundred thirty-two million dollars; and

(B) In the event that the disbursements made pursuant to sub-subparagraph (A) of this subparagraph (III) are insufficient to cover any such appropriations, upon written order, direct the state treasurer and controller to transfer, and said state treasurer and controller shall transfer, to the general fund, from the local government severance tax

fund created in section 39-29-110 (1) (a) (I), C.R.S., or the local government mineral impact fund created in section 34-63-102 (5) (a) (I), C.R.S., or both, such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom; except that the amount transferred from the local government severance tax fund pursuant to this sub-subparagraph (B) shall not exceed eighteen million dollars and the amount transferred from the local government mineral impact fund pursuant to this sub-subparagraph (B) shall not exceed nine million dollars.

(e) For the fiscal year 2003-04 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June of 2004 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by section 24-75-201.1 (1) (d), the governor shall, from time to time during the period beginning on June 20, 2004, and ending on June 30, 2004, upon written order, direct the state treasurer to disburse an amount of general fund moneys otherwise comprising such reserve as is necessary to cover any appropriations then in effect made from the general fund for which general fund revenues would not otherwise be available, not to exceed forty-eight million dollars.

(f) For the fiscal year 2005-06 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June, September, or December of 2005 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall either:

(I) Formulate and implement a plan pursuant to paragraph (a) of this subsection (1); or

(II) Upon written order, direct the executive director of the department of personnel to attempt to sell a legal interest in one or more eligible state facilities pursuant to section 24-82-1102, in order that the net proceeds from such sale may be deposited in the general fund to be used for general fund expenditures and retained as part of the reserve required by section 24-75-201.1 (1) (d). The executive director may sell a legal interest in as many eligible state facilities as is necessary to ensure that the appropriations then in effect will result in the use of less than one-half of the reserve required by section 24-75-201.1 (1) (d), but in no case shall the executive director sell a legal interest in an eligible state facility if, based on the appropriations then in effect, the net proceeds from such sale would cause the statutory reserve to exceed the amount required by section 24-75-201.1 (1) (d).

(g) (I) For the fiscal year 2008-09 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June 2009 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available for expenditure for such fiscal year, the state treasurer and the controller, upon the written order of the governor, shall transfer to the

general fund on June 30, 2009, from any or all of such funds described in subparagraph (II) of this paragraph (g), such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose.

(II) The transfer or transfers described in subparagraph (I) of this paragraph (g) shall be made from one or more of the following funds:

(A) The employment support fund created in section 8-77-109 (1), C.R.S., not to exceed twenty-five million dollars;

(B) The tobacco litigation settlement cash fund created in section 24-22-115 (1) (a), not to exceed eighty-four million six hundred thousand dollars;

(C) The local government mineral impact fund created in section 34-63-102 (5) (a) (I), C.R.S., not to exceed seventy-two million dollars;

(D) The Colorado water conservation board construction fund created in section 37-60-121 (1) (a), C.R.S., not to exceed sixty million dollars;

(E) The unclaimed property trust fund created in section 38-13-116.5 (1) (a), C.R.S., not to exceed one hundred million dollars;

(F) The severance tax perpetual base fund created in section 39-29-109 (2) (a), C.R.S., not to exceed seventy-five million dollars;

(G) The severance tax operational fund created in section 39-29-109 (2) (b), C.R.S., not to exceed twenty-one million three hundred thousand dollars;

(H) The local government severance tax fund created in section 39-29-110 (1) (a) (I), C.R.S., not to exceed one hundred twenty-eight million dollars.

(III) Effective July 1, 2009, the state treasurer and the controller shall transfer moneys from the general fund to any or all funds described in subparagraph (II) of this paragraph (g) in order to restore to said funds any amount transferred therefrom pursuant to subparagraph (I) of this paragraph (g).

(2) In formulating a plan for the reduction of general fund expenditures as required by subsection (1) of this section, the governor may consider any recommendations for reducing general fund expenditures of the institutions of higher education submitted by the Colorado commission on higher education, after consultation with the governing boards of such institutions.

(3) Repealed.

(4) Whenever the governor has formulated and implemented a plan to reduce general fund expenditures in accordance with subsection (1) of this section, and such plan reduces general fund expenditures in an amount equal to or greater than one percent of all general fund appropriations for the fiscal year, the governor, after consultation with the capital development committee and the joint budget committee, may transfer general fund moneys from the capital construction fund into the general fund. Pursuant to this subsection (4), the governor will restrict the capital construction projects in the reverse order of the priorities as established by the capital development committee unless approved by the capital development committee and the joint budget committee.

24-75-201.7. Enforcement of state spending restriction - punitive or exemplary damages - property tax relief fund - creation. Any punitive or exemplary damages awarded to any party to a lawsuit brought to enforce the restriction on state spending as set forth in section 24-75-201.1 shall be deposited and credited to the property tax relief fund, which is hereby created in the state treasury. All moneys in the fund at the end of any fiscal year shall remain in the fund and shall not be transferred or credited to the state general fund or to any other state fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Moneys in said fund shall be used only in such manner as the general assembly deems appropriate as to provide property tax relief throughout the state and shall never be available for appropriation for any other state purpose.

24-75-202. Imprest cash accounts. (1) The controller may, in writing, authorize any department, institution, or agency of the state government to withdraw from any moneys in the state treasury available to it such amount as he may specify, to be used as an imprest cash account.

(2) Under procedures prescribed by the controller, such department, institution, or agency may pay out of said imprest cash account, locally, such operating expense items as would be allowable if submitted on a regular voucher. The aggregate amount of such payments shall be submitted to the office of the state controller, monthly or more often, on a voucher signed by the fiscal officer of such department, institution, or agency or by some person authorized to act for him, and upon approval of the same, a warrant in said amount shall be drawn upon the state treasurer for replenishment of said imprest cash account.

24-75-203. Loans and advances. (1) (a) Upon the prior written approval of the governor and the controller as to purpose and amount, the state treasurer may lend the approved amount, out of any moneys in the state treasury not immediately required to be disbursed, to any department, institution, or agency to provide it with working capital for the operation of business enterprises by institutions of higher education the primary purpose of which is not teaching or research and which are, or may be, in competition with private enterprise or any other self-maintaining program in other state agencies which generate their own revenues and which in the judgment of the state treasurer have the capacity to repay loans on the terms described in this subsection (1). Except as provided in section 17-24-106 (1) (j), C.R.S., any such loan shall bear interest at the earnings rate calculated monthly by the state treasurer. Loans shall be repaid to the state treasury by the borrower out of moneys to be subsequently received by it from the

activities specified in this subsection (1) at such times as the controller shall direct. Loans made pursuant to this section shall be reviewed at least annually by the controller to determine if such loans have a continuing purpose and necessity. The general assembly may, through appropriation or notation in the general appropriation bill, place limitations on the amount to be loaned either in total or to any department, institution, or agency.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), for purposes of the loan approved to the Colorado state fair authority created in section 35-65-401, C.R.S., the authority may repay the loan with the appropriation specified in section 24-49.7-106 (5) (a).

(2) The controller may authorize an advance without interest to be made to any department, institution, or agency of the state government to provide it with working capital for the operation of programs other than those enterprises listed in subsection (1) of this section or for federal programs for which federal advances or letters of credit are not available in such amount as he may determine, but the amount advanced shall not exceed twelve million dollars to any such department, institution, or agency, out of any moneys available in the state treasury as provided in section 24-36-103 (1), and upon such authorization the state treasurer may make such advance. Under procedures prescribed by the controller, such department, institution, or agency may pay out of such advance any items which would be allowable if submitted on a regular voucher. Any such advance shall be repaid to the state treasury at such time as the controller shall direct. Advances authorized pursuant to this section shall be reviewed at least annually by the controller to determine if such advances have a continuing purpose and necessity. The general assembly may, through appropriation or notation in the general appropriation bill, place limitations on the amount to be advanced either in total or to any agency, department, or institution.

(3) and (4) Repealed.

24-75-204. Reports. (1) Every department, institution, or agency which has received an advance or a loan of state moneys, as authorized in section 24-75-203, shall file with the controller a report at such times and in such form and detail as he may prescribe by fiscal rule.

(2) On or before November 30 of each year, the controller shall submit a report to the governor and to the joint budget committee and the legislative audit committee of the general assembly in which shall be summarized, by agency, all advances and loans outstanding at the end of the preceding fiscal year pursuant to the provisions of section 24-75-203.

24-75-205. Insurance and retirement reserves. The insurance and retirement

reserves of this state shall comprise the Pinnacol Assurance fund, the unemployment compensation fund on deposit with the treasurer of the United States, the unemployment compensation fund clearing account, the funds of the public employees' retirement association, and such other funds of the same or similar character as may be created after April 9, 1941; and all moneys expended for any purpose by said funds shall be expended in accordance with the provisions of the respective laws creating said funds and relating thereto. Nothing in this part 2 shall be construed to repeal, alter, or impair the method of administering said funds as provided by law.

24-75-206. Legislative declaration. The general assembly hereby determines and declares that it intends by sections 24-75-206 to 24-75-210 to improve the system of management of the public funds in the custody of the state treasurer to enable the state of Colorado promptly to make disbursements of legally appropriated moneys prior to and in anticipation of receipts of the general revenue funds.

24-75-207. Definitions. As used in sections 24-75-206 to 24-75-210, unless the context otherwise requires:

(1) "Noninterest bearing general fund warrants" means any warrant issued against the general fund at a time when moneys accruing to the fund have not been received or credited to the general fund.

24-75-208. Investment of treasury funds. It is lawful for the state treasurer and it is the state treasurer's duty, whenever there are funds on hand or in the state treasurer's custody or possession eligible for investment, to invest in noninterest bearing general fund warrants issued against the general fund at a time when moneys accruing to the fund have not been received or credited to the general fund, but such warrants shall be drawn pursuant to appropriation made by the general assembly, and the controller shall first certify that appropriations do not exceed estimated general fund revenues and surplus.

24-75-209. Payment of general fund warrants. The state treasurer shall pay such noninterest bearing general fund warrants pursuant to section 24-36-106 (2).

24-75-210. Reports to governor. The state treasurer shall report to the governor and to members of the general assembly the general fund cash balance as of the last day of the preceding month as part of the treasurer's quarterly report required by section 24-

22-107 (1).

24-75-211. Augmentation of the general fund through transfers of certain moneys to meet cash flow needs and prevent a deficit - restoration of funds - suspension and resumption of transfers to the highway users tax fund - fiscal emergency fund. (Repealed)

24-75-212. Legislative reporting of federal moneys - definitions. (1) (a) Each state agency shall submit to the controller by October 1 of each year a report of all federal moneys received by the state agency. Except as set forth in paragraph (d) of this subsection (1), for each separate grant of federal moneys received, the state agency shall include in the report the following information:

(I) The federal program;

(II) A citation to its federal statutory authority;

(III) The amount received under such program, including indirect cost recoveries;

(IV) The purpose for which the moneys were used;

(V) The percentage of the federal moneys that the state agency used for administrative expenses; and

(VI) A summary of any obligations imposed on the state as a result of accepting the federal moneys.

(b) The state agency shall also include in the report the following information:

(I) The total amount of all federal moneys received by the state agency;

(II) The percentage of the state agency's total spending that was from federal moneys; and

(III) Plans for operating the state agency if there is a reduction of:

(A) Five percent or more in the total amount of all federal moneys that the state agency receives; and

(B) Twenty-five percent or more in the total amount of all federal moneys that the state agency receives.

(c) A state agency shall use the most recently completed state fiscal year as of the report deadline in determining the information required by this subsection (1).

(d) A state institution of higher education is not required to include the information required by subparagraphs (IV), (V), and (VI) of paragraph (a) or paragraph (b) of this subsection (1) in its report to the controller.

(2) In accordance with the provisions of section 24-1-136 (9), the controller shall submit to the general assembly by November 1 of each year a report of all federal moneys, including the same matters required by subsection (1) of this section, received by each state agency during the prior state fiscal year. In the report, the controller shall

identify any state agency that failed to submit a report as required by this section.

(3) This section is exempt from the provisions of section 24-1-136 (11) (a) (I).

(4) As used in this section, "state agency" means a principal department of the executive branch of state government specified in section 24-1-110, a state institution of higher education, or an office created in the office of the governor.

24-75-213. Augmentation of the general fund for the 1985-86 fiscal year. (Repealed)

24-75-214. Augmentation of the general fund for the 1986-87 fiscal year. (Repealed)

24-75-215. Transfers to highway users tax fund. (Repealed)

24-75-216. Temporary state motor vehicle registration fee reduction. (Repealed)

24-75-217. Restoration of funds transferred to augment the general fund for the 2001-02 fiscal year. (1) Effective February 1, 2003, in any fiscal year, if the most recently issued revenue estimate prepared by the staff of legislative council indicates that general fund revenues for the applicable fiscal year will exceed general fund obligations, the moneys required to be allocated to the highway users tax fund pursuant to section 39-26-123 (2), C.R.S., for the applicable fiscal year, and the amount transferred from one or more funds specified in subsection (3) of this section for the augmentation of the general fund for the 2001-02 fiscal year, the state treasurer shall transfer moneys from the general fund to one or more of said funds in accordance with the provisions of this section in order to restore the amount transferred from each fund or a portion thereof as is required by law. The restoration of said funds shall occur in the same order of priority as said funds are set forth in subsection (3) of this section. Such restoration shall be made in a manner such that all of the moneys that are required by law to be repaid to a fund shall be completely restored to that fund before any moneys are transferred to any other fund lower in the order of priority of said funds set forth in subsection (3) of this section.

(2) For purposes of subsection (1) of this section, "general fund obligations" include:

(a) General fund appropriations required by permanent statute or constitutional

provision;

(b) General fund appropriations up to the limitation established by section 24-75-201.1 (1) (a) and general fund appropriations that are exceptions to said limitation;

(c) The general fund transfer to the capital construction fund provided in section 24-75-302 (2), including any additional transfers necessary to fund capital construction priorities for the applicable fiscal year;

(d) Any transfer to the controlled maintenance trust fund pursuant to the provisions of section 24-75-302.5;

(e) Any refunds required to be made by section 20 of article X of the state constitution; and

(f) The reserve required to be maintained pursuant to section 24-75-201.1 (1) (d).

(3) The funds that shall be restored pursuant to subsection (1) of this section include:

(a) The capital account of the species conservation trust fund created in section 24-33-111 (2) (a), C.R.S.;

(b) The children's basic health plan trust created in section 25.5-8-105 (1), C.R.S.;

(c) Repealed.

(d) The severance tax operational fund created in section 39-29-109 (2) (b), C.R.S.;

(e) The persistent drunk driver cash fund created in section 42-3-303, C.R.S.;

(f) The Fitzsimons trust fund created in section 23-20-136, C.R.S.;

(g) The petroleum storage tank fund created in section 8-20.5-103 (1), C.R.S.;

(h) The hazardous substance response fund created in section 25-16-104.6 (1) (a), C.R.S.; and

(i) The tobacco settlement defense account in the tobacco litigation settlement cash fund created in section 24-22-115 (2) (a).

24-75-218. Transfers of general fund surplus - repeal. (Repealed)

24-75-219. Transfers - transportation - capital construction - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Capital construction fund" means the capital construction fund created in section 24-75-302.

(b) "Colorado personal income" means the total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce.

(c) "Funds" means the highway users tax fund and the capital construction fund.

(d) "Highway users tax fund" means the highway users tax fund created in section

43-4-201, C.R.S.

(e) "Initial transfers" means the transfers required pursuant to paragraph (a) of subsection (2) of this section.

(f) "Personal income trigger" means an increase in annual Colorado personal income from one calendar year, starting with 2011, to the next calendar year thereafter by an amount equal to five percent or more.

(2) (a) Except as otherwise set forth in paragraph (e) of this subsection (2), for the state fiscal year 2012-13, the state treasurer shall transfer from the general fund to the:

(I) Highway users tax fund, an amount equal to two percent of the total general fund revenues for such state fiscal year; and

(II) Capital construction fund, an amount equal to one-half of one percent of the total general fund revenues for such state fiscal year.

(b) Except as otherwise set forth in paragraph (e) of this subsection (2), for the state fiscal year 2013-14, the state treasurer shall transfer from the general fund to the:

(I) Highway users tax fund, an amount equal to two percent of the total general fund revenues for such state fiscal year; and

(II) Capital construction fund, an amount equal to one-half of one percent of the total general fund revenues for such state fiscal year.

(c) Except as otherwise set forth in paragraph (e) of this subsection (2), for each state fiscal year from 2014-15 through the state fiscal year 2016-17, the state treasurer shall transfer from the general fund to the:

(I) Highway users tax fund, an amount equal to two percent of the total general fund revenues for the state fiscal year in which the transfer is made; and

(II) Capital construction fund, an amount equal to one percent of the total general fund revenues for the state fiscal year in which the transfer is made.

(d) For each state fiscal year after the last state fiscal year in which a transfer is required to be made pursuant to paragraph (c) of this subsection (2), the general assembly may appropriate or transfer, in its sole discretion, moneys from the general fund to the highway users tax fund, the capital construction fund, or both funds.

(e) (I) The initial transfers are suspended until the personal income trigger occurs. The initial transfers shall be made in the first state fiscal year that begins after the personal income trigger occurs.

(I.5) For purposes of determining whether the personal income trigger occurs, the following estimates reported by the bureau of economic analysis in the United States department of commerce are used:

(A) For the later calendar year, the first available estimate reported by the bureau after the end of the calendar year; and

(B) For the earlier calendar year, the revised estimate that is available at the same time as the estimate set forth in sub-subparagraph (A) of this subparagraph (I.5).

(II) The transfers required pursuant to paragraphs (b) and (c) of this subsection (2)

shall each be suspended by the same number of state fiscal years that the initial transfers are suspended pursuant to subparagraph (I) of this paragraph (e).

(3) (a) Except as otherwise set forth in subsection (4) of this section, the transfers required pursuant to paragraph (a) of subsection (2) of this section shall be made as follows:

(I) On April 15 of the state fiscal year in which the transfers are required, eighty percent of the total amounts that are required to be transferred to the highway users tax fund and the capital construction fund for such state fiscal year, which amounts shall be based on the most recent revenue estimate prepared by the legislative council staff that is available at the time of the transfers, shall be transferred to the respective funds.

(II) On the date during the state fiscal year on which the state controller distributes the comprehensive annual financial report of the state, the state treasurer shall transfer an amount equal to the differences between the actual amounts required to be transferred to the funds and the estimated amounts previously transferred pursuant to subparagraph (I) of this paragraph (a).

(b) Except as otherwise set forth in subsection (4) of this section, the transfers required pursuant to paragraphs (b) and (c) of subsection (2) of this section shall be made as follows:

(I) On the fifteenth day of the first month of each quarter of each state fiscal year in which the transfers are required, an amount equal to twenty percent of the total amounts that are required to be transferred to the highway users tax fund and the capital construction fund for such state fiscal year, which amounts shall be based on the most recent revenue estimate prepared by legislative council staff that is available at the time of the transfers, shall be transferred to the respective funds.

(II) On the date during the state fiscal year on which the state controller distributes the comprehensive annual financial report of the state, the state treasurer shall transfer an amount equal to the differences between the actual amounts required to be transferred to the funds and the estimated amounts previously transferred pursuant to subparagraph (I) of this paragraph (b).

(4) (a) For any state fiscal year for which there are excess state revenues that are required to be refunded pursuant to section 20 of article X of the state constitution, the quarterly and year-end amounts that are required to be transferred to the funds pursuant to subsection (3) of this section shall:

(I) Be reduced by fifty percent, if the amount of the refund is greater than one percent of the general fund revenues for the state fiscal year but less than or equal to three percent of the total general fund revenues for the state fiscal year; and

(II) Not be made, if the amount of the refund is greater than three percent of the total general fund revenues for the state fiscal year.

(b) The calculations required pursuant to paragraph (a) of this subsection (4) shall be based on the most recent revenue estimate prepared by the legislative council staff that

is available at the time of each transfer; except that the last transfer made for each state fiscal year shall be based on the actual revenues for the state fiscal year.

24-75-220. State education fund - transfers - surplus - legislative declaration. (1) Notwithstanding any provision of law to the contrary, on the date on which the state controller publishes the comprehensive annual financial report of the state for the fiscal year 2011-12, the state treasurer shall transfer to the state education fund created in section 17 (4) of article IX of the state constitution fifty-nine million dollars from the general fund surplus designated in accordance with section 24-75-201 (1) for the fiscal year 2011-12, which represents the unrestricted general fund balance after the applicable amount of reserve required pursuant to section 24-75-201.1 (1) (d).

(2) Notwithstanding any provision of law to the contrary, on the date on which the state controller publishes the comprehensive annual financial report of the state for the fiscal year 2012-13, the state treasurer shall transfer to the state education fund created in section 17 (4) of article IX of the state constitution the general fund surplus designated in accordance with section 24-75-201 (1) for the fiscal year 2012-13, which represents the unrestricted general fund balance after the applicable amount of reserve required pursuant to section 24-75-201.1 (1) (d).

(3) (a) The general assembly hereby finds and declares that Senate Bill 13-234, enacted in 2013, required the state treasurer to transfer moneys from the general fund to the old hire plan members' benefit trust fund created in section 31-31-701 (6), C.R.S., to satisfy the state's future required payments. This transfer reduced the amount of the general fund surplus that would otherwise have been transferred to the state education fund created in section 17 (4) of article IX of the state constitution under subsection (2) of this section. The transfers in paragraph (b) of this subsection (3) are intended to reimburse the state education fund for this reduced transfer and they represent the amount the state would have contributed to the old hire plan member's benefit trust fund in the absence of the early pay off.

(b) On April 30, 2014, the state treasurer shall transfer forty-five million three hundred twenty-one thousand seventy-nine dollars from the general fund to the state education fund created in section 17 (4) of article IX of the state constitution. On April 30, 2015, and April 30 of each year thereafter through 2018, the state treasurer shall transfer twenty-five million three hundred twenty-one thousand seventy-nine dollars from the general fund to the state education fund. On April 30, 2019, the state treasurer shall transfer twenty-four million nine hundred ninety-one thousand seven hundred thirty-nine dollars from the general fund to the state education fund.

(4) Notwithstanding any provision of law to the contrary, on the date on which the state controller publishes the comprehensive annual financial report of the state for the fiscal year 2013-14, after making the transfer required pursuant to section 24-75-222, as

enacted in Senate Bill 13-236, the state treasurer shall transfer to the state education fund created in section 17 (4) of article IX of the state constitution seventy-five percent of the remaining general fund surplus designated in accordance with section 24-75-201 (1) for the fiscal year 2013-14.

24-75-221. Transfer of general fund revenue to Colorado economic development fund for 2011-12 fiscal year. Notwithstanding any provision of law to the contrary, on June 30, 2012, the state treasurer shall transfer from the general fund to the Colorado economic development fund created in section 24-46-105 the lesser of four million dollars or the amount by which the June 2012 estimate of general fund revenue prepared by the office of state planning and budgeting for the 2011-12 fiscal year exceeds the March 2012 estimate of general fund revenue prepared by the office of state planning and budgeting for the 2011-12 fiscal year.

24-75-222. Transfer to general fund - moneys from repealed cash funds - definition - repeal. (1) As used in this section, "designated cash funds" means the commission on mandated health insurance benefits cash fund, which was created in section 10-16-103.3, C.R.S., and repealed on July 1, 2010, and the multiple employer welfare arrangement cash fund, which was created in section 10-16-902, C.R.S., and repealed on July 1, 2008.

(2) On July 1, 2013, the state treasurer shall transfer to the general fund the unexpended and unencumbered moneys that were in the designated cash funds at the time of their repeal and any interest and income since earned on the moneys.

(3) This section is repealed, effective July 1, 2014.

24-75-223. Transfer of general fund surplus to Colorado water conservation board construction fund - repeal. (1) Notwithstanding any provision of law to the contrary, on the date on which the state controller publishes the comprehensive annual financial report of the state for the fiscal year 2013-14, the state treasurer shall transfer to the Colorado water conservation board construction fund created in section 37-60-121, C.R.S., an amount of the general fund surplus designated in accordance with section 24-75-201 (1) for the fiscal year 2013-14 that is equal to the lesser of thirty million dollars or the total general fund surplus.

(2) This section is repealed, effective July 1, 2015.

PART 3

CAPITAL CONSTRUCTION FUND

24-75-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Capital construction" means:

(a) Purchase of land, regardless of the value thereof;

(b) Purchase, construction, or demolition of buildings or other physical facilities, including utilities and state highways or remodeling or renovation of existing buildings or other physical facilities, including utilities and state highways to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to the health and safety of persons which are not covered by codes, to effect conservation of energy resources, to effect cost savings for staffing, operations, or maintenance of the facility, or to improve appearance;

(c) Site improvement or development;

(d) Purchase and installation of the fixed and movable equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities and for the conduct of programs initially housed therein upon completion of the new construction, remodeling, or renovation;

(e) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any capital construction project and to supervise construction or execution of such capital construction projects;

(f) Any item of instructional or scientific equipment if the cost will exceed fifty thousand dollars.

(g) The purchase of services from the office of information technology on the condition that the use of such services is the most cost beneficial option or falls within the duties and responsibilities of the office or the office's chief information officer as described in sections 24-37.5-105 and 24-37.5-106.

(2) "Prepreliminary planning" means the initial review of a proposed project, as defined in subsection (1) of this section, by the division of planning for any of the following items:

(a) Conformance with long-range development plans;

(b) Technical and economic feasibility of the project;

(c) Preparation of outline plans and specifications; and

(d) Preparation of prepreliminary cost estimates.

24-75-302. Capital construction fund - capital assessment fees - calculation. (1) (a) There is hereby created the capital construction fund to which shall be allocated such revenues as the general assembly may from time to time determine. Moneys in the capital construction fund may be appropriated for capital construction, as

defined in section 24-75-301 (1), including the remodeling or renovation of existing buildings or other physical facilities designated as controlled maintenance projects in the general appropriation act; except that any moneys transferred to the capital construction fund for state highway reconstruction, repair, and maintenance projects may only be appropriated for such projects. The appropriation for such projects shall be set forth in a single line item as a total sum. All unappropriated balances in said fund at the close of any fiscal year shall remain therein and not revert to the general fund. All moneys unexpended or not encumbered from the capital construction fund appropriation to each department for any fiscal year shall revert to the capital construction fund at the end of the period for which such moneys are appropriated. Except as provided in sections 2-3-1304 (1) (a.5) and 24-30-1303.7 (1), C.R.S., no portion of the unexpended balance of a department's capital construction fund appropriation may be used by such department for any additional projects which are beyond the scope or design of the original project without further approval by the general assembly of such additional project. Anticipation warrants may be issued against the revenues of the fund as provided by law. Except as provided in subsection (7) of this section, all interest earned from the investment of moneys in said fund shall remain in said fund and become a part thereof.

(b) The unrestricted year-end balance of the capital construction fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), and, for purposes of section 24-77-103:

(I) Any moneys credited to the capital construction fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), for such fiscal year; and

(II) Any transfers or expenditures from the capital construction fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), for such fiscal year.

(2) On July 1 of each year through July 1, 2013, 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:

(a) On July 1, 1988, fifteen million dollars;

(b) On July 1, 1989, fifteen million dollars;

(c) On July 1, 1990, nine million four hundred twenty-nine thousand two hundred eighty-one dollars;

(d) (Deleted by amendment, L. 92, p. 142, § 2, effective February 25, 1992.)

(e) On July 1, 1992, twenty-one million one hundred thousand dollars;

(f) On July 1, 1993, twenty-five million dollars, plus twenty-one million six

hundred forty-one thousand dollars pursuant to H.B. 93S-1001; plus four million thirty-six thousand dollars pursuant to S.B. 93S-009; plus six hundred twenty-seven thousand eight hundred dollars pursuant to H.B. 93S-1005, enacted at the first extraordinary session of the fifty-ninth general assembly; plus thirty-two million five hundred forty thousand one hundred dollars pursuant to S.B. 94-207; plus forty-six million nine hundred fifty thousand five hundred ten dollars pursuant to H.B. 94-1340, enacted at the second regular session of the fifty-ninth general assembly;

(g) On July 1, 1994, one hundred nine million six hundred seventy-seven thousand eight hundred fifty dollars, plus ten million six hundred thirteen thousand three hundred ten dollars pursuant to H.B. 95-1352, enacted at the first regular session of the sixtieth general assembly;

(h) On July 1, 1995, one hundred thirty-one million nine hundred fifty-eight thousand two hundred seventy-three dollars with seventy-five million dollars of such amount to be available for appropriation only for state highway reconstruction, repair, and maintenance projects, plus twenty-six million nine hundred ninety-four thousand five hundred thirty-six dollars pursuant to H.B. 95-1352, enacted at the first regular session of the sixtieth general assembly;

(i) (I) On July 1, 1996, two hundred ten million nine hundred thirty-six thousand ninety-nine dollars with one hundred fifteen million dollars of such amount to be available for appropriation only for state highway reconstruction, repair, maintenance, and capacity expansion projects, notwithstanding the limitation specified in paragraph (a) of subsection (1) of this section and section 2-3-1304 (1) (a.5), C.R.S., for such revenues;

(II) In addition to any other moneys transferred pursuant to this paragraph (i), on July 1, 1996, twenty million dollars to be available for appropriation only for the technology learning grant and revolving loan program established in article 11.5 of title 23, C.R.S.;

(j) On July 1, 1997, one hundred million dollars, plus seventy-eight million seven hundred eighty-five thousand six hundred seventy-five dollars pursuant to H.B. 97-1244; plus two million seven hundred thirty-six thousand two hundred fifty dollars pursuant to H.B. 97-1318; plus seventy-three thousand six hundred thirty-six dollars pursuant to H.B. 97-1060; plus two hundred twenty-eight thousand two hundred seventy-two dollars pursuant to H.B. 97-1186, enacted at the first regular session of the sixty-first general assembly; plus sixteen million five hundred sixty-three thousand two hundred thirty-three dollars pursuant to H.B. 98-1402, enacted at the second regular session of the sixty-first general assembly;

(k) On July 1, 1998, one hundred fifty million dollars with one hundred million dollars of such amount to be available for appropriation only for state highway reconstruction, repair, maintenance, and capacity expansion projects, plus three hundred sixteen thousand six hundred thirty-five dollars pursuant to H.B. 97-1186, enacted at the first regular session of the sixty-first general assembly; plus four million three hundred six

thousand seven hundred seventy dollars pursuant to S.B. 98-186, enacted at the second regular session of the sixty-first general assembly; plus five million one hundred thousand dollars pursuant to H.B. 98-1006, enacted at the second regular session of the sixty-first general assembly; plus three million three hundred thousand dollars pursuant to H.B. 98-1068, enacted at the second regular session of the sixty-first general assembly; plus three hundred five million two hundred seventy-three thousand one hundred fifteen dollars pursuant to H.B. 98-1402, enacted at the second regular session of the sixty-first general assembly;

(l) On July 1, 1999, one hundred million dollars, plus three hundred twenty-three thousand nine hundred ninety-eight dollars pursuant to H.B. 97-1186, enacted at the first regular session of the sixty-first general assembly; plus three thousand eight hundred forty dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus nine thousand nine hundred fifty-seven dollars pursuant to H.B. 99-1068, enacted at the first regular session of the sixty-second general assembly; plus sixty-eight million six hundred ninety-one thousand four hundred five dollars pursuant to S.B. 99-239, enacted at the first regular session of the sixty-second general assembly; plus four million five hundred forty-nine thousand two hundred two dollars pursuant to H.B. 00-1416, enacted at the second regular session of the sixty-second general assembly;

(m) On July 1, 2000, one hundred million dollars, plus one hundred eighty-four thousand ninety dollars pursuant to H.B. 97-1186; plus four hundred seventy-eight thousand six hundred thirty-four dollars pursuant to H.B. 97-1077, enacted at the first regular session of the sixty-first general assembly; plus twelve thousand two hundred seventeen dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus seventy-one thousand two hundred seven dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; plus five hundred thousand dollars pursuant to H.B. 00-1069, enacted at the second regular session of the sixty-second general assembly; plus eight hundred twelve thousand seven hundred sixty-four dollars pursuant to H.B. 00-1107, enacted at the second regular session of the sixty-second general assembly; plus two hundred fifty-eight thousand one hundred eighty-six dollars pursuant to H.B. 00-1111, enacted at the second regular session of the sixty-second general assembly; plus six hundred twenty-five thousand two hundred three dollars pursuant to H.B. 00-1158, enacted at the second regular session of the sixty-second general assembly; plus four hundred forty-two thousand eight hundred fifty-two dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; plus four hundred sixteen thousand eight hundred two dollars pursuant to H.B. 00-1214, enacted at the second regular session of the sixty-second general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 00-1247, enacted at the second regular session of the sixty-second general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 00-1317, enacted at the second regular session of the sixty-second

general assembly; plus one hundred sixty-eight million four hundred forty-six thousand two hundred ninety-three dollars pursuant to H.B. 00-1452, enacted at the second regular session of the sixty-second general assembly; plus two million one hundred thirty-nine thousand four hundred sixty-nine dollars pursuant to H.B. 01-1409, enacted at the first regular session of the sixty-third general assembly;

(n) On July 1, 2001, one hundred million dollars, plus one hundred fifty-four thousand six hundred thirty-six dollars pursuant to H.B. 97-1186; plus nine hundred five thousand seven hundred twenty-three dollars pursuant to H.B. 97-1077, enacted at the first regular session of the sixty-first general assembly; plus nine thousand eight hundred ninety dollars pursuant to S.B. 98-021, enacted at the second regular session of the sixty-first general assembly; plus three hundred forty-nine thousand fifty-five dollars pursuant to H.B. 98-1160, enacted at the second regular session of the sixty-first general assembly; plus three hundred twenty-six thousand thirty-two dollars pursuant to H.B. 00-1107, enacted at the second regular session of the sixty-second general assembly; plus ninety-seven thousand two hundred fifty-four dollars pursuant to H.B. 00-1111, enacted at the second regular session of the sixty-second general assembly; plus two hundred ninety-one thousand seven hundred sixty-one dollars pursuant to H.B. 00-1158, enacted at the second regular session of the sixty-second general assembly; plus one million one hundred sixteen thousand nine hundred seventy-one dollars pursuant to H.B. 00-1201, enacted at the second regular session of the sixty-second general assembly; plus four hundred sixteen thousand eight hundred two dollars pursuant to H.B. 00-1214, enacted at the second regular session of the sixty-second general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 00-1247, enacted at the second regular session of the sixty-second general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to S.B. 01-046, enacted at the first regular session of the sixty-third general assembly; plus four hundred sixty-six thousand eight dollars pursuant to S.B. 01-210, enacted at the first regular session of the sixty-third general assembly; plus one hundred fifty-two million one hundred forty-seven thousand two hundred seven dollars pursuant to S.B. 01-232, enacted at the first regular session of the sixty-third general assembly; plus two hundred seventy-seven thousand eight hundred sixty-eight dollars pursuant to H.B. 01-1242, enacted at the first regular session of the sixty-third general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 01-1344, enacted at the first regular session of the sixty-third general assembly;

(n.5) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 36, § 2, effective November 9, 2001.)

(o) On July 1, 2002, nine million four hundred eighty-nine thousand dollars;

(p) On July 1, 2003, nine million four hundred twenty thousand four hundred ninety-eight dollars, plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1213, enacted at the first regular session of the sixty-fourth general assembly;

(q) and (r) (Deleted by amendment, L. 2004, p. 685, § 1, effective July 1, 2004.)

(r.5) On July 1, 2005, fifty-four thousand eight hundred forty-seven dollars, plus seventy-six thousand four hundred fourteen dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly;

(s) On July 1, 2006, eighty-two million six hundred ninety-seven thousand seven hundred seventy-four dollars; plus twenty-two thousand nine hundred twenty-four dollars pursuant to section 3 of H.B. 02S-1006, enacted at the third extraordinary session of the sixty-third general assembly; plus two hundred ninety-one thousand seven hundred sixty-one dollars pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus one hundred twenty-five thousand forty-one dollars pursuant to H.B. 03-1138, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1213, enacted at the first regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; plus ninety thousand three hundred seven dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 04-1016, enacted at the second regular session of the sixty-fourth general assembly; plus fifteen million dollars pursuant to H.B. 06-1373, enacted at the second regular session of the sixty-fifth general assembly; plus one hundred seventy-four thousand three hundred eighty-eight dollars pursuant to S.B. 06-206, enacted at the second regular session of the sixty-fifth general assembly; plus one hundred seventy-four thousand three hundred eighty-eight dollars pursuant to S.B. 06-207, enacted at the second regular session of the sixty-fifth general assembly; plus six hundred ten thousand three hundred fifty-eight dollars pursuant to H.B. 06-1326, enacted at the second regular session of the sixty-fifth general assembly; plus eighty-seven thousand one hundred ninety-four dollars pursuant to H.B. 06-1145, enacted at the second regular session of the sixty-fifth general assembly; plus four hundred thirty-five thousand nine hundred seventy dollars pursuant to H.B. 06-1092, enacted at the second regular session of the sixty-fifth general assembly; plus eighty-seven thousand one hundred ninety-four dollars pursuant to H.B. 06-1151, enacted at the second regular session of the sixty-fifth general assembly; plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the second regular session of the sixty-fifth general assembly; plus eighty-seven thousand one hundred ninety-four dollars pursuant to S.B. 06S-004, enacted at the first extraordinary session of the sixty-fifth general assembly; plus one hundred seventy-four thousand three hundred eighty-eight dollars pursuant to S.B. 06S-005, enacted at the first extraordinary session of the sixty-fifth general assembly; plus eighty-seven thousand one hundred ninety-four dollars pursuant to S.B. 06S-007, enacted at the first extraordinary session of the sixty-fifth general assembly; plus thirty million dollars;

(t) On July 1, 2007, forty-seven million eight hundred twenty-one thousand seven hundred forty-six dollars, plus four hundred sixteen thousand eight hundred two dollars

pursuant to H.B. 03-1004, enacted at the first regular session of the sixty-fourth general assembly; plus fifty-five thousand five hundred seventy-four dollars pursuant to H.B. 03-1317, enacted at the first regular session of the sixty-fourth general assembly; plus thirteen thousand eight hundred ninety-three dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; plus twenty-two million eight hundred eighty-five thousand three hundred eighty-six dollars pursuant to H.B. 06-1373, enacted at the second regular session of the sixty-fifth general assembly; plus two hundred nine thousand two hundred sixty-six dollars pursuant to S.B. 06-206, enacted at the second regular session of the sixty-fifth general assembly; plus two hundred nine thousand two hundred sixty-six dollars pursuant to S.B. 06-207, enacted at the second regular session of the sixty-fifth general assembly; plus six hundred ten thousand three hundred fifty-eight dollars pursuant to H.B. 06-1326, enacted at the second regular session of the sixty-fifth general assembly; plus sixty-nine thousand seven hundred fifty-five dollars pursuant to H.B. 06-1151, enacted at the second regular session of the sixty-fifth general assembly; plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the second regular session of the sixty-fifth general assembly; plus seventeen thousand four hundred thirty-nine dollars pursuant to S.B. 06S-005, enacted at the first extraordinary session of the sixty-fifth general assembly; plus three hundred seventy-five thousand four hundred ninety-five dollars pursuant to S.B. 07-096, enacted at the first regular session of the sixty-sixth general assembly; plus five hundred thousand six hundred sixty dollars pursuant to H.B. 07-1326, enacted at the first regular session of the sixty-sixth general assembly;

(u) On July 1, 2008, twenty million dollars, plus sixty-nine thousand four hundred sixty-seven dollars pursuant to H.B. 04-1021, enacted at the second regular session of the sixty-fourth general assembly; plus three hundred ninety-two thousand three hundred seventy-three dollars pursuant to S.B. 06-206, enacted at the second regular session of the sixty-fifth general assembly; plus three hundred ninety-two thousand three hundred seventy-three dollars pursuant to S.B. 06-207, enacted at the second regular session of the sixty-fifth general assembly; plus four hundred sixty-two thousand one hundred twenty-eight dollars pursuant to H.B. 06-1326, enacted at the second regular session of the sixty-fifth general assembly; plus twenty-six thousand one hundred fifty-eight dollars pursuant to H.B. 06-1145, enacted at the second regular session of the sixty-fifth general assembly; plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the second regular session of the sixty-fifth general assembly; plus sixty-nine thousand seven hundred fifty-five dollars pursuant to S.B. 06S-004, enacted at the first extraordinary session of the sixty-fifth general assembly; plus three hundred twenty-five thousand four hundred twenty-nine dollars pursuant to S.B. 07-096, enacted at the first regular session of the sixty-sixth general assembly; plus one hundred fifty thousand one hundred ninety-eight dollars pursuant to H.B. 07-1326, enacted at the first regular session of the sixty-sixth general assembly; plus one hundred twenty-five

thousand one hundred sixty-five dollars pursuant to H.B. 08-1115, enacted at the second regular session of the sixty-sixth general assembly; plus two million one hundred twenty-seven thousand eight hundred five dollars pursuant to H.B. 08-1352, enacted at the second regular session of the sixty-sixth general assembly; plus one hundred twenty-five thousand one hundred sixty-five dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general assembly; plus one hundred twenty-five thousand one hundred sixty-five dollars pursuant to H.B. 08-1194, enacted at the second regular session of the sixty-sixth general assembly;

(v) On July 1, 2009, forty-three thousand five hundred ninety-seven dollars pursuant to H.B. 06-1145, enacted at the second regular session of the sixty-fifth general assembly; plus one hundred twenty-five thousand one hundred sixty-five dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general assembly;

(w) On July 1, 2010, eight million six hundred twenty-five thousand five hundred six dollars, plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to S.B. 06-206, enacted at the second regular session of the sixty-fifth general assembly; plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to S.B. 06-207, enacted at the second regular session of the sixty-fifth general assembly; plus forty-three thousand five hundred ninety-seven dollars pursuant to H.B. 06-1145, enacted at the second regular session of the sixty-fifth general assembly; plus five hundred twenty-three thousand one hundred sixty-four dollars pursuant to H.B. 06-1011, enacted at the second regular session of the sixty-fifth general assembly; plus sixty-nine thousand seven hundred fifty-five dollars pursuant to S.B. 06S-004, enacted at the first extraordinary session of the sixty-fifth general assembly; plus seven hundred fifty thousand nine hundred ninety dollars pursuant to S.B. 07-096, enacted at the first regular session of the sixty-sixth general assembly; plus one hundred twelve thousand six hundred forty-nine dollars pursuant to H.B. 08-1115, enacted at the second regular session of the sixty-sixth general assembly; plus one hundred thirty-seven thousand six hundred eighty-two dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general assembly; plus ninety-one thousand three hundred seventy dollars pursuant to H.B. 10-1081, enacted at the second regular session of the sixty-seventh general assembly; plus eighty-three thousand eight hundred sixty-one dollars pursuant to H.B. 10-1277, enacted at the second regular session of the sixty-seventh general assembly;

(x) On July 1, 2011, forty-seven million six hundred seventy-one thousand seven hundred forty-nine dollars, plus seven hundred fifty thousand nine hundred ninety dollars pursuant to S.B. 07-096, enacted at the first regular session of the sixty-sixth general assembly; plus three hundred seventy-five thousand four hundred ninety-five dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general assembly;

(y) On July 1, 2012, sixty million three hundred thirty-nine thousand four hundred

ninety-three dollars, plus one hundred twelve thousand six hundred forty-nine dollars pursuant to H.B. 08-1115, enacted at the second regular session of the sixty-sixth general assembly; plus three hundred seventy-five thousand four hundred ninety-five dollars pursuant to S.B. 08-239, enacted at the second regular session of the sixty-sixth general assembly; plus eighty-three thousand eight hundred sixty-one dollars pursuant to S.B. 10-128, enacted at the second regular session of the sixty-seventh general assembly;

(z) On July 1, 2013, one hundred eighty-six million two hundred fifteen thousand four hundred ninety-three dollars.

(2.5) In addition to the sums accrued pursuant to subsection (2) of this section, on July 1 of each year through July 1, 2013, the state treasurer and the controller shall transfer a sum as specified in this subsection (2.5) from the general fund exempt account of the general fund created pursuant to section 24-77-103.6 to the capital construction fund as moneys become available in the general fund exempt account during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2.5) are not appropriations subject to the limitations of section 24-75-201.1. The amounts transferred pursuant to this subsection (2.5) are as follows:

(a) On July 1, 2005, ten million dollars;

(b) On July 1, 2006, fifteen million dollars;

(c) On July 1, 2007, twenty million dollars;

(d) (Deleted by amendment, L. 2010, (HB 10-1389), ch. 206, p. 893, § 1, effective May 5, 2010.)

(e) On July 1, 2010, five hundred thousand dollars;

(f) On July 1, 2011, five hundred thousand dollars;

(g) On July 1, 2012, five hundred thousand dollars; and

(h) On July 1, 2013, five hundred thousand dollars.

(3) There is hereby created a special account within the capital construction fund established pursuant to subsection (1) of this section to be known as the "debt service repayment account". All net lottery proceeds distributed pursuant to section 33-60-103 (1) (c), C.R.S., by the state treasurer beginning with the fourth quarter of the 1992-93 fiscal year through the fourth quarter of the 1997-98 fiscal year shall be deposited in such account and expended in accordance with the terms specified in the documents originating the obligations set forth in section 33-60-103, C.R.S., or, if refunded, according to the terms of the documents originating such refunded obligations. All moneys unexpended or unencumbered in any fiscal year shall remain in the account. All interest earned from the investment of moneys in said account shall revert to the general fund.

(3.2) There is hereby created a special account within the capital construction fund established pursuant to subsection (1) of this section to be known as the emergency controlled maintenance account. The account shall consist of any moneys appropriated to the account by the general assembly. The moneys in the account shall be subject to annual

appropriation and shall be used only to fund any unplanned and immediate controlled maintenance needs pursuant to section 24-30-1303.9 (5). All moneys unexpended or unencumbered in any fiscal year shall remain in the account.

(3.5) There is hereby created a special account within the capital construction fund established pursuant to subsection (1) of this section to be known as the "lease-purchase servicing account" for the benefit of the department of personnel. The state treasurer shall deposit into the lease-purchase servicing account all moneys transferred or received pursuant to section 24-82-802 (9). Moneys in the lease-purchase servicing account shall be subject to annual appropriation and shall only be used to pay annual lease-purchase payments, as defined in section 24-82-802 (1) (a), for lease-purchase agreements authorized pursuant to section 24-82-802 or for operating, maintenance, and controlled maintenance costs and to establish a reserve for controlled maintenance costs for the buildings subject to the lease-purchase agreements. All interest and income derived from the investment and deposit of moneys in the account shall be credited to the account. All moneys remaining in the account at the end of a fiscal year that are unexpended or unencumbered shall remain in the account.

(4) Notwithstanding any provision of subsection (2) of this section to the contrary, seventy-five million dollars of the amount to be transferred on July 1, 1994, pursuant to paragraph (g) of said subsection (2) and twenty-five million dollars of the amount to be transferred on July 1, 1995, pursuant to paragraph (h) of said subsection (2) shall be transferred by the state treasurer and the controller from general fund reserves into the capital construction fund and, as reserve transfers, shall be excluded from state fiscal year spending, as defined in section 20 (2) (e) of article X of the state constitution, for the 1994-95 and 1995-96 fiscal years, respectively.

(5) On November 9, 2001, pursuant to S.B. 01S2-023, enacted at the second extraordinary session of the sixty-third general assembly, the state treasurer and the controller shall transfer two hundred nineteen million two hundred sixty-six thousand eight hundred fifty-three dollars from the capital construction fund to the general fund created in section 24-75-201 (1).

(6) (a) On March 27, 2002, pursuant to H.B. 02-1389, enacted at the second regular session of the sixty-third general assembly, the state treasurer and the controller shall transfer thirty-seven million five hundred thousand seven hundred fifty-five dollars from the capital construction fund to the general fund created in section 24-75-201 (1).

(b) On March 26, 2003, pursuant to S.B. 03-179, enacted at the first regular session of the sixty-fourth general assembly, the state treasurer and the controller shall transfer twenty-five million two hundred fifty-five thousand nine hundred forty dollars from the capital construction fund to the general fund created in section 24-75-201 (1).

(7) (a) Notwithstanding any provision of this section to the contrary, as soon as practicable after March 27, 2002, the state treasurer shall transfer from the capital construction fund to the general fund created in section 24-75-201 (1), an amount equal to

the interest earned on the principal of the capital construction fund from the beginning of the 2001-02 fiscal year through February 28, 2002.

(b) For each succeeding calendar month of the 2001-02 fiscal year, through June 30, 2002, the state treasurer shall transfer from the capital construction fund to the general fund an amount equal to the interest earned on the principal of the capital construction fund during such calendar month no later than the last day of the month in which such interest was earned.

(c) (I) Notwithstanding any provision of this section to the contrary, as soon as practicable after March 26, 2003, the state treasurer shall transfer from the capital construction fund to the general fund created in section 24-75-201 (1), an amount equal to the interest earned on the principal of the capital construction fund from the beginning of the 2002-03 fiscal year through February 28, 2003.

(II) For each succeeding calendar month of the 2002-03 fiscal year, through June 30, 2003, the state treasurer shall transfer from the capital construction fund to the general fund an amount equal to the interest earned on the principal of the capital construction fund during the calendar month. The transfer shall occur no later than the last day of the month in which the interest was earned.

(8) On May 28, 2002, pursuant to H.B. 02-1443, enacted at the second regular session of the sixty-third general assembly, the state treasurer and the controller shall transfer fifty-three million five hundred forty-five thousand dollars from the capital construction fund to the general fund created in section 24-75-201 (1).

(9) On July 1, 2004, pursuant to H.B. 04-1412, enacted at the second regular session of the sixty-fourth general assembly, the state treasurer and the controller shall transfer two hundred eighty-five thousand seven hundred eighty-two dollars from the capital construction fund to the general fund created in section 24-75-201 (1).

(10) (a) Notwithstanding any other provision of this section to the contrary, on July 1, 2009, the state treasurer shall deduct twenty-eight million fifty-four thousand four hundred seventy-six dollars from the capital construction fund and transfer such sum to the general fund.

(b) Notwithstanding any other provision of this section to the contrary, on May 5, 2010, the state treasurer shall deduct thirteen million three hundred seventeen thousand eight hundred forty-five dollars from the capital construction fund and transfer such sum to the general fund.

(11) Notwithstanding any provision of this section to the contrary, on April 15, 2010, the state treasurer shall deduct three hundred thirty-five thousand dollars from the emergency controlled maintenance account in the capital construction fund and transfer such sum to the general fund.

24-75-302.5. Controlled maintenance - trust fund. (1) In light of the

fluctuating amounts of state revenues which have been available for controlled maintenance purposes in the past, the general assembly hereby finds and declares that a stable, predictable, and consistent source of revenues for controlled maintenance projects will better allow the state to fund such projects on a timely basis and avoid higher replacement costs. In order to provide a consistent source of revenues, the general assembly hereby further finds and declares that it is appropriate to create a trust fund which will generate an annual amount of interest which will be dedicated to controlled maintenance.

(2) (a) There is hereby created the controlled maintenance trust fund, the principal of which shall consist of any general fund revenues appropriated or transferred thereto by law and proceeds of leveraged leasing agreements deposited thereto pursuant to section 24-82-1003 (3). For the 1996-97 fiscal year and fiscal years thereafter, the principal of the trust fund may constitute all or some portion of the state emergency reserve established pursuant to section 24-77-104 and may be expended in any given fiscal year as provided in said section. The principal of the trust fund shall not be expended or appropriated for any purpose other than use as part of the state emergency reserve. The state treasurer may in the state treasurer's discretion deposit, redeposit, invest, and reinvest moneys accrued or accruing to the controlled maintenance trust fund in the types of deposits and investments authorized in sections 24-36-109, 24-36-112, and 24-36-113.

(b) Beginning September 1, 1994, and on September 1 of each year thereafter, the state treasurer shall certify to the general assembly the amount of interest actually earned on the principal of the trust fund during the previous fiscal year and shall also provide an estimate of the interest expected to be earned on such principal during the current fiscal year.

(c) Beginning with the 1996-97 fiscal year, the interest earned on the principal of the trust fund balance may be appropriated for controlled maintenance, as defined in section 24-30-1301 (2), as follows: Up to fifty percent of the amount of interest expected to be earned on the principal of the trust fund during the current fiscal year as estimated by the state treasurer and the amount of interest actually earned on the principal of the trust fund during the previous fiscal year as certified by the state treasurer, not to exceed a maximum of thirty-five million dollars in any fiscal year.

(d) The principal of the trust fund and any unappropriated interest earned on the principal of the trust fund at the close of any fiscal year shall remain therein and shall not revert to the general fund.

(e) (Deleted by amendment, L. 2004, p. 261, § 1, effective April 5, 2004.)

(f) Repealed.

(3) Notwithstanding any other provision of this section to the contrary:

(a) On July 1, 2001, the state treasurer and the controller shall transfer an amount equal to the principal balance of the trust fund as of June 30, 2001, to the general fund to be expended or transferred as provided by law.

(b) Repealed.

(4) Notwithstanding any other provision of this section to the contrary, on March 27, 2002, the state treasurer and the controller shall transfer nine million five hundred thousand dollars from the trust fund to the general fund.

(5) Notwithstanding any other provision of this section to the contrary, on June 1, 2006, the state treasurer and controller shall transfer one hundred eighty-five million six hundred twenty-seven thousand eight hundred one dollars from the trust fund to the general fund.

(6) (a) Notwithstanding any provision of this section to the contrary, on February 1, 2006, the state treasurer and the controller shall transfer three million one hundred forty-four thousand one hundred sixty-two dollars from the interest earned on the principal of the trust fund balance to the general fund to be used to increase the general fund appropriation for safety net provider payments for private hospitals under the Colorado indigent care program created in part 1 of article 3 of title 25.5, C.R.S.

(b) If, on February 1, 2006, there is not sufficient interest earned on the principal of the trust fund to make the transfer required by paragraph (a) of this subsection (6), the state treasurer and controller shall transfer the available interest as of February 1, 2006, and shall transfer the remaining interest due as the interest accrues.

(7) Notwithstanding any provision of this section to the contrary, on July 1, 2009, the state treasurer shall deduct eight hundred three thousand six hundred ten dollars from the trust fund and transfer such sum to the general fund.

24-75-303. Appropriation for capital construction. (1) The general assembly shall appropriate for capital construction in such form, in such amounts, and from such funds as it deems necessary and may appropriate either for construction or for planning of any project.

(2) No appropriation for capital construction shall be made to or expended by any department, agency, or institution of the state which has not complied with the requirements of section 24-30-1303.5, with respect to preparation and maintenance of a state inventory of real property and improvements and other capital assets.

(2.5) No appropriation for capital construction shall be made to or expended by any department, agency, or institution of the state that has not received approval of a facility management plan for a vacant facility controlled by the state department, agency, or institution pursuant to section 24-30-1303.5, unless the capital development committee exempts the state department, agency, or institution from the provisions of section 24-30-1303.5 (3.5) (f).

(3) (a) A capital construction project for a state-supported institution of higher education that is estimated to require total expenditures exceeding two million dollars may not be commenced unless:

(I) The project:

(A) Is to be constructed solely from cash funds held by the institution;

(B) Is to be constructed in whole or in part using moneys subject to the higher education revenue bond intercept program established pursuant to section 23-5-139, C.R.S.; and

(C) Has been approved by the Colorado commission on higher education pursuant to section 23-1-106 (10), C.R.S.; or

(II) (A) The plan for the project was contained in the most recent unified, two-year capital improvements projection provided pursuant to section 23-1-106 (6) (b), C.R.S., as the projection may be amended from time to time;

(B) The project has been approved by the governing board of the institution; and

(C) The project is to be constructed, operated, and maintained solely from cash funds held by the institution, or the project is an academic building and is to be constructed solely from cash funds held by the institution, but may be operated or maintained using cash funds or state moneys appropriated for such purposes, or both.

(b) This subsection (3) shall not apply to any capital construction project of a state-supported institution of higher education that requires an appropriation of state moneys from the capital construction fund created in section 24-75-302 (1).

(3.5) If a capital construction project for a state-supported institution of higher education is to be completed using a combination of capital construction appropriations pursuant to this section and cash funds or other nonstate moneys held by the institution, the institution may, at any time prior to or after receiving the cash funds or other nonstate moneys, earn the moneys appropriated from the state capital construction fund. For any project funded in part by capital construction appropriations pursuant to this section, if there are cash funds or other nonstate moneys remaining after the project is completed, the institution shall refund moneys to the state capital construction fund in proportion to the amount of state capital construction moneys appropriated for the project.

(4) All contracts required as the result of a capital construction appropriation shall be entered into in accordance with section 24-30-1404 (7).

24-75-304. Legislative declaration. It is declared to be the intent of the general assembly in the passage of sections 24-75-304 to 24-75-306, to provide for orderly management of state funds and, as fiscal procedures may require, to temporarily augment the general revenue funds of the state in order to insure prompt payment of all warrants drawn against said general revenue funds pursuant to law.

24-75-305. Transfers from capital construction fund. (1) In accordance with the legislative declaration as specified in section 24-75-304, the controller and the state

treasurer shall, from time to time, during any fiscal year as fiscal procedures may require and upon the written approval of the governor, transfer from the capital construction fund to the general revenue funds such amounts of money as shall be necessary to insure prompt payment of all warrants drawn against said general revenue funds if the controller first certifies:

(a) That the general revenue funds shall have sufficient moneys accruing to them in the same fiscal year in which the transfer is made to retransfer to the capital construction fund any moneys so transferred;

(b) That appropriations from the general revenue funds do not exceed estimated general fund revenues and estimated surplus; and

(c) That the capital construction fund has, at the time of the transfer, and will have sufficient moneys accruing to it during the period prior to the anticipated retransfer to enable it to meet its own obligations.

(2) The controller and the state treasurer shall retransfer from the general revenue funds to the capital construction fund any moneys transferred under the provisions of subsection (1) of this section prior to June 30 of the fiscal year in which the transfer was made.

24-75-306. Federal revenue sharing trust fund. (1) There is hereby created in the office of the state treasurer the federal revenue sharing trust fund. All moneys received by this state from the general and special revenue programs of the federal government and the interest thereon shall be deposited to said fund. All funds and the interest thereon presently held by the state treasurer in the account known as the "federal revenue sharing trust fund" shall be transferred to the federal revenue sharing trust fund.

(2) The general assembly may make appropriations out of said fund. Any amounts so appropriated shall be transferred by the state treasurer and the controller to the expending agency. All unappropriated balances in said fund at the close of any fiscal year shall remain therein and shall not revert to the general fund.

PART 4

CASH FUNDS

24-75-401. Cash funds abolished. (1) All revenues derived on and after July 1, 1973, from the proceeds of the cash funds subject to the provisions of this part 4 immediately prior to July 1, 1973, without any deduction on account of salaries, fees, costs, charges, expenses, or claims of any description whatsoever shall be transmitted to the office of the state treasurer, and said moneys so transmitted together with all balances remaining in said funds after payment of all obligations of the preceding fiscal year shall

be credited to the general fund of the state, and said cash funds are abolished.

(2) The general assembly shall make appropriations out of the general fund for the fiscal year beginning July 1, 1973, for the state agencies requiring an expenditure for any purpose formerly paid out of any of the cash funds abolished by subsection (1) of this section, and thereafter each such agency shall make a budgetary request for each fiscal year as provided by law.

24-75-402. Cash funds - limit on uncommitted reserves - reduction in amount of fees - exclusions - repeal. (1) The general assembly hereby finds that:

(a) Section 20 of article X of the state constitution limits state fiscal year spending;

(b) Subject to certain exclusions specified in section 20 of article X of the state constitution, all state general fund revenues and all state cash fund revenues are subject to the limitation on state fiscal year spending;

(c) The legislative powers of the general assembly, including but not limited to its plenary power of appropriation, authorize and require the general assembly to assure compliance with the limitation on state fiscal year spending and to make fundamental fiscal policy decisions establishing the level of activity of all departments and agencies of state government, including those funded by revenues generated from fees;

(d) Consonant with the exercise of such legislative powers, the general assembly must establish limits on the amount of uncommitted reserves that may be maintained by state agencies for cash funds and exercise any other necessary controls on cash fund revenues, including but not limited to the power of appropriation;

(e) In order to ensure compliance with the limitations on the amount of uncommitted reserves that may be maintained for any cash fund, the general assembly may require reductions in the amount of fees collected by state agencies, even though such reductions may result in some persons paying more than other persons to receive state agency services.

(2) For purposes of this section, unless the context otherwise requires:

(a) "Alternative reserve balance" means a minimum reserve balance that exceeds the target reserve, a maximum reserve balance that is less than the target reserve, or a maximum reserve balance that exceeds the target reserve.

(b) "Cash fund" means any fund, other than the state general fund created by section 24-75-201 and any federal fund, established by law for a specific program or purpose.

(c) (I) "Entity" means any organ of the legislative, executive, or judicial branch of the government of the state of Colorado, including but not limited to:

(A) The departments of the executive branch;

(B) The legislative houses and agencies;

(C) The appellate and trial courts and court personnel; and

(D) State institutions of higher education.

(II) "Entity" does not include any enterprise, as defined in section 24-77-102 (3), or any special purpose authority.

(d) "Excess uncommitted reserves" means the amount of uncommitted reserves for a cash fund that exceeds the target reserve amount for that cash fund.

(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.

(f) "Nonmonetary current asset" means an asset that either cannot be converted to cash or is held with the intent of being used rather than being converted to cash.

(g) "Target reserve" means sixteen and five-tenths percent of the amount expended from a cash fund during the fiscal year.

(h) "Uncommitted reserves" means the fund balance of a cash fund as of June 30 of any fiscal year, minus the following:

(I) Any long-term assets credited to the cash fund;

(II) Any unencumbered fund balance previously appropriated for capital construction or other multiyear purposes;

(III) Any nonmonetary current assets credited to the cash fund, including but not limited to consumable inventory and prepaid expenses;

(IV) Any portion of the revenues credited to the cash fund that is estimated to be derived from non-fee sources. The estimate shall be equal to the portion of total revenues received from non-fee sources in the prior fiscal year.

(3) (a) At the end of the 1997-98 fiscal year, if the uncommitted reserves of a cash fund exceed the target 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 said fees as follows:

(I) If the uncommitted reserves exceed sixteen and five-tenths percent of the

amount expended from the cash fund during the 1997-98 fiscal year but are less than fifty percent of the amount expended from the cash fund during the 1997-98 fiscal year, the fees shall be reduced by an amount calculated to result in an amount of uncommitted reserves by the end of the 2000-01 fiscal year that does not exceed the target reserve for the 2000-01 fiscal year;

(II) If the uncommitted reserves equal fifty percent or more of the amount expended from the cash fund during the 1997-98 fiscal year, the fees shall be reduced by an amount calculated to result in an amount of uncommitted reserves by the end of the 2002-03 fiscal year that does not exceed the target reserve for the 2002-03 fiscal year.

(b) Notwithstanding any provisions of this subsection (3) to the contrary, the provisions of paragraph (a) of this subsection (3) shall not apply to any cash fund for which an alternative reserve balance is specified in the constitution or for which an alternative reserve balance is otherwise established by law. If the actual amount of uncommitted reserves exceeds the alternative reserve balance otherwise specified for any cash fund, 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 said fees. The amount of fee reduction shall be calculated to reduce the uncommitted reserves to not more than the alternative reserve balance otherwise specified for the cash fund by the end of the 2000-01 fiscal year.

(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.

(d) If more than one entity collects the fees that are deposited in a cash fund and the amount of said fees are required to be reduced pursuant to this subsection (3), the reduction in fees for each entity shall be proportional to the amount of fees contributed by each entity to the excess uncommitted reserves.

(e) In calculating the reduction in fees under this subsection (3), an entity may take into account increases in expenditures from the cash fund.

(4) (a) If an entity reduces the amount of a fee pursuant to subsection (3) of this section, the entity by rule or as otherwise provided by law may subsequently raise the

amount of the fee so long as the projected amount of uncommitted reserves of the cash fund does not exceed the limitations specified in subsection (3) of this section. Any such fee increase by an entity in the executive branch, prior to promulgation or adoption, shall be subject to approval by the office of state planning and budgeting. The entity shall not increase the fee beyond any amount specified in statute for the fee.

(b) Any rule adopted by an entity in the executive branch that reduces the amount of a fee pursuant to subsection (3) of this section or increases the amount of a fee pursuant to this subsection (4) shall be subject to the requirements of the "State Administrative Procedure Act", article 4 of this title.

(5) Notwithstanding any provision of this section to the contrary, the following cash funds are excluded from the limitations specified in this section:

(a) Any cash fund for which revenues are derived solely from fees, the amounts of which are established by the federal government;

(b) Any cash fund for which revenues are derived solely from fees set by the Colorado supreme court in the exercise of its exclusive authority to regulate the practice of law;

(c) Any cash fund for which revenues are derived solely from fees set by an enterprise, as defined in section 24-77-102 (3), or a special purpose authority;

(d) Any cash fund that is established to fund capital construction;

(e) Any cash fund for which the reserve amounts are based on actuarial requirements;

(f) Any trust fund;

(g) Any cash fund with uncommitted reserves of less than fifty thousand dollars;

(h) The highway users tax fund and the state highway fund; except that the emergency medical services account created in section 25-3.5-603, C.R.S., the Colorado state titling and registration account created in section 42-1-211 (2), C.R.S., and the AIR account created in section 42-3-304 (18) (a), C.R.S., included in the highway users tax fund shall be subject to the provisions of this section;

(i) The petroleum storage tank fund created in section 8-20.5-103, C.R.S.;

(j) The hazardous substance response fund created in section 25-16-104.6, C.R.S.;

(k) The land and water management fund created in section 36-1-148, C.R.S.;

(l) The brand inspection fund created in section 35-41-102, C.R.S.;

(m) The Colorado state fair authority cash fund created in section 35-65-107, C.R.S.;

(n) The motorcycle operator safety training fund created in section 43-5-504, C.R.S.;

(o) The cost containment fund created in section 8-14.5-108, C.R.S.;

(p) The workers' compensation cash fund created in section 8-44-112 (7), C.R.S.;

(q) Repealed.

(r) The state commission on judicial performance cash fund created in section 13-

5.5-107, C.R.S.;

(s) The Colorado disabled telephone users fund created in section 40-17-104, C.R.S.;

(t) The Colorado bureau of investigation identification unit fund created in section 24-33.5-426;

(u) The department of human services buildings and grounds cash fund created in section 26-1-133.5 (2), C.R.S.;

(v) The judicial department information technology cash fund created in section 13-32-114, C.R.S.;

(w) The private activity bond allocations fund created in section 24-32-1709.5 (2);

(x) The Colorado high cost administration fund created in section 40-15-208 (3), C.R.S.;

(y) The public school construction and inspection cash fund created in section 24-33.5-1207.7 and the health facility construction and inspection cash fund created in section 24-33.5-1207.8;

(z) The medical marijuana license cash fund created in section 12-43.3-501, C.R.S.;

(aa) The emergency fire fund created in section 24-33.5-1220 (2), the wildland fire equipment repair cash fund created in section 24-33.5-1220 (3), and the wildland fire cost recovery fund created in section 24-33.5-1220 (4).

(6) Notwithstanding any provision of this section to the contrary, the limitations specified in this section shall not apply to any cash fund used to fund a single program if the program has been in existence less than two full fiscal years.

(7) The office of state planning and budgeting shall annually review the total amount of revenues credited to cash funds, including but not limited to the amounts received from fees and from other sources, and the report of uncommitted reserves prepared by the state controller pursuant to section 24-30-207 (3).

(8) (a) Notwithstanding the target reserve limitation imposed pursuant to paragraph (c) of subsection (3) of this section, for fiscal years beginning on or after July 1, 2000, the general assembly may grant a waiver of the target reserve requirement specified in subsection (3) of this section for an entity that demonstrates a specific purpose for which the entity needs to maintain uncommitted reserves in an amount greater than the target reserve for a specified, limited period of time. A specific purpose that may warrant a waiver pursuant to this subsection (8) includes, but is not limited to, purchase of a particular item of equipment or operation of a short-term program.

(b) To request a waiver pursuant to this subsection (8), an entity, during the annual budget-setting process, shall present a plan to the joint budget committee that at a minimum specifies the specific purpose for which the entity needs to maintain a greater amount of uncommitted reserves, the greater amount of uncommitted reserves requested, the time period for the waiver, and the plan for reducing any excess uncommitted reserves

that may remain on completion of the waiver period. The joint budget committee, in determining whether to recommend a waiver pursuant to this subsection (8), shall consider the purpose for which the entity has requested the waiver, the reasonableness of the time period for the waiver, and the effect the waiver may have on the state's ability to comply with the limitations on state fiscal year spending imposed pursuant to section 20 of article X of the state constitution.

(c) The joint budget committee shall recommend legislation to grant any waiver requested pursuant to this subsection (8) that the committee deems appropriate. The legislation, at a minimum, shall specify the fund for which the waiver is granted, the greater amount of uncommitted reserves authorized, and the time period for the waiver.

(9) For the fiscal year commencing on July 1, 2000, and ending June 30, 2001, a waiver of the target reserve requirement specified in subsection (3) of this section shall be allowed pursuant to paragraph (a) of subsection (8) of this section for the following:

(a) The educator licensure cash fund created in section 22-60.5-112, C.R.S., shall be allowed to retain an amount equal to two hundred thirty-eight thousand seven hundred twenty-four dollars in excess uncommitted reserves;

(b) The supplier database cash fund created in section 24-102-202.5 (2) shall be allowed to retain an amount equal to two hundred eighty-nine thousand three hundred twenty-two dollars in excess uncommitted reserves;

(c) The emergency services medical services account of the highway users tax fund created in section 25-3.5-603 (1), C.R.S., shall be allowed to retain an amount equal to three hundred ninety-six thousand seven hundred fifty dollars in excess uncommitted reserves;

(d) The wildlife cash fund created in section 33-1-112 (1), C.R.S., shall be allowed to retain an amount equal to two million six hundred twenty thousand four hundred eighty-eight dollars in excess uncommitted reserves; and

(e) The historical society enterprise services fund shall be allowed to retain an amount equal to fifty-five thousand nine hundred sixty-six dollars in excess uncommitted reserves.

(10) For the fiscal year commencing July 1, 2008, and each fiscal year thereafter, the public safety inspection fund created in section 8-1-151, C.R.S., shall not be subject to the limit on uncommitted reserve funds pursuant to this section.

(11) (a) For the 2012-13 and 2013-14 fiscal years, a waiver of the target reserve requirement specified in subsection (3) of this section is allowed pursuant to paragraph (a) of subsection (8) of this section for all excess uncommitted reserves in the building regulation fund created in section 24-32-3309 (1) (a).

(b) This subsection (11) is repealed, effective July 1, 2014.

PART 5

CASH REVOLVING FUND

24-75-501 to 24-75-506. (Repealed)

PART 6

FUNDS - LEGAL INVESTMENTS

24-75-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Public entity" means the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, district, or other political subdivision of the state, including any school district and institution of higher education; any institution, department, agency, instrumentality, or authority of any of the foregoing, including any county or municipal housing authority; any local government investment pool organized pursuant to part 7 of this article; any public entity insurance pool organized pursuant to state law; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing.

(2) "Public funds" means any funds in the custody, possession, or control of a public entity; any funds over which a public entity has investment control; any funds over which a public entity would have investment control but for the entity's delegation of that control to another person; and any funds over which another person exercises investment control on behalf of or for the benefit of a public entity. "Public funds" includes, but is not limited to, proceeds of the sale of securities of a public entity and proceeds of certificates of participation or other securities evidencing rights in payments to be made by a public entity under a lease, lease-purchase agreement, or other similar arrangement, regardless of whether such proceeds are held by the public entity, a third-party trustee, or any other person. "Public funds" shall not include funds invested by the public employees' retirement association created in article 51 of this title or any other funds invested for employee retirement or pensions. "Public funds" shall also not include trusts managed on behalf of the board of education of a school district coterminous with a city and county for the benefit of a retiree's health insurance and teacher compensation.

(2.5) (Deleted by amendment, L. 2006, p. 551, § 2, effective August 7, 2006.)

(3) "Security" means any bill, note, bond, bankers' acceptance, commercial paper, repurchase agreement, reverse repurchase agreement, securities lending agreement, guaranteed investment contract, guaranteed interest contract, annuity contract, funding agreement, certificate of indebtedness or other evidence of indebtedness, or interest in any of the foregoing. No foregoing instrument shall be convertible to equity or represent any equity interest. All foregoing instruments shall be denominated in the currency of the United States.

24-75-601.1. Legal investments of public funds. (1) It is lawful to invest public funds in any of the following securities:

(a) Any security issued by, fully guaranteed by, or for which the full credit of the United States treasury is pledged for payment and, notwithstanding paragraph (a) of subsection (1.3) of this section, inflation indexed securities issued by the United States treasury. The period from the date of settlement of this type of security to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(b) (I) Any security issued by, fully guaranteed by, or for which the full credit of the following is pledged for payment: The federal farm credit bank, the federal land bank, a federal home loan bank, the federal home loan mortgage corporation, the federal national mortgage association, the export-import bank, the Tennessee valley authority, the government national mortgage association, the world bank, or an entity or organization that is not listed in this paragraph (b) but that is created by, or the creation of which is authorized by, legislation enacted by the United States congress and that is subject to control by the federal government that is at least as extensive as that which governs an entity or organization listed in this paragraph (b). The period from the date of settlement of this type of security to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(II) No subordinated security may be purchased pursuant to this paragraph (b).

(c) (Deleted by amendment, L. 2006, p. 552, § 3, effective August 7, 2006.)

(d) (I) Any security that is a general obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (d) unless:

(A) At the time of purchase, the security is rated in one of its two highest rating categories by two or more nationally recognized organizations that regularly rate such obligations.

(B) (Deleted by amendment, L. 2006, p. 552, § 3, effective August 7, 2006.)

(C) The period from the date of settlement of this type of security to its maturity date shall be no more than three years unless the governing body of the public entity authorizes investment for a period in excess of three years.

(e) (I) Any security that is a revenue obligation of any state of the United States, the District of Columbia, or any territorial possession of the United States or of any political subdivision, institution, department, agency, instrumentality, or authority of any of such governmental entities.

(II) No security may be purchased pursuant to this paragraph (e) unless, at the time of purchase, the security is rated in its highest rating category by two or more nationally recognized organizations that regularly rate such obligations.

(III) The period from the date of settlement of this type of security to its maturity date shall be no more than three years.

(f) and (g) (Deleted by amendment, L. 2006, p. 552, § 3, effective August 7, 2006.)

(h) Any security of the investing public entity or any certificate of participation or other security evidencing rights in payments to be made by the investing public entity under a lease, lease-purchase agreement, or similar arrangement;

(h.5) Any certificate of participation or other security evidencing rights in payments to be made by a school district under a lease, lease-purchase agreement, or similar arrangement if the security, at the time of purchase, carries at least two credit ratings from any of the nationally recognized credit rating agencies and is rated at or above "A" by all such credit agencies that have provided a rating;

(i) Any interest in any local government investment pool organized pursuant to part 7 of this article;

(j) The purchase of any repurchase agreement concerning any securities referred to in paragraph (a) or (b) of this subsection (1) that can otherwise be purchased under this section if all of the conditions of subparagraphs (I) to (VI) of this paragraph (j) are met:

(I) The securities subject to the repurchase agreement must be marketable.

(II) The title to or a perfected security interest in such securities along with any necessary transfer documents must be transferred to the investing public entity or to a custodian acting on behalf of the investing public entity.

(III) Such securities must be actually delivered versus payment to the public entity's custodian or to a third-party custodian or third-party trustee for safekeeping on behalf of the public entity.

(IV) The collateral securities of the repurchase agreement must be collateralized at no less than one hundred two percent and marked to market no less frequently than weekly.

(V) The securities subject to the repurchase agreement may have a maturity in excess of five years.

(VI) The period from the date of settlement of a repurchase agreement to its maturity date shall be no more than five years unless the governing body of the public entity authorizes investment for a period in excess of five years.

(j.5) Any reverse repurchase agreement concerning any securities referred to in paragraph (a) or (b) of this subsection (1) that can otherwise be purchased under this section if all of the conditions of subparagraphs (I) to (VII) of this paragraph (j.5) are met:

(I) Any necessary transfer documents must be transferred to the investing public entity.

(II) Cash must be received by the investing public entity or a custodian acting on behalf of the investing public entity in a deliver versus payment settlement.

(III) The cash received from a reverse repurchase agreement must be collateralized at no more than one hundred and five percent and marked to market no less frequently than weekly.

(IV) The repurchase agreement is not greater than ninety days in maturity from the date of settlement unless the governing body of the public entity authorizes investment for a period in excess of ninety days.

(V) The counter-party meets the credit conditions of an issuer that would qualify under paragraph (m) of this subsection (1).

(VI) The value of all securities reversed under this paragraph (j.5) does not exceed eighty percent of the total deposits and investments of the public entity.

(VII) No securities are purchased with the proceeds of the reverse repurchase agreement that are greater in maturity than the term of the reverse repurchase agreement.

(j.7) A securities lending agreement in which the public entity lends securities in exchange for securities authorized for investment in this section, if all of the following conditions are met:

(I) Any necessary transfer documents must be transferred to the investing public entity.

(II) Securities must be received by the investing public entity or a custodian acting on behalf of the investing public entity in a simultaneous settlement.

(III) The securities received in the securities lending agreement must be no less than one hundred two percent of the value of the securities lent and marked to market no less frequently than weekly.

(IV) The counter-party meets the conditions of an issuer specified in paragraph (m) of this subsection (1).

(V) In the case of a local government, the securities lending agreement shall be approved and designated by written resolution adopted by a majority vote of the governing body of the local government, which resolutions shall be recorded in its minutes.

(k) Any money market fund that is registered as an investment company under the federal "Investment Company Act of 1940", as amended, if, at the time the investing public entity invests in such fund:

(I) The investment policies of the fund include seeking to maintain a constant share price;

(II) No sales or load fee is added to the purchase price or deducted from the redemption price of the investments in the fund and no fee may be charged unless the governing body of the public entity authorizes such a fee at the time of the initial purchase;

(III) The investments of the fund consist only of securities with a maximum

remaining maturity as specified in rule 2a-7 under the federal "Investment Company Act of 1940", as amended, or any successor regulation under such act regulating money market funds, so long as such rule 2a-7 is not amended to, or such successor regulation does not, increase the maximum remaining maturity of such securities to a period that is greater than three years, and if the fund has assets of one billion dollars or more, or has the highest current credit rating from one or more nationally recognized organizations that regularly rate such obligations.

(IV) The dollar-weighted average portfolio maturity of the fund meets the requirements specified in rule 2a-7 under the federal "Investment Company Act of 1940", as amended, or any successor regulation under such act regulating money market funds, so long as such rule 2a-7 is not amended to increase the dollar-weighted average portfolio maturity of a fund to a period greater than one hundred eighty days.

(l) (I) Any guaranteed investment contract, guaranteed interest contract, annuity contract, or funding agreement if, at the time the contract or agreement is entered into, the long-term credit rating, financial obligations rating, claims paying ability rating, or financial strength rating of the party, or of the guarantor of the party, with whom the public entity enters the contract or agreement is, at the time of issuance, rated in one of the two highest rating categories by two or more nationally recognized securities rating agencies that regularly issue such ratings.

(II) (Deleted by amendment, L. 2004, p. 950, 7, effective May 21, 2004.)

(III) (A) Except as provided in sub-subparagraph (B) of this subparagraph (III), the contracts or agreements purchased under this paragraph (l) shall not have a maturity period greater than three years.

(B) Contracts or agreements with a maturity period greater than three years shall only be purchased with proceeds of the sale of securities of a public entity and proceeds of certificates of participation or other securities evidencing rights in payments to be made by a public entity under a lease, lease-purchase agreement, or other similar arrangement or if purchased by revenues pledged to the payment of such securities or certificates; except that no contract or agreement may be purchased pursuant to this paragraph (l) with the proceeds of any of the foregoing that are held in an escrow or otherwise for the purpose of refunding bonds or other obligations of a public entity.

(m) (I) Any corporate or bank security that is denominated in United States dollars, that matures within three years from the date of settlement, that at the time of purchase carries at least two credit ratings from any of the nationally recognized statistical ratings organizations, and that is not rated below:

(A) "A1, P1, or F1" or their equivalents by either rating used to fulfill the requirements of this subparagraph (I) if the security is a money market instrument such as commercial paper or bankers' acceptance; or

(B) "AA- or Aa3" or their equivalents by either rating used to fulfill the requirements of this subparagraph (I) if the security is any other kind of security.

(II) At no time shall the book value of a public entity's investment in notes evidencing a debt pursuant to this paragraph (m) exceed the following:

(A) Fifty percent of the book value of the public entity's investment portfolio unless the governing body of the public entity authorizes a greater percent of such book value; or

(B) Five percent of the book value of the public entity's investment portfolio if the notes are issued by a single corporation or bank unless the governing body of the public entity authorizes a greater percent of such book value.

(III) No subordinated security may be purchased pursuant to this paragraph (m). No security issued by a corporation or bank that is not organized and operated within the United States may be purchased pursuant to this paragraph (m) unless the governing body of the public entity authorizes investment in such securities.

(n) (Deleted by amendment, L. 2006, p. 552, § 3, effective August 7, 2006.)

(1.3) (a) Except as provided in paragraph (a) of subsection (1) of this section and except as provided in paragraph (b) of this subsection (1.3), public funds shall not be invested in any security on which the coupon rate is not fixed, or a schedule of specific fixed coupon rates is not established, from the time the security is settled until its maturity date, other than shares in qualified money market mutual funds, unless the coupon rate is:

(I) Established by reference to the rate on a United States treasury security with a maturity of one year or less or to the United States dollar London interbank offer rate of one year or less maturity, or to the cost of funds index or the prime rate as published by the federal reserve; and

(II) Expressed as a positive value of the referenced index plus or minus a fixed number of basis points.

(b) A municipal index may be used for the investment of bond or note accounts from issues with coupons linked to the same index.

(c) For purposes of this section, "maturity date" means the last possible date, barring default, that principal can be repaid to the purchaser.

(1.5) Any firm that sells any financial instrument that fails to comply with the provisions of this section to any public entity in the state of Colorado shall, upon demand of the public entity through the state treasurer, repurchase such instruments for the greater of the original purchase principal amount or the original face value, plus any and all accrued interest, within one business day of the demand.

(2) Investments made pursuant to this section shall be made in conformance with the standard set forth in section 15-1-304, C.R.S.

(2.3) Public entities shall adopt criteria designating eligible broker-dealers for the purchase of term securities, except for bond proceed investments, under this section.

(2.5) (a) If a public entity invests public moneys through an investment firm offering for sale corporate stocks, bonds, notes, debentures, or a mutual fund that contains corporate securities, the investment firm shall disclose, in any research or other disclosure

documents provided in support of the securities being offered, to the public entity whether the investment firm has an agreement with a for-profit corporation that is not a government-sponsored enterprise, whose securities are being offered for sale to the public entity and because of such agreement the investment firm:

(I) Had received compensation for investment banking services within the most recent twelve months; or

(II) May receive compensation for investment banking services within the next three consecutive months.

(b) For the purposes of this subsection (2.5), "investment firm" means a bank, brokerage firm, or other financial services firm conducting business within this state, or any agent thereof.

(3) Nothing in this section is intended to limit:

(a) The power of any public entity to invest any public funds in any security or other investment permitted to such public entities under any other valid law of the state; or

(b) The power of any home rule city, city and county, town, or county to invest any public funds in any security or other investment permitted under the charter or ordinance of such home rule city, city and county, town, or county; or

(c) The authority of the state board of regents to invest any funds available to the board in any security or other investment otherwise provided by law.

(3.5) (Deleted by amendment, L. 2006, p. 552, § 3, effective August 7, 2006.)

(4) Nothing in this section is intended to apply to public funds held or invested as part of any pension plan, full or supplemental retirement plan, or deferred compensation plan.

24-75-601.2. Prior investments valid. Nothing in this article shall be construed so as to invalidate any legal investment made prior to July 1, 1989. Such investments shall continue to be authorized through their dates of maturity.

24-75-601.3. Remedial actions - investments not made in conformance with statute. The audit of the financial statements of public entities required by part 6 of article 1 of title 29, C.R.S., shall, in addition to all other requirements, include a supplemental listing of all investments held by the public entity at the date of the financial statement. The public entity shall divest itself of any investment which is not included as a lawful investment in section 24-75-601.1 or other statutory authority within six months of the initial disclosure of the existence of such investment.

24-75-601.4. Liability of officials of public entities. Elected or appointed officials or employees of public entities who, in the good faith performance of their duties as public officials, comply with the standards established in this part 6 for the investment of public funds in securities shall not be liable for any loss of public funds resulting from such investment.

24-75-601.5. Liability for sale of unlawful investments to public entities. (1) Any person who sells or causes to be sold to a public entity any investment which is not a lawful investment for such public entity pursuant to section 24-75-601.1 or other authority, and who knew or should have known that said investment was not a lawful investment, shall be liable to such public entity for any loss of investment principal resulting from such investment and, in addition, shall be liable for any reasonably foreseeable costs resulting from such loss, including but not limited to:

(a) Attorney fees; and

(b) Interest on the principal which would have resulted from the investment of said principal on the day the unlawful investment was made in one-year United States treasury bills at the market yield on such bills on such day.

24-75-602. Bonds of housing authority as legal investments. Notwithstanding any restrictions on investments contained in any laws of this state, all banks, bankers, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business and all insurance companies, insurance associations, and other persons carrying on an insurance business may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to the "Housing Authorities Law", part 2 of article 4 of title 29, C.R.S., or issued by any public housing authority or agency in the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, and such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, firms, corporations, and associations, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations. Public entities, as defined in section 24-75-601 (1), may invest public funds in such bonds or other obligations only if said bonds or other obligations satisfy the investment requirements established in this part 6. Nothing contained in this section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

24-75-603. Depositories. (1) It is lawful for the state of Colorado and any of its institutions and agencies, counties, municipalities, and districts; any other political subdivision of the state; any department, agency, or instrumentality thereof; or political or public corporation of the state; and any bank, savings and loan association, credit union, fraternal benefit society, trust deposit and security company, trust company, or other financial institution operating under the laws of this state having funds in their possession or custody, respectively, to deposit, or cause to be deposited either by or through the treasurer or such other custodian of funds as may be appointed, such funds so eligible for investment in any state bank, national bank, or state or federal savings and loan association in Colorado that is, at the time the deposit is made, a member of the federal deposit insurance corporation or its successor to the extent that the deposit is insured by the federal deposit insurance corporation or its successor or is secured by pledge of eligible collateral as required by statute.

(2) Notwithstanding any provisions of law of this state or any rule or requirement of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond, or any other form, such security for deposits of public funds shall not be required to the extent said deposits are insured by the federal deposit insurance corporation or its successor.

(3) Repealed.

(4) In lieu of or in addition to other statutory authorization for the investment of public funds, any public funds that are not needed for current operating expenses may be invested in accordance with the following conditions:

(a) The public funds shall initially be placed by the public entity in a bank or savings and loan association located in this state that is an eligible public depository certified by the state banking board or the state financial services board that offers federal deposit insurance corporation insurance on its deposits;

(b) The selected eligible public depository simultaneously shall arrange for the deposit of any public funds initially placed in such eligible public depository that are in excess of the amount insured by the federal deposit insurance corporation, or its successor, in one or more certificates of deposit fully insured by the federal deposit insurance corporation in one or more other banks or savings and loan associations wherever located in the United States, for the account of the public entity;

(c) At the same time the public funds are deposited and the certificates of deposit are issued for the benefit of the public entity, the eligible public depository shall receive an amount of deposits from customers of other banks or savings and loan associations equal to the amount of the public funds initially placed by the public entity;

(d) Each such certificate of deposit shall be insured by the federal deposit insurance corporation;

(e) The selected eligible public depository shall act as custodian for the public

entity with respect to the certificates of deposit issued for the public entity's account;

(f) Public funds invested in accordance with paragraphs (a) to (e) of this subsection (4) are not subject to the collateralization, requirements, or restrictions of article 10.5 of title 11, C.R.S., except for certification as an eligible public depository as provided in paragraph (a) of this subsection (4); and

(g) Banks and savings and loan associations that accept public funds for the purposes of investing them in accordance with paragraphs (a) to (e) of this subsection (4) are not subject to the additional requirements or restrictions of article 10.5 of title 11, C.R.S., except for certification as an eligible public depository as provided in paragraph (a) of this subsection (4).

24-75-604. Investments in bonds issued by member institutions of the farm credit system. All savings banks, insurance companies, assurance, casualty, fidelity, and guaranty companies, and savings and loan associations which are permitted or directed by the laws of the state of Colorado to invest any of their moneys or deposits in securities may invest such moneys or deposits in bonds issued by any federal land bank or joint-stock land bank organized pursuant to an act of congress known as the "Farm Credit Act of 1971", and acts amendatory thereto. Such bonds shall be accepted as security for all public deposits and in all cases where bonds are required by law to be deposited with any department or public official of the state of Colorado; but this section shall not be so construed as to prohibit such moneys or deposits from being invested in such other securities as are provided for by law.

24-75-605. Legal investments - cities of twenty-five thousand or more population - limitation in class of investments. (1) Whenever cities having a population of twenty-five thousand or more, as determined by the last preceding federal decennial census, have moneys in policemen's or firefighters' pension funds, or other special funds of said cities, including pension, endowment, and trust funds, whether or not administered by a board or similar authority, it is lawful to invest or reinvest these moneys as set forth in this section if the authorization to invest moneys as provided in this section does not affect the administration of or control over the various funds, to wit:

(a) Class 1. Bonds or warrants of the United States, the state of Colorado, or in the bonds of any other state of the United States;

(b) Class 2. General obligation bonds of any city, town, or school district of the state of Colorado, the valuation for assessment of which city, town, or school district in the year next preceding the year in which such bonds may be purchased equals or exceeds two million dollars;

(c) Class 3. Obligations secured by first liens on real estate or by pledge of

specific income or revenue and issued, insured, or guaranteed by any agency or instrumentality of the United States or the state of Colorado;

(d) Class 4. Notes, bonds, or debentures which are direct obligations of United States corporations engaged in the production, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or water works, or any combination of them, which, at the time of purchase, are designated as investment grade securities by any two nationally recognized investment services as may, from time to time, be designated by the city council;

(e) Class 5. In share certificates for savings accounts in any state or federally chartered savings and loan association in Colorado if said association is a member of the federal deposit insurance corporation or its successor and further if the full amount of each account is insured by the federal deposit insurance corporation or its successor; and in any time certificate of deposit or savings account in any state or national bank in Colorado, which certificates of deposit or savings accounts are fully insured by the federal deposit insurance corporations or its successor;

(f) Class 6. In stocks, preferred or common, or bonds of corporations, created or existing under the laws of the United States, or any state, district, or territory thereof, which, at the time of purchase, are listed on a national stock exchange in the United States.

(2) Investments under this section shall be limited in their acquisition and retention in the above classes of securities so that the aggregate of all investments in each separate fund at any time shall be as follows:

(a) Classes 1, 2, and 3, or any combination thereof, up to any amount but not less than seventy percent;

(b) Class 4. In any amount not to exceed thirty percent;

(c) Class 5. In any amount that is fully insured by the federal deposit insurance corporation or its successor.

(3) The legal investments in this section authorized for cities having a population of twenty-five thousand or more shall be in addition to those investments otherwise by law authorized for said cities.

(4) Notwithstanding the provisions of subsection (2) of this section, investments of firefighters' pension funds shall be limited in their acquisition and retention in the classes of securities set forth in subsection (1) of this section so that the aggregate of all investments in each separate fund at any time shall be as follows:

(a) Classes 1, 2, and 3, or any combination thereof, up to any amount but not less than fifty percent;

(b) Class 4. In any amount not to exceed fifty percent, but not more than fifty percent of such class 4 aggregate may be invested in class 4 notes, bonds, or debentures which are convertible into shares of common stock or in common stocks of such class 4;

(c) Class 6. In any amount not to exceed fifty percent;

(d) As a further limitation thereon, in any amount not to exceed seven percent or one hundred thousand dollars, whichever is the greater, of any one issue valued at the time of purchase;

(e) In no event shall any investment be made in the common or preferred stock, or both, of any single corporation in an amount in excess of five percent of the then book value of the assets of the retirement fund.

PART 7

INVESTMENT FUNDS - LOCAL GOVERNMENT POOLING

24-75-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Administrator" means the administrator of a local government investment pool trust fund created pursuant to section 24-75-703.

(2) "Board" or "board of trustees" means the board of trustees composed of members that are selected from among the treasurers or other local officials empowered to invest the funds of local governments pursuant to section 24-75-703 (2), and any other independent and unaffiliated trustees named by such members.

(3) "Custodian" means a designee located in the state of Colorado, with authority, including control, over public funds of a local government investment pool trust fund. For purposes of this subsection (3), "control" includes possession of public funds of a local government investment pool trust fund, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of authority over such public funds requires action by or the consent of two or more putative custodians, then such custodians shall be treated as one custodian with respect to such public funds.

(4) "Financial institution" means an institution, with its primary place of business in this state and authorized by its charter to exercise fiduciary powers, that is a state bank, savings and loan association, or trust company chartered by this state, a national bank organized or chartered under chapter 2 of title 12 of the United States Code, or a federal savings and loan association organized or chartered under chapter 12 of title 12 of the United States Code.

(5) (a) "Investment adviser" means, except as provided in paragraph (b) of this subsection (5), any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide such

investment advisory services to a local government investment pool trust fund for compensation or who hold themselves out as providing investment advisory services to a local government investment pool trust fund for compensation.

(b) "Investment adviser" does not include:

(I) A publisher of any bona fide newspaper, magazine, or business or financial publication with a regular and paid circulation; a publisher of any securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situations; or any author of material included in any such newspaper, magazine, publication, or newsletter who does not otherwise come within the definition of an "investment adviser" or "investment adviser representative";

(II) An investment adviser representative;

(III) A broker-dealer or sales representative for a broker-dealer licensed by the securities commissioner whose performance of investment advisory services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for such services;

(IV) A financial institution or any person employed by or directly associated with a financial institution;

(V) A lawyer, certified public accountant, professional engineer, professional geologist, or teacher, if such person:

(A) Does not take possession of the funds or securities of a local government investment pool trust fund in connection with providing investment advisory services; and

(B) Does not receive commissions or other compensation, directly or indirectly, from the sale of any security to any local government investment pool trust fund to whom such person provides advice about the value or advisability of investing in such security; and

(C) Does not engage in the business of advising a local government investment pool trust fund as to the value of securities or as to the advisability of investing in, purchasing, or selling securities and provides such advice, if at all, in a manner solely incidental to the practice of the person's profession;

(VI) Any official, employee, or representative of the United States, any state, any political subdivision of a state, or any agency or body corporate or other instrumentality thereof, acting in such person's official capacity on behalf of such entity;

(VII) Any other person or class of persons the securities commissioner designates by rule or order.

(6) "Investment adviser representative" means any individual who is a partner, officer, or director of an investment adviser, who occupies a similar status with or performs similar functions for an investment adviser, or who is employed or otherwise associated with an investment adviser, except clerical or ministerial personnel, and who:

(a) Makes any recommendations or otherwise renders advice regarding securities;

(b) Manages accounts or portfolios of clients of the investment adviser;

(c) Determines which recommendation or advice regarding securities should be given;

(d) Solicits, offers, negotiates for the sale of, or sells, investment advisory services; or

(e) Supervises employees who perform any of the duties specified in this subsection (6).

(7) "Investment advisory services" means those activities performed by a person in connection with such person's engaging in any of the activities described in paragraph (a) of subsection (5) of this section.

(8) "Local government" means any county, city and county, town, school district, special district, or other political subdivision of the state, or any department, agency, or instrumentality thereof, or any political or public corporation of the state.

(9) "Local government investment pool trust fund" means the trust fund created pursuant to section 24-75-703, that is comprised of moneys deposited by participating local governments in such trust fund and held by a custodian.

(10) "Participating local government" means a local government that participates in a local government investment pool trust fund.

(11) "Securities commissioner" means the commissioner of securities created by section 11-51-701, C.R.S.

(12) "Trust fund" means a local government investment pool trust fund.

24-75-702. Local governments - authority to pool surplus funds. (1) In accordance with the provisions of this part 7, it is lawful for any local government to pool any moneys in its treasury, which are not immediately required to be disbursed, with the same such moneys in the treasury of any other local government and to deposit such moneys in a local government investment pool trust fund in order to take advantage of short-term investments and maximize net interest earnings.

(2) Any trust fund formed pursuant to this part 7 shall be subject to part 4 of article 6 and part 2 of article 72 of this title and shall be considered a local public body for purposes of those provisions.

24-75-703. Local government investment pooling - trust method - resolution - filing requirements. (1) The governing body of each local government that desires to participate in a local government investment pool trust fund shall cooperate in drafting a uniform resolution to be adopted by a majority vote of the governing body of each participating local government. The resolution shall provide for, but need not be limited to, the following:

(a) Establishment of a local government investment pool trust fund;

(b) A statement of the purposes and objectives of the trust fund, including, but not limited to:

(I) The investment objectives of the trust fund;

(II) A description of eligible trust fund investments;

(III) Credit standards for trust fund investments;

(IV) Allowable maturity ranges for trust fund investments;

(V) The portfolio concentrations permitted for each type of security owned by the trust fund; and

(VI) Supervision of the trust fund by a board of trustees composed of members that are selected from among the treasurers or other local officials empowered to invest local funds of the participating local governments and such other independent and unaffiliated trustees named by such members and, a description of the powers and duties of the board of trustees;

(c) Appointment of an administrator with its primary place of business in this state for the trust fund by the board of trustees, the manner of such administrator's appointment, and the duties of such administrator;

(d) Appointment of a custodian of the trust fund by the board of trustees and a statement of the powers and duties of the custodian and the custodial arrangements, including, but not limited to:

(I) The safekeeping practices utilized for the trust fund;

(II) Maximum and minimum account sizes;

(III) Maximum and minimum transaction sizes for deposits to and withdrawals from such accounts;

(IV) Instructions for establishing accounts and making deposits to and withdrawals from such accounts; and

(V) The requirement that the primary records of the trust fund be maintained in this state.

(e) Appointment by the board of trustees of an investment adviser with its principal place of business in this state registered with the securities and exchange commission under the federal "Investment Advisers Act of 1940", or licensed as an investment adviser by the securities commissioner, or either a licensed broker-dealer with its primary place of business in this state or a financial institution to act in an advisory capacity, and a description of the duties and obligations of such adviser, advisory broker-dealer, or financial institution;

(f) The repayment from the earnings of the trust fund of costs incurred in the establishment of the trust fund;

(g) Payment of the expenses of administration from the income received from the earnings of the trust fund;

(h) Limitations, if any, on the aggregate amount of moneys which any participating local government may have on deposit in the trust fund at one time;

(i) Limitations, if any, on the period of time that the funds of any participating local government may be held in trust;

(j) Penalties upon participating local governments for early withdrawal of funds and procedures for resolving other contingencies which may jeopardize the earning potential of the trust fund; except that, any such penalty shall be payable only from earnings on the funds of the participating local government and the amount deposited by each participating local government in the trust fund;

(k) Distribution of the income from earnings of the trust fund to participating local governments on a pro rata basis;

(l) Maintenance of separate accounts for each participating local government; however, individual transactions and totals of all investments, or the share belonging to each participating local government, shall be recorded in the accounts;

(m) Annual audits of trust fund management pursuant to section 11-51-906 (4), C.R.S.;

(n) Quarterly reports to each participating local government which show the investments and the earnings thereon pursuant to section 11-51-906 (2), C.R.S.;

(o) Disclosure of administrative and associated costs incurred by the trust fund;

(p) Purchase of surety or other bonds necessary to protect the trust fund;

(q) That neither the trust fund's administrator, investment adviser, or investment adviser representative may act as a principal in the purchase of securities from or the sale of securities to the trust fund; and

(r) The method of voting of the trust membership and whether the voting shall be by each participating local government or by number of shares held by any participating local government.

(2) The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, waive any of the requirements set forth in subsection (1) of this section if the securities commissioner finds that the applicability of such requirements is not necessary in the public interest and for the protection of participating local governments.

(3) By separate resolution similarly adopted, the governing body of each participating local government shall authorize investment of any moneys in its treasury, which are not immediately required to be disbursed, in a local government investment pool trust fund established pursuant to this section. The resolution shall name the local government official, who may be the treasurer or other official empowered to invest local funds, responsible for deposit and withdrawal of such funds. In making such deposits and withdrawals, such official shall use prudence and care to preserve the principal and to secure the maximum rate of interest consistent with safety and liquidity. The resolution shall be filed with the board of trustees of the trust fund.

(4) Any local government which invests in a local government investment pool trust fund shall make available for public inspection the name, address, and telephone

number of any such trust fund in which the local government has deposited funds, as well as the most recent information statement or prospectus provided by such trust fund describing the funds, investments, and performance, including net rate of return earned for the most recent year or quarter after deduction of administrative expenses.

24-75-704. Investments - limitations. (1) The investments made with local government investment pool trust fund moneys shall be limited to those instruments which all participating local governments may individually invest in by law. The trust fund shall not be used to circumvent such statutory limitations on the investment authority of participating local government entities.

(2) In order to assure compliance with subsection (1) of this section, the securities commissioner may, by rule or order, require trust funds to be in substantial compliance with the rules and regulations regarding money market funds promulgated by the securities and exchange commission under section 270 of the federal "Investment Company Act of 1940". The securities commissioner may, by rule or order, waive or modify such rules or orders if the securities commissioner finds that their application in a particular instance is not necessary in the public interest.

24-75-705. Board of trustees - duties - liabilities. (1) The board of trustees of any local government investment pool trust fund moneys authorized by this section shall invest in compliance with the requirements of this section and with that degree of judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital and need for liquidity as well as the probable income to be derived.

(2) The board shall exercise the functions over which such board has substantial discretion solely in the interest of the participating local governments and for the exclusive purpose of providing earnings and defraying expenses incurred in administering the trust fund. The board shall act in accordance with the provisions of this part 7 and with the care, skill, and due diligence in light of the circumstances then prevailing that a person in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

(3) It is unlawful for a member of the board to engage in any activities which might result in a conflict of interest with such member's functions as a fiduciary of the trust fund.

24-75-706. Custodian - location - unlawful activities. (1) It is unlawful for any

custodian of a local government investment pool trust fund to:

(a) Maintain the primary records of the assets of the trust fund anywhere but within the state of Colorado;

(b) Act as a trustee, administrator, or investment adviser of the trust fund, except that a financial institution, or any person employed by or directly associated with a financial institution, acting as a custodian for a trust fund is not prohibited from also acting as administrator or in any advisory capacity for such trust fund;

(c) Effect any transaction to relinquish possession of, distribute, expend, or transfer any of the assets of the trust fund without the prior written authorization of the board, except for:

(I) The purchase or sale of authorized investments or the exchange of such assets for other assets of equal or greater value provided that such sale, purchase, or exchange is solely in the accounts of the trust fund;

(II) Distributions to participating local governments; or

(III) The payment of routine fees and expenses that have been authorized by the board of trustees in the annual budget of the trust fund; or

(d) Execute any transaction with any of the assets of the trust fund without the written instruction of the investment adviser or a financial institution acting in an advisory capacity.

(2) The custodian shall reconcile the accounts of a trust fund on a daily basis.

24-75-707. Investment adviser - duties - unlawful activities. (1) An investment adviser, a broker-dealer, or a financial institution acting in an advisory capacity for a local government investment pool trust fund which contracts with the board of trustees of such trust fund shall be held to the standard of conduct set forth in section 24-75-705 with respect to those functions over which such investment adviser, broker-dealer, or financial institution has substantial discretion.

(2) It is unlawful for any investment adviser to a local government investment pool trust fund or any investment adviser representative of such investment adviser to:

(a) Act as a member of the board of trustees or custodian of that trust fund; or

(b) Maintain the primary records of the trust fund anywhere but within this state; except that, the securities commissioner may, by rule or order, and subject to such terms and conditions as prescribed therein, permit the maintenance of such records in another state if the securities commissioner finds that maintenance of such records in this state is not necessary in the public interest and for the protection of participating local governments.

(3) It is unlawful for any broker-dealer or financial institution acting in an advisory capacity to a local government investment pool trust fund or any person employed by or directly associated with a broker-dealer or financial institution acting in

an advisory capacity to such a trust fund to:

(a) Act as a member of the board of trustees of that trust fund; or

(b) Maintain the primary records of the trust fund anywhere but within this state; except that, the securities commissioner may, by rule or order, and subject to such terms and conditions as prescribed therein, permit the maintenance of such records in another state if the securities commissioner finds that maintenance of such records in this state is not necessary in the public interest and for the protection of participating local governments.

24-75-708. Administrator - duties - unlawful activities. (1) Every local government investment pool trust fund shall be administered by an administrator in this state appointed by the board of trustees of such pool. The administrator shall have such duties as may be prescribed by the securities commissioner by rule.

(2) It is unlawful for an administrator to:

(a) Act as a trustee or custodian of a local government investment pool trust fund, except that a financial institution, or any person employed by or directly associated with a financial institution, acting as the administrator for a trust fund is not prohibited from also acting as custodian for such trust fund; or

(b) Maintain the primary records of the trust fund anywhere but within this state; except that, the securities commissioner may, by rule or order, and subject to such terms and conditions as prescribed therein, permit the maintenance of such records in another state if the securities commissioner finds that maintenance of such records in this state is not necessary in the public interest and for the protection of participating local governments.

24-75-709. Administration and enforcement. This part 7 shall be administered and enforced by the securities commissioner pursuant to section 11-51-902, C.R.S.

PART 8

MANAGEMENT INCENTIVE PROGRAM

24-75-801 to 24-75-803. (Repealed)

PART 9

FUNDS MANAGEMENT ACT OF 1986

24-75-901. Short title. This part 9 shall be known and may be cited as the "Funds Management Act of 1986".

24-75-902. Legislative declaration. The general assembly hereby finds and declares that, since the state currently experiences and may hereafter experience fluctuations in revenues and expenditures and temporary cash flow deficits resulting in the temporary inability to pay proper expenses from currently budgeted and appropriated revenues of its various funds and since the state must maintain its reputation for timely payment to its creditors and suppliers, this part 9 is necessary for the immediate preservation of the public peace, health, and safety.

24-75-903. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Book entry" means a form of issuance under which no physical instrument is issued and the rights to principal and interest payments are evidenced by and may be transferred only through a bookkeeping entry in a central registry.

(1.5) "Expenditure" means any cash expenditure or other cash disbursement which may be made from revenue duly credited to a particular fund.

(2) "Fund" means any fund or group of accounts to which state moneys are credited, including, but not limited to: The general fund, the highway users tax fund, the Pinnacol Assurance fund, the Colorado water conservation board construction fund, the central services revolving fund, the correctional industries account, the capital construction fund, the severance tax trust fund, and the higher education fund.

(3) "Note" means any note or other evidence of borrowing made under the authority of this part 9.

(4) "Revenue" means any cash income or other cash receipt duly credited to a particular fund.

(5) and (6) Repealed.

24-75-904. Computations. In computing the amount of revenue in a particular fund, there shall not be considered the proceeds of any note or other borrowing credited to such fund or any income from the investment of revenue or of such proceeds. Likewise, in computing the amount of expenditure in a particular fund, there shall not be considered the payments of principal, interest, or premium on any note or other borrowing payable from such fund.

24-75-905. Authority to issue and sell notes. (1) The state treasurer, on behalf of the state, may, by resolution, issue from time to time and sell notes payable from the anticipated revenue of any fund in order to accomplish any of the purposes of this part 9. The proceeds of the notes may be applied for the payment of the costs of issuing the notes, for the payment of any expenditure otherwise payable from the revenue of the fund upon which the notes are issued, for the payment of the principal of, the interest on, or any premium due in connection with the redemption, purchase, or payment of any notes, or for the payment of any combination thereof. Pending such application, such proceeds may be invested or deposited as provided in this part 9.

(2) The state treasurer has the following powers in order to accomplish any of the purposes of this part 9, in addition to the powers otherwise granted by law:

(a) To use the seal of the state treasurer;

(b) To issue notes for the purposes provided in this part 9;

(c) To adopt resolutions;

(d) To engage the services of consultants, financial advisors, underwriters, attorneys, paying agents, registrars, remarketing agents, indexing agents, depositories, and other agents whose services may be required in connection with the notes;

(e) To enter into contracts and agreements in connection with the notes, including but not limited to contracts with persons specified in paragraph (d) of this subsection (2) and contracts providing for the purchase or repurchase of the notes; and

(f) To do all things necessary and convenient to carry out the purposes of this part 9 and in connection with the issuance of notes.

(3) The controller and the director of the office of state planning and budgeting shall, at the request of the state treasurer, assist and advise the state treasurer concerning the amount of notes to be issued and the terms and conditions under which the notes are to be issued.

24-75-906. Limitation on amount of notes. The principal amount of notes payable from any fund shall be limited to fifty percent of the amount of revenue anticipated but not yet credited to the fund for the applicable fiscal year.

24-75-907. Form and terms of notes. (1) Notes shall be issued in a form consistent with the provisions of this part 9, describing the fund and the revenue from which such notes are payable; shall mature not later than three days before the last day of the fiscal year in which the same were issued; shall bear interest, if any, at a rate or rates determined by the state treasurer to be for the best advantage of the state; and may be redeemable, payable, or subject to purchase prior to maturity at such time and upon the payment of such premium or premiums, if any, as shall be determined by the state

treasurer to be for the best advantage of the state. Book entry issuance is a form consistent with this part 9. The rate or rates of interest borne by the notes may be fixed, adjustable, or variable or any combination thereof. If any rate or rates are adjustable or variable, the standard, index, method, or formula pursuant to which the same are to be determined from time to time shall be set forth in the state treasurer's resolution authorizing the issuance of the notes. Such standard, index, method, or formula may include a delegation of authority to an agent acting for and on behalf of the state to determine a rate or rates within parameters, including a maximum interest rate, prescribed by the state treasurer in the resolution authorizing the issuance of the notes.

(2) In connection with the issuance of any notes, the state treasurer may direct the controller to create such restricted accounts within any fund as may be necessary or convenient for the segregation of note proceeds and investment income therefrom, revenue and investment income therefrom, or other sums, and the state treasurer may pledge any such accounts to and create liens thereon in favor of the owners of the notes; except that the aggregate amount of all such restricted accounts other than those created for note proceeds and investment income therefrom shall not exceed the principal and interest due at maturity on such notes. In connection with such issuance, the state treasurer may also make such customary covenants on behalf of the state as may be necessary to secure the notes.

(3) Any pledge made by the state treasurer shall be valid and binding from the time the pledge is made. The revenues and moneys so pledged and thereafter received shall immediately be subject to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, by contract, or otherwise against such pledging parties, irrespective of whether such claiming parties have notice of such lien. The resolution by which a pledge is created need not be recorded. Said resolution shall constitute a commitment voucher for purposes of section 24-30-202. The execution by the state treasurer and the controller of said resolution shall constitute the controller's approval of the commitment voucher and the treasurer's authorization of the expenditure of moneys from the state treasury to pay costs of issuance and the principal of and interest on notes at maturity.

24-75-908. Execution of notes. (1) The notes shall be signed on behalf of the state by the state treasurer and countersigned by the controller, and the seal of the state treasurer shall be affixed thereto; except that no such signatures or seal shall be required if the notes are issued in book entry form pursuant to section 24-75-907 (1). The resolution authorizing the issuance of the notes may provide that the notes may be authenticated prior to delivery by the authorized representative of the registrar, paying agent, or depository.

(2) Pursuant to article 55 of title 11, C.R.S., any signature required by subsection (1) of this section may be a facsimile signature imprinted, engraved, stamped, or otherwise placed on the notes. If all signatures of public officials on the notes are facsimile signatures, provision shall be made for a manual authenticating signature on the notes by or on behalf of a designated authenticating agent. If an official ceases to hold office before delivery of the notes signed by such official, the signature or facsimile signature of the official is nevertheless valid and sufficient for all purposes. A facsimile of the seal of the state treasurer may be imprinted, engraved, stamped, or otherwise placed on the notes.

24-75-909. Manner of sale of notes. Notes may be sold at public or private sale and may be sold at, above, or below par.

24-75-910. Investment or deposit of proceeds - income therefrom. The state treasurer may invest and reinvest the proceeds of the notes in any securities which are legal investments for the fund from which the notes are payable or may deposit such proceeds in any eligible public depository. Notwithstanding the provisions of any other statute to the contrary, the income from any such investment or deposit shall be credited to the fund from which such notes are payable and shall be retained therein.

24-75-911. No debt created. Notes shall be payable solely from the revenues pledged thereto, and the owners or holders of the notes may not look to any other source for repayment of the principal of or interest on the notes. In every case, the revenues pledged shall be those which are the subject of appropriation for the current fiscal year and are yet to be credited to the applicable fund. The notes shall not constitute a debt or an indebtedness of the state within the meaning of any applicable provision of the state constitution or statutes.

24-75-912. Notes as legal investments and eligible collateral. Notwithstanding the provisions of any other statute to the contrary, notes meeting the investment requirements established in part 6 of this article shall be legal investments for any political subdivision or public body of the state and shall be eligible for use as collateral for deposits of public funds.

24-75-913. Construction with other statutes. The powers conferred by this part

9 shall constitute an additional and separate grant of powers for the issuance and payment of the notes and all other acts in connection therewith authorized by this part 9. The powers conferred by this part 9 are in addition to any other powers conferred by statute. If there is any inconsistency between the provisions of this part 9 and any other statutes, the provisions of this part 9 shall apply to the issuance of notes under this part 9.

24-75-914. State auditor - report. The state auditor shall annually prepare and submit a report to the legislative audit committee and to the finance committees of the senate and the house of representatives, which shall include, but need not be limited to, a review and analysis of the sales, purchases, and rates of any notes issued under this part 9 and any other information deemed by the state auditor to be necessary to judge the effectiveness of this part 9.

24-75-915. Savings clause. The repeal and reenactment of this part 9, effective July 1, 1986, shall 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.

PART 10

HIGHER EDUCATION FUND

24-75-1001. Higher education fund. (1) There is hereby created the higher education fund, which shall consist of all moneys which shall be allocated thereto by the state treasurer pursuant to subsection (2) of this section.

(2) The moneys annually allocated to the higher education fund shall be the amount of the total annual general fund appropriations to the department of higher education for that fiscal year. Such allocation shall be made, as moneys become available, on a periodic basis during such fiscal year commencing on July 1 or the beginning of such fiscal year.

(3) The higher education fund shall be separate from the general fund and considered a special fund under section 24-75-201.

(4) Nothing in subsection (1) of this section shall be construed to supersede the provisions of sections 23-20-117.5 and 23-30-106, C.R.S.

PART 11

TOBACCO SETTLEMENT FUNDS

24-75-1101. Legislative declaration. The general assembly hereby finds and declares that, pursuant to the master settlement agreement between several states, including Colorado, and certain tobacco companies, the state will receive substantial moneys for several years, and that such moneys may be reduced based on several factors, such as decreased sales of tobacco products. The general assembly further finds that such moneys will enable Colorado to enact tobacco use prevention, education, and cessation programs, related health programs, and literacy programs and that such programs must involve cost-effective programs at the state and local levels. For such purposes, the policies in this part 11 shall apply to all moneys received by the state from the master settlement agreement.

24-75-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver.

(2) "Settlement moneys" means the moneys received pursuant to the master settlement agreement, other than attorney fees and costs.

(2.5) "Strategic contribution fund moneys" means settlement moneys received by the state from the strategic contribution fund created under the terms of the master settlement agreement.

(3) "Tobacco settlement program" means any program that receives appropriations from moneys received by the state pursuant to the master settlement agreement.

24-75-1103. Policy on use of tobacco settlement funds. (1) No settlement moneys shall be used for a tobacco settlement program unless such program is expressly authorized by statute or is within the authority of the department or local government requesting funding. Nothing in this part 11 nor the establishment of any tobacco settlement program shall be deemed to create an entitlement to services or funding under this part 11 or other state law.

(2) Local governments are integral participants in the development and implementation of any tobacco prevention, education, and cessation programs. In addition

to the ability to participate in any state programs, a portion of the settlement moneys may be dedicated to local governments for locally operated tobacco use prevention, education, and cessation programs and related health programs.

(3) The majority of the moneys received by the state from the master settlement agreement shall be dedicated to improving the health of the citizens of Colorado, including tobacco use prevention, education, and cessation programs and related health programs. Such moneys are intended to supplement any moneys appropriated to health-related programs established prior to May 18, 2000.

(4) (a) Since the amount of moneys to be received by the state is uncertain, a portion of the settlement moneys shall be placed in an endowment trust fund created in section 24-22-115.5, with the principal and interest reinvested in the trust fund until the state auditor certifies that actuarially sound projections of future interest earnings indicate that the interest earned will be sufficient to fully fund the tobacco settlement programs. However, notwithstanding the policy prohibiting the appropriation of the principal in the trust fund, the principal may be expended as provided in section 24-22-115.5 (2).

(b) Repealed.

(5) A portion of the settlement moneys shall be used to strengthen and enhance the health of all residents of Colorado by supplementing and expanding statewide and local public health programs.

(6) A portion of the settlement moneys shall be allocated to methods of addressing tobacco-related health problems, including but not limited to programs designed for tobacco use prevention, reduction, cessation, and education and the reduction of second-hand smoke.

(7) A portion of the settlement moneys shall be invested in tobacco-related in-state research, including but not limited to research in such areas as tobacco-related disease, illness, education, evaluation, cessation, and prevention.

(8) A portion of the settlement moneys shall be invested in improving the literacy of Colorado's children through reading programs implemented by public schools throughout the state.

24-75-1104. Use of settlement moneys - programs - repeal. (Repealed)

24-75-1104.5. Use of settlement moneys - programs - repeal. (1) Except as otherwise provided in subsections (1.3) and (5) of this section, for the 2004-05 fiscal year and for each fiscal year thereafter, the following programs, services, or funds shall receive the following specified amounts from the settlement moneys received by the state in the preceding fiscal year:

(a) The Colorado nurse home visitor program created in article 6.4 of title 26,

C.R.S., shall receive the following amounts, not to exceed nineteen million dollars in any fiscal year, as provided in section 26-6.4-107, C.R.S.:

(I) For the 2004-05 fiscal year, nine percent of the total amount of settlement moneys received by the state;

(II) For the 2005-06 fiscal year, ten percent of the total amount of settlement moneys received by the state;

(III) For the 2006-07 fiscal year, eleven percent of the total amount of settlement moneys received by the state;

(IV) For the 2007-08 fiscal year, twelve percent of the total amount of settlement moneys received by the state;

(V) For the 2008-09 and 2009-10 fiscal years, thirteen percent of the total amount of settlement moneys received by the state;

(VI) For the 2010-11 fiscal year, fourteen percent of the total amount of settlement moneys received by the state;

(VII) For the 2011-12 fiscal year, the greater of fourteen percent of the total amount of settlement moneys received by the state or twelve million seven hundred twenty-seven thousand three hundred fifty dollars. The difference between fifteen percent of the total amount of settlement moneys received by the state and the amount actually received by the program pursuant to this subparagraph (VII) shall be transferred to the general fund.

(VIII) For the 2012-13 fiscal year, the greater of fourteen percent of the total amount of settlement moneys received by the state or twelve million seven hundred twenty-seven thousand three hundred fifty dollars. The difference between sixteen percent of the total amount of settlement moneys received by the state and the amount actually received by the program pursuant to this subparagraph (VIII) shall be transferred to the tobacco settlement defense account of the tobacco litigation settlement cash fund.

(IX) For the 2013-14 fiscal year, seventeen percent of the total amount of settlement moneys received by the state less one million dollars, which one million dollars shall be transferred to the tobacco settlement defense account of the tobacco litigation settlement cash fund;

(X) For the 2014-15 fiscal year, eighteen percent of the total amount of settlement moneys received by the state less one million dollars, which one million dollars shall be transferred to the tobacco settlement defense account of the tobacco litigation settlement cash fund;

(XI) For the 2015-16 fiscal year, nineteen percent of the total amount of settlement moneys received by the state less one million dollars, which one million dollars shall be transferred to the tobacco settlement defense account of the tobacco litigation settlement cash fund; and

(XII) For the 2016-17 fiscal year and for each fiscal year thereafter, nineteen percent of the total amount of settlement moneys received by the state.

(b) Repealed.

(c) (I) For fiscal year 2004-05 through fiscal year 2010-11, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive twenty-four percent of the total amount of settlement moneys annually received by the state, not to exceed thirty million dollars in any fiscal year, as provided in said section. If in any fiscal year the percentage of settlement moneys specified in this paragraph (c) does not equal at least seventeen million five hundred thousand dollars, the general assembly shall appropriate the amount of the shortfall out of the tobacco litigation settlement trust fund pursuant to section 24-22-115.5 (2) (a.7) (I) and, if necessary, for fiscal years prior to the 2007-08 fiscal year, out of the amount of settlement moneys transferred to the general fund pursuant to section 24-22-115 (3) or, for the 2007-08 fiscal year and for the 2008-09 fiscal year through the 2010-11 fiscal year, and prior to their allocation, out of the amount of settlement moneys to be allocated and transferred pursuant to subsection (1.5) of this section.

(II) For the 2011-12 fiscal year and each fiscal year thereafter, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive twenty-seven percent of the total amount of settlement moneys annually received by the state, not to exceed thirty-three million dollars in any fiscal year, as provided in said section. If in any fiscal year the percentage of settlement moneys specified in this paragraph (c) does not equal at least seventeen million five hundred thousand dollars, the general assembly shall appropriate the amount of the shortfall out of the tobacco litigation settlement trust fund pursuant to section 24-22-115.5 (2) (a.7) (I) or, for the 2011-12 fiscal year and for each fiscal year thereafter, and prior to their allocation, out of the amount of settlement moneys to be allocated and transferred pursuant to subsection (1.5) of this section.

(d) The state dental loan repayment program created in article 23 of title 25, C.R.S., shall receive two hundred thousand dollars as provided in section 25-23-104, C.R.S.

(e) The Fitzsimons trust fund created in section 23-20-136 (3), C.R.S., shall receive the lesser of the amount due to any lessor during the fiscal year under a lease-purchase agreement authorized pursuant to section 3 of House Bill 03-1256, as enacted at the first regular session of the sixty-fourth general assembly, or eight percent of the total amount of settlement moneys annually received by the state, not to exceed eight million dollars in any fiscal year. The settlement moneys shall be appropriated in accordance with the procedure specified in section 23-20-136 (3.5) (a), C.R.S.

(f) Repealed.

(g) The Colorado state veterans trust fund created in section 28-5-709, C.R.S., shall receive one percent of the total amount of settlement moneys annually received by the state, not to exceed one million dollars in any fiscal year, as provided in said section.

(h) The early literacy fund created in section 22-7-1210, C.R.S., shall receive five percent of the total amount of settlement moneys annually received by the state, not to

exceed eight million dollars in any fiscal year, as provided in said section;

(i) The Tony Grampsas youth services program created in article 6.8 of title 26, C.R.S., shall receive four percent of the total amount of settlement moneys annually received by the state, not to exceed five million dollars in any fiscal year, which the state treasurer shall transfer to the youth services program fund created in section 26-6.8-102 (2) (d), C.R.S.

(j) (I) The AIDS drug assistance program created in section 25-4-1411, C.R.S., shall receive three and a half percent of the total amount of settlement moneys annually received by the state, not to exceed five million dollars in any fiscal year, as provided in said section.

(II) Repealed.

(k) Three hundred thousand dollars shall be appropriated, as provided in section 27-67-106, C.R.S., to fund the state's share of the annual funding required for the "Child Mental Health Treatment Act", article 67 of title 27, C.R.S.

(l) The autism treatment fund created pursuant to section 25.5-6-805, C.R.S., shall receive one million dollars to pay a portion of the state's share of the annual funding required by the "Home- and Community-based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S.

(m) The Colorado HIV and AIDS prevention grant program created in section 25-4-1413, C.R.S., shall receive two percent of the total amount of settlement moneys annually received by the state, not to exceed two million dollars in any fiscal year, as provided in section 25-4-1415 (2), C.R.S.

(1.3) (a) For the 2012-13 fiscal year, and for each fiscal year thereafter, the lesser of all settlement moneys received or the following amounts of settlement moneys shall be allocated in each fiscal year in which the state receives the moneys in the percentages or amounts specified and for the programs, services, and funds specified in subsections (1) and (1.5) of this section:

(I) For the 2012-13 fiscal year, eighty million four hundred thousand dollars less the amount of unexpended and unencumbered moneys remaining in the tobacco litigation settlement cash fund, created in section 24-22-115 (1) (a), at the end of the 2011-12 fiscal year;

(II) For the 2013-14, 2014-15, 2015-16, and 2016-17 fiscal years, and for the 2018-19 fiscal year and for each fiscal year thereafter, the amount allocated pursuant to this subsection (1.3) for the prior fiscal year less the amount of unexpended and unencumbered moneys remaining in the tobacco litigation settlement cash fund at the end of the prior fiscal year; and

(III) For the 2017-18 fiscal year, the amount allocated pursuant to this subsection (1.3) for the 2016-17 fiscal year less fifteen million dollars and less the amount of unexpended and unencumbered moneys remaining in the tobacco litigation settlement cash fund at the end of the 2016-17 fiscal year.

(b) For the 2012-13 fiscal year, and for each fiscal year thereafter, in addition to the amounts allocated pursuant to paragraph (a) of this subsection (1.3), the amount of unexpended and unencumbered moneys remaining in the tobacco litigation settlement cash fund, created in section 24-22-115 (1) (a), at the end of the prior fiscal year shall be allocated to the programs that receive settlement moneys pursuant to subsections (1) and (1.5) of this section in proportion to their shares of the settlement moneys.

(c) Notwithstanding the provisions of section 24-1-136, no later than October 1, 2013, and no later than October 1 of each year thereafter, the state treasurer shall submit a written report to the joint budget committee that sets forth the total amount allocated pursuant to this subsection (1.3) during the prior fiscal year and the total amount anticipated to be allocated pursuant to this subsection (1.3) during the current fiscal year.

(1.5) (a) Except as otherwise provided in subsection (5) of this section, for the 2007-08 fiscal year and for each fiscal year thereafter, the following programs, services, and funds will receive the following specified amounts from the portion of any settlement moneys received and allocated by the state in the current fiscal year that remains after the programs, services, and funds receiving such moneys pursuant to subsection (1) of this section have been fully funded, and the portion of all other settlement moneys received by the state in the preceding fiscal year that remains after the programs, services, and funds receiving such other settlement moneys pursuant to subsection (1) of this section have been fully funded and all overexpenditures and supplemental appropriations allowed for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years pursuant to section 24-22-115 (4) have been made:

(I) The university of Colorado at Denver and health sciences center shall receive forty-nine percent of the settlement moneys, which shall be transferred by the state treasurer to the tobacco litigation settlement moneys health education fund, which is hereby created in the state treasury. The principal of the fund is subject to annual appropriation by the general assembly to the health sciences center. The lesser of all unexpended and unencumbered moneys in the fund at the end of any fiscal year or an amount of such moneys equal to five percent of the amount appropriated from the fund for the fiscal year remain in the fund and shall not be transferred to the general fund or any other fund. Any additional unexpended and unencumbered moneys in the fund at the end of any fiscal year shall be transferred to the tobacco litigation settlement cash fund created in section 24-22-115.

(II) The offender mental health services fund created in section 27-66-104 (4), C.R.S., shall receive twelve percent of the settlement moneys, which the state treasurer shall transfer thereto, for the purchase of mental health services from community mental health centers for juvenile and adult offenders who have mental health problems and are involved in the criminal justice system.

(III) Repealed.

(IV) (A) The public health services support fund created in section 25-1-512 (2),

C.R.S., shall receive seven percent of the settlement moneys, which the state treasurer shall transfer to the fund to be used for the authorized purposes of the fund.

(B) Repealed.

(V) (A) For fiscal years 2007-08 through 2009-10, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive five percent of the settlement moneys, which the state treasurer shall transfer thereto.

(B) For the 2010-11 fiscal year, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive thirteen and one-half percent of the settlement moneys, which the state treasurer shall transfer thereto.

(C) For the 2011-12 fiscal year and each fiscal year thereafter, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive fourteen and one-half percent of the settlement moneys, which the state treasurer shall transfer thereto.

(VI) The supplemental state contribution fund created in section 24-50-609 (5) shall receive four and one-half percent of the settlement moneys, which the state treasurer shall transfer thereto and which, subject to annual appropriation by the general assembly, shall be used to pay the costs of increased nonsupplemental state contributions, as defined in section 24-50-609.5 (3) (c) (II), and provide supplements to the state contribution for state employee group benefit plans for each eligible state employee, as defined in section 24-50-609.5 (2) (a), as required by said section.

(VII) The supplemental tobacco litigation settlement moneys account of the Colorado immunization fund, created in section 25-4-2301, C.R.S., shall receive four percent of the settlement moneys, which the state treasurer shall transfer thereto, for the purposes specified in said section.

(VIII) (A) The unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, shall receive three percent of the settlement moneys, which shall be transferred by the state treasurer to the alcohol and drug abuse community prevention and treatment fund, which is hereby created in the state treasury. The principal of the fund is subject to annual appropriation by the general assembly to provide or purchase community prevention and treatment services in accordance with section 27-80-106, C.R.S. The lesser of all unexpended and unencumbered moneys in the fund at the end of any fiscal year or an amount of such moneys equal to five percent of the amount appropriated from the fund for the fiscal year remain in the fund and shall not be transferred to the general fund or any other fund. Any additional unexpended and unencumbered moneys in the fund at the end of any fiscal year shall be transferred to the tobacco litigation settlement cash fund created in section 24-22-115.

(B) Notwithstanding any provision of sub-subparagraph (A) of this subparagraph (VIII) to the contrary, on April 16, 2009, the state treasurer shall deduct sixty-one thousand one hundred eighty-six dollars from the alcohol and drug abuse community prevention and treatment fund and transfer such sum to the general fund.

(IX) and (X) Repealed.

(XI) For the 2011-12 fiscal year and each fiscal year thereafter, the Colorado health service corps fund created in section 25-1.5-506, C.R.S., two hundred fifty thousand dollars.

(XII) For the 2012-13 fiscal year and each fiscal year thereafter, the state auditor's office shall receive eighty-nine thousand dollars for the costs of implementing the requirements of section 2-3-113, C.R.S.

(b) (I) and (II) Repealed.

(III) Except as otherwise provided in subparagraphs (I) and (II) and sub-subparagraph (A) of subparagraph (VIII) of paragraph (a) of this subsection (1.5), section 24-50-609 (5), section 25-1-512 (2), C.R.S., and section 25-4-2301, C.R.S., at the end of the 2011-12 fiscal year and at the end of each fiscal year thereafter, any moneys allocated for the fiscal year pursuant to paragraph (a) of this subsection (1.5) that are unexpended and unencumbered shall be transferred to the general fund.

(c) Settlement moneys and any interest and income earned on the deposit and investment of settlement moneys allocated pursuant to this subsection (1.5) shall supplement and shall not supplant any other state moneys appropriated or otherwise allocated for similar programs or purposes.

(2) The general assembly shall appropriate or the state treasurer shall transfer, as provided by law, the amounts specified in subsections (1) and (1.5) of this section from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115. Except for moneys credited to the health care supplemental appropriations and overexpenditures account of the cash fund pursuant to section 24-22-115 (4) (a), all settlement moneys other than settlement moneys received and allocated by the state during the same fiscal year pursuant to subsections (1) and (1.5) of this section shall be credited to the specified funds or accounts on July 1 of the fiscal year for which they are transferred, and all settlement moneys received and allocated by the state during the same fiscal year pursuant to said subsections (1) and (1.5) shall be credited to the specified funds or accounts upon receipt by the state.

(3) Notwithstanding the provisions of subsections (1) and (1.5) of this section, for purposes of sections 22-7-1210 (3), 23-20-136 (3.5) (a), 25-4-1411 (6) (a), 25-4-1415 (2), 25-23-104 (2), 25.5-6-805 (2), 25.5-8-105 (3), 26-6.4-107 (2) (d) (I), 26-6.8-102 (2) (d), 27-67-106 (2) (b), and 28-5-709 (2) (a), C.R.S., settlement moneys received and allocated by the state pursuant to said subsections (1) and (1.5) during the same fiscal year shall be deemed to be moneys received for or during the preceding fiscal year.

(4) Notwithstanding any other provision of this section, for the 2007-08 fiscal year only, six million two hundred fifty thousand dollars of the strategic contribution fund moneys received by the state during the fiscal year shall be allocated pursuant to subsection (1) of this section, and nine million one hundred fifty thousand dollars of the strategic contribution fund moneys received by the state during the fiscal year shall be

allocated pursuant to subsection (1.5) of this section.

(5) (a) (I) The state treasurer shall credit all disputed payments upon receipt, or if received prior to June 1, 2009, on June 1, 2009, to the general fund. On June 1, 2009, the state treasurer shall transfer the following amounts from the general fund:

(A) One million dollars to the children's basic health plan trust created in section 25.5-8-105 (1), C.R.S.; and

(B) Four hundred seventy-eight thousand dollars to the nurse home visitor program fund created in section 26-6.4-107 (2) (b), C.R.S.

(II) As used in this paragraph (a):

(A) "Allocable share" has the same meaning as set forth in section (II) (f) of the master settlement agreement and all amendments thereto.

(B) "Disputed payments" means payments of settlement moneys received by the state from participating manufacturers on or after July 1, 2008, in regard to the maximum potential NPM adjustment allocable share applicable to Colorado for any year, as calculated by the independent auditor, and any earned income or interest associated with the payments.

(C) "Independent auditor" has the same meaning as set forth in section (II) (w) of the master settlement agreement and all amendments thereto.

(D) "NPM adjustment" has the same meaning as set forth in section (II) (ff) of the master settlement agreement and all amendments thereto.

(E) "Participating manufacturer" has the same meaning as set forth in section (II) (jj) of the master settlement agreement and all amendments thereto.

(b) Notwithstanding any other provision of this section, of the settlement payments received in fiscal year 2008-09 that are not disputed payments, fifteen million four hundred thousand dollars of the strategic contribution fund moneys shall be allocated among settlement programs in fiscal year 2008-09 pursuant to the rules of subsections (1) and (1.5) of this section and eighty-four million six hundred thousand dollars of the remaining settlement payments shall be allocated among settlement programs in fiscal year 2009-10 as specified in subsections (1) and (1.5) of this section. Any settlement payments received in fiscal year 2008-09 that are not disputed payments and are not to be allocated among tobacco programs pursuant to this paragraph (b) shall be transferred to the general fund on June 1, 2009.

(6) Repealed.

(7) Notwithstanding any limitation on the amount of advances set forth in section 24-75-203 (2), the controller may authorize an advance without interest in any amount to be made to any department, institution, or agency of state government to provide it with working capital for the operation of tobacco settlement programs to which settlement moneys are allocated pursuant to this section.

(8) Repealed.

24-75-1105. Use of settlement moneys - review. (1) On or before January 30, 2006, the joint budget committee and the health and human services committees of the senate and house of representatives, or any successor committees, referred to in this section as the "joint committees", shall meet jointly to review the use of settlement moneys. In accordance with subsection (2) of this section, the joint committees shall again meet jointly to review the use of settlement moneys on or before January 30, 2009. Specifically, the joint committees shall review:

(a) The effectiveness of each program that receives settlement moneys, including but not limited to reviewing the annual reports of each program prepared by the department of public health and environment pursuant to section 25-1-108.5, C.R.S., and the program reviews of each program prepared by the state auditor pursuant to section 2-3-113, C.R.S.;

(a.5) For the children's basic health plan, all of the items listed in this subsection (1) for review shall be separately reported and reviewed with respect to the children's basic health plan and the prenatal and postpartum care program added to the children's basic health plan in fiscal year 2002-03. The joint committee shall also consider whether the prenatal and postpartum care portion of the children's basic health plan should continue to be paid for out of settlement moneys or should be paid for out of general fund revenues.

(b) The costs incurred by each program that receives settlement moneys, including but not limited to the amount and justification of administrative costs incurred by the agencies that implement the program;

(c) The percentage allocated to each program receiving settlement moneys and the actual amount appropriated to each program each fiscal year; and

(d) The amount of settlement moneys annually credited to the tobacco litigation settlement trust fund created in section 24-22-115.5, the investment of and return on such moneys, and the projections of future interest earnings on the moneys in the fund.

(2) The joint committees shall submit a legislative recommendation specifying the date by which the joint committees shall again review the use of settlement moneys as provided in this section. In addition, the joint committees may make legislative recommendations concerning programs that receive settlement moneys, which recommendations may include, but need not be limited to increases or decreases in the amount received by each program, discontinuance of the funding for any program, or identification of new programs to receive settlement moneys.

(3) The department of public health and environment and the state auditor shall provide such assistance and information as the joint committees may request in completing the review required pursuant to this section.

24-75-1106. Repeal of sections - instructions to revisor of statutes. (Repealed)

24-75-1107. Loss of disputed payments - authorization for transfers to tobacco litigation settlement cash fund. (1) The attorney general shall immediately notify the governor, the state treasurer, the joint budget committee of the general assembly, the speaker and minority leader of the house of representatives, and the president and minority leader of the senate if an arbitration panel makes any finding regarding the failure of the state to diligently enforce the provisions of part 2 of article 28 of title 39, C.R.S., that will reduce the amount of any payment of settlement moneys to the state.

(2) If the attorney general provides notification pursuant to subsection (1) of this section, the governor may instruct the state treasurer to transfer a specific amount of not more than forty million dollars from the general fund to the tobacco litigation settlement cash fund and to further transfer those moneys to programs and funds that receive settlement moneys pursuant to section 24-75-1104.5 as directed by the governor if:

(a) The general assembly is not in regular session;

(b) The notification indicates that the next scheduled payment of settlement moneys to the state will be at least thirty-five million dollars less than the most recent amount forecast by the staff of the legislative council when the general assembly was last in regular session;

(c) The settlement moneys that will no longer be paid to the state were previously expected to be paid within twelve months of the date of the finding that will reduce the amount of a payment of settlement moneys to the state; and

(d) The amount to be transferred is based on:

(I) The amount required to cover the amount of working capital advanced from the general fund to tobacco settlement programs before the date of the finding that will reduce the amount of a payment of settlement moneys to the state; and

(II) Any additional amount needed to allow tobacco settlement programs to meet critical state obligations and reduce program expenditure in an orderly manner through the end of the next January.

PART 12

CLEAN ENERGY FUND

24-75-1201. (Repealed)

PART 13

STATUS OF GIFTS, GRANTS, AND DONATIONS

MADE TO STATE AGENCIES

24-75-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Grant" means any gift, grant, or donation from a nongovernmental entity to a state agency that is not required to be repaid and that is fifty dollars or more.

(2) "State agency" means any department, commission, council, board, bureau, committee, agency, or other governmental unit of the executive, legislative, or judicial branch of state government. "State agency" shall not include any institution of higher education.

24-75-1302. State agencies - information obtained with grants. Each state agency that receives a grant to provide funding for a bill enacted by the general assembly that relies entirely on grant moneys for the funding source of the program, service, study, interim committee, or other government function required by the bill shall request that the entity submit a letter to the state agency at the time of making the grant specifying the amount of the grant, the duration of the grant, and the specific purposes for which the grant money is to be used. The state agency shall request that the entity awarding the grant include the bill number of the bill that created the program, service, study, interim committee, or other governmental function for which the grant is intended to provide funding.

24-75-1303. Report to general assembly. (1) On or before November 1, 2011, and on or before November 1 of each year thereafter, each state agency shall submit to the joint budget committee of the general assembly a report, in accordance with generally accepted accounting principles, of all grants made to the state agency during the immediately preceding state fiscal year, which grants provided funding for a bill enacted by the general assembly that relies entirely on grant moneys for the funding source of the program, service, study, interim committee, or other governmental function required by the bill. The state agency shall be prepared to review the report at the state agency's briefing with the joint budget committee in connection with its annual budget request.

(2) In compiling the report required pursuant to subsection (1) of this section, the state agency may use the documentation provided by the entity awarding the grant pursuant to section 24-75-1302.

(3) The report required pursuant to subsection (1) of this section must include the following information for every grant received:

(a) The source of the grant;

(b) The amount of money that the state agency receives through the grant on an annual basis and the number of years that the state agency will receive such grant moneys; and

(c) The specific program that the grant is intended to support, including the bill number of the bill that created the program.

(4) In addition to the information specified in subsection (3) of this section, a state agency shall include in the report a statement of the state agency's intent regarding the sustainability of each program or service that is funded entirely by grant moneys in the event that grant moneys are no longer available to support the program or service in the future. If the state agency intends to continue the program or service after grant moneys are no longer available, the state agency shall include a statement regarding how the program or service will be funded.

(5) Nothing in this section shall be construed to require a school district to submit information to the department of education for purposes of the report required in this section.

24-75-1304. Legislation - programs or services reliant on grants - repeal of program. (Repealed)

24-75-1305. Programs or services reliant on grants - statutory reauthorization of program. (1) Except as otherwise provided in subsection (3) of this section, beginning January 1, 2011, the general assembly shall not make an appropriation of moneys from the general fund or from any other source of state moneys to fund a program, service, study, or other function of state government that was previously funded through grant moneys and that has not received adequate grant moneys to support the program, service, study, or other function of state government for the applicable fiscal year.

(2) Except as otherwise provided in subsection (3) of this section, beginning January 1, 2011, a state agency that oversees any program, service, study, or other function of state government shall not request as part of its annual budget request to the joint budget committee that the general assembly make an appropriation from the general fund or any other source of state moneys to fund a program, service, study, or other function of state government that was previously funded through grant moneys and that has not received adequate grant moneys to support the program, service, study, or other function of state government for the applicable fiscal year.

(3) The general assembly may adopt legislation to reauthorize any program, service, study, or other function of state government that was previously funded through grant moneys and, if such legislation includes an appropriation from the general fund or

any other source of state moneys and becomes law, may make an appropriation from the general fund or from any other source of state moneys to a state agency to oversee the program, service, study, or other function of state government.

PART 14

INDIRECT COSTS EXCESS RECOVERY FUND

24-75-1401. Indirect costs excess recovery fund - creation - departmental accounts - use of fund - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Indirect costs" means the indirect cost assessment line items in the annual general appropriation act that represent expected collections of statewide and departmental indirect costs from cash-funded, reappropriated-funded, or federal-funded programs for the purpose of paying departmental or statewide overhead costs as allocated to those programs in the annual general appropriation act.

(b) "State agency" or "agency" means any board, bureau, commission, department, institution, division, section, or officer of the state except those within the department of higher education designation in the annual general appropriation act.

(2) The indirect costs excess recovery fund is created in the state treasury. A separate account for each principal department of state government other than the department of higher education is created within the fund. Before the close of the state's accounting system each fiscal year, the state treasurer shall credit all moneys collected by a state agency for indirect costs for the fiscal year in excess of the actual amount expended during the fiscal year to the account for the department that includes the agency. The state treasurer shall credit all interest and income earned on the deposit and investment of moneys in any account of the fund to the account.

(3) Each account of the indirect costs excess recovery fund is subject to annual appropriation for indirect costs by its corresponding department for the sole purpose of paying any indirect costs incurred by agencies within the department during a fiscal year that exceed their actual indirect cost collections for the fiscal year.

(4) No later than November 1, 2013, and no later than each November 1 thereafter, the state controller shall report to the joint budget committee of the general assembly regarding the revenues, expenditures, and balance of each account of the indirect costs excess recovery fund as of June 30 of the prior fiscal year.

FEDERAL FUNDS

ARTICLE 76

Federal Funds

24-76-101. Appropriation of certain federal funds. (1) The general assembly may appropriate block grant moneys in the state treasury received from any agency of the federal government, and, if so appropriated, such block grant moneys shall not be disbursed except in accordance with the appropriation. This section shall be construed so as to authorize legislative appropriation of block grant moneys, notwithstanding any other provision of law enacted prior to July 1, 1985, which authorizes any department, agency, institution, or officer of the state to apply for, receive, and expend moneys from the federal government without reference to legislative appropriation.

(2) As used in this article, "block grant moneys" means moneys received for use in a broad functional area as provided by federal law, and concerning which the state has discretion as to the specific programs to be funded, or as to the level at which such programs will be funded, or as to eligibility requirements or other criteria for identifying the beneficiaries of programs, or as to the transfer of moneys to another block grant, or as to two or more such matters. "Block grant moneys" includes all such moneys in the state treasury, even if they will be passed through to local governments, private nonprofit agencies, or other entities for expenditure.

(3) The following federal moneys shall not be appropriated:

(a) Moneys received from the federal government by the state for the construction, improvement, or maintenance of highways;

(b) Moneys received from the federal government by the state as grants for research at institutions of higher education.

(4) Whenever any federal law permits the transfer of block grant moneys from one block grant to another, such moneys shall not be transferred and expended unless such transfer is authorized by the general assembly, either by appropriation or by permanent law.

(5) Nothing in this section shall be construed to affect the functions of any advisory committee or advisory council which has been established to make recommendations with regard to block grant moneys.

24-76-102. Reporting requirements. (1) Each department, agency, or officer of the state which applies for or receives block grant moneys shall file the following with the joint budget committee:

(a) A copy of each application for block grant moneys, and any revision thereto, whether denominated a grant application, a report of intended expenditures, a state plan,

an implementation report, or any other term, within three days after transmitting such application to the federal government;

(b) A copy of each notice of grant award involving block grant moneys received by such department, agency, or officer, within three days after receipt of such notice;

(c) A copy of any guidelines, criteria, formulas, procedures, or other measures formulated or adopted by the department, agency, or officer and used in allocating block grant moneys among programs, beneficiaries, local governments, private nonprofit agencies, or other entities, within seven days after their formulation or adoption.

24-76-103. Federal grants - mortgage lending process. The division of real estate and any state agency involved in the prosecution of or public education about mortgage fraud and theft in the mortgage lending process may accept on behalf of the state grants of federal funds for the purpose of lowering the incidents of mortgage fraud in Colorado. The state agency, with the approval of the governor, shall have the power to direct the disposition of a federal grant consistent with the terms and conditions of the grant so long as the terms and conditions do not conflict with state law.

RESTRICTIONS ON PUBLIC BENEFITS

ARTICLE 76.5

Restrictions on Public Benefits

24-76.5-101. Legislative declaration. It is the public policy of the state of Colorado that all persons eighteen years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits.

24-76.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Emergency medical condition" shall have the same meaning as provided in 42 U.S.C. sec. 1396b (v) (3).

(2) "Federal public benefits" shall have the same meaning as provided in 8 U.S.C. sec. 1611.

(3) "State or local public benefits" shall have the same meaning as provided in 8 U.S.C. sec. 1621.

24-76.5-103. Verification of lawful presence - exceptions - reporting - rules. (1) Except as otherwise provided in subsection (3) of this section or where exempted by federal law, on and after August 1, 2006, each agency or political subdivision of the state shall verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for state or local public benefits or for federal public benefits for the applicant.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) Verification of lawful presence in the United States shall not be required:

(a) For any purpose for which lawful presence in the United States is not required by law, ordinance, or rule;

(b) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

(c) For short-term, noncash, in-kind emergency disaster relief;

(d) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(e) For programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that:

(I) Deliver in-kind services at the community level, including services through public or private nonprofit agencies;

(II) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(III) Are necessary for the protection of life or safety;

(f) For pregnant women;

(g) For individuals over the age of eighteen years and under the age of nineteen years who continue to be eligible for medical assistance programs after their eighteenth birthday;

(h) For renewing an educator license pursuant to article 60.5 of title 22, C.R.S.; or

(i) For receipt of educational services or benefits from institutions of higher education, except as may be limited pursuant to section 23-7-110, C.R.S., including participation in the college opportunity fund program pursuant to part 2 of article 18 of title 23, C.R.S., college savings plans pursuant to section 23-3.1-301, C.R.S., and any other financial benefit of the institution of higher education relating to attendance at the institution of higher education.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen years of age or older for federal public benefits or state or local public benefits by requiring the applicant to:

(a) Produce:

(I) A valid Colorado driver's license or a Colorado identification card issued under article 2 of title 42, C.R.S., unless the applicant holds a license or card issued under part 5 of article 2 of title 42, C.R.S.; or

(II) A United States military card or a military dependent's identification card; or

(III) A United States Coast Guard Merchant Mariner card; or

(IV) A Native American tribal document; and

(b) Execute an affidavit stating:

(I) That he or she is a United States citizen or legal permanent resident; or

(II) That he or she is otherwise lawfully present in the United States pursuant to federal law.

(4.5) Notwithstanding the requirements of subsection (4) of this section, an institution of higher education may accept a tuition classification certification form signed by an authorized United States military education services official as evidence of an applicant's lawful presence in the United States.

(5) (a) Notwithstanding the requirements of paragraph (a) of subsection (4) of this section, the executive director of the department of revenue shall promulgate rules providing for additional forms of identification recognized by the federal government to prove lawful presence and a waiver process to ensure that an individual seeking benefits pursuant to this section proves lawful presence in the United States. The rules are necessary to ensure that certain individuals lawfully present in the United States receive authorized benefits, including but not limited to homeless state citizens.

(b) (Deleted by amendment, L. 2007, p. 24, § 1, effective March 1, 2007.)

(c) Repealed.

(6) A person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to subsection (4) of this section shall be guilty of a violation of section 18-8-503, C.R.S. It shall constitute a separate violation of section 18-8-503, C.R.S., each time that a person receives a public benefit based upon such a statement or representation.

(7) For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, referred to in this section as the "SAVE program", operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.

(8) Agencies or political subdivisions of this state may adopt variations of the requirements of paragraph (b) of subsection (4) of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual

circumstances in which the verification procedures in this section would impose unusual hardship on a legal resident of the state; except that the variations shall be no less stringent than the requirements of this section.

(9) It shall be unlawful for an agency or a political subdivision of this state to provide a federal public benefit or a state or local public benefit in violation of this section. On or before January 15, 2009, and on or before January 15 each year thereafter, each state agency or department that administers a program that provides state or local public benefits shall provide a report with respect to its compliance with this section to the state, veterans, and military affairs committees of the senate and house of representatives, or any successor committees.

(10) Errors and significant delays by the SAVE program shall be reported to the United States department of homeland security and to the secretary of state, both of which monitor the SAVE program and its verification application errors and significant delays and report yearly on such errors and delays, to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of the state.

(11) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

STATE FISCAL POLICIES RELATING TO SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION

ARTICLE 77

State Fiscal Policies Relating to Section 20
of Article X of the State Constitution

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.

(2) The general assembly further finds and declares that:

(a) The adoption of section 20 of article X imposes a limit on state fiscal year spending and the provisions of this article were enacted to facilitate compliance with the state fiscal year spending limit;

(b) This article reflects the judgment of the general assembly regarding the meaning and implementation of section 20 of article X of the state constitution as it relates to state government;

(c) The provisions of this article should not be construed to substitute for generally accepted accounting principles which are applicable to financial documents and reports of state government;

(d) The purpose of preparing figures in accordance with this article, to ensure compliance with the state fiscal year spending limit, may differ from the purpose of preparing financial statements of the state, to determine the financial condition of the state;

(e) The financial statements of the state prepared by the state controller shall be prepared, insofar as possible, in conformity with generally accepted accounting principles; and

(f) The financial report required by this article shall be prepared in conformity with generally accepted accounting principles unless otherwise provided by law or unless an irreconcilable conflict exists between generally accepted accounting principles and the provisions of section 20 of article X in which case the provisions of said constitutional provision shall control.

(3) The general assembly further finds and declares that:

(a) When revenues exceed the state fiscal year spending limitation for any given fiscal year, section 20 (7) (d) of article X of the state constitution requires that the excess revenues be refunded in the next fiscal year unless voters approve a revenue change allowing the state to retain the revenues;

(b) It is the duty and intent of the general assembly to comply with the constitutional requirement to refund state excess revenues;

(c) It is within the legislative prerogative to facilitate compliance with the

constitutional requirement to refund state excess revenues and legislation relating to the refunding of such excess revenues is a reasonable and necessary exercise of the legislative prerogative; and

(d) State excess revenues that are carried forward from the fiscal year in which they accrued shall be refunded in the next fiscal year and shall not be available for any other governmental purpose unless voters have authorized the state to retain such revenues.

24-77-102. Definitions - repeal. As used in this article, unless the context otherwise requires:

(1) "Collections for another government" means any tax revenues or other revenues that are collected by the state for the benefit and use of any government other than the state pursuant to the authority of such other government and that are passed through to the government for whose use such revenues were collected.

(2) "Damage award" means any pecuniary compensation received by the state as a result of any judgment or allowance in favor of the state.

(3) "Enterprise" means a government-owned business:

(a) Which has authority to issue its own revenue bonds; and

(b) Which receives less than ten percent of its annual revenues in grants from all state and local governments in Colorado combined.

(4) "Expenditure" means the appropriation or disbursement of any state general fund or cash fund moneys for any expense incurred by the state.

(5) "Federal funds" means any pecuniary resources received by the state from the national government of the United States.

(6) "Gift" means something of value which is given to the state voluntarily by any person or entity, regardless of whether such person or entity specifies the purpose or purposes for which such thing of value is to be used. "Gift" includes, but is not limited to, voluntary contributions received by the state as a result of any state voluntary contribution program established pursuant to article 22 of title 39, C.R.S. "Gift" does not include federal funds or any pecuniary compensation received by the state from any other governmental entity.

(7) (a) "Grant" means any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid.

(b) "Grant" does not include:

(I) Any indirect benefit conferred upon an enterprise from the state or any local government in Colorado;

(II) Any revenues resulting from rates, fees, assessments, or other charges imposed by an enterprise for the provision of goods or services by such enterprise;

(III) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by an enterprise;

(IV) Any moneys received by the division of parks and wildlife, created in section 33-9-104, from the great outdoors Colorado trust fund established in section 2 of article XXVII of the state constitution;

(V) Any revenues received by the division of brand inspection created in section 24-1-123 (4) (g) (I).

(8) "Inflation" means the percentage change in the consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, as published by the United States department of labor, bureau of labor statistics, or its successor index.

(9) "Pension contributions by employees" means the amount contributed by state employees to the retirement plans of such employees.

(10) "Pension fund earnings" means the amount which is earned from the investment of moneys set apart for the payment of retirement income for state employees.

(11) "Property sale" means:

(a) Any transfer of the ownership of an estate in tangible assets or intangible rights, excluding leasehold interests, in which or to which the state has rights protected by law from the state to any party for consideration; or

(b) Any contract resulting in the payment of pecuniary compensation to the state for permitting another to exploit, use, or market nonrenewable natural resources which are located on real property owned by the state and which are subject to depletion with use.

(12) "Reserve" means any unrestricted general fund or cash fund year-end balance which is held by the state to meet any needs or demands.

(13) "Reserve increase" means any action which has the effect of increasing a reserve.

(14) "Reserve transfers or expenditures" means moneys which are passed from one fund of cash or assets held by the state as a reserve to another such fund or moneys which are disbursed from such fund.

(15) (a) "Special purpose authority" means any entity that is created pursuant to state law to serve a valid public purpose, which is either a political subdivision of the state or an instrumentality of the state, which is not an agency of the state, and which is not subject to administrative direction by any department, commission, bureau, or agency of the state.

(b) "Special purpose authority" includes, but is not limited to:

(I) The Colorado housing and finance authority created pursuant to section 29-4-704, C.R.S.;

(II) The university of Colorado hospital authority created pursuant to section 23-21-503 (1), C.R.S.;

(III) The Colorado water resources and power development authority created pursuant to section 37-95-104 (1), C.R.S.;

(IV) Pinnacol Assurance created pursuant to section 8-45-101, C.R.S.;

(V) The Colorado educational and cultural facilities authority created pursuant to section 23-15-104 (1), C.R.S.;

(VI) The Colorado health facilities authority created pursuant to section 25-25-104 (1), C.R.S.;

(VII) (Deleted by amendment, L. 2000, p. 1296, § 19, effective May 26, 2000.)

(VIII) The Colorado agricultural development authority created pursuant to section 35-75-104 (1), C.R.S.;

(IX) The public employees' retirement association created pursuant to section 24-51-201 (1);

(X) The Denver health and hospital authority created pursuant to section 25-29-103 (1), C.R.S.;

(XI) The Pueblo depot activity development authority created pursuant to section 29-23-104, C.R.S.;

(XII) (A) CoverColorado, created pursuant to section 10-8-501, C.R.S.

(B) This subparagraph (XII) is repealed, effective March 31, 2015.

(XIII) Repealed.

(XIV) The venture capital authority created in section 24-46-202;

(XV) The statewide internet portal authority created pursuant to section 24-37.7-102, C.R.S.;

(XVI) Repealed.

(XVII) The Colorado channel authority created pursuant to article 49.9 of this title;

(XVIII) The consolidated communications system authority created in section 29-24.5-103, C.R.S.

(16) (a) "State" means the central civil government of the state of Colorado, which shall consist of the following:

(I) The legislative, executive, and judicial branches of government established by article III of the state constitution;

(II) All organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and

(III) State institutions of higher education.

(b) "State" does not include:

(I) Any enterprise;

(I.5) An institution or group of institutions of higher education that has been designated as an enterprise pursuant to section 23-5-101.7, C.R.S.;

(I.6) An institution or group of institutions of higher education that has been designated as an enterprise pursuant to section 23-5-101.8, C.R.S.;

Editor's note: For the effective date of this subparagraph (I.6), see the editor's note following this section.

(II) Any special purpose authority;

(III) Any organization declared to be a joint governmental entity under section 2-3-311 (2), C.R.S.

(17) (a) "State fiscal year spending" means all state expenditures and reserve increases occurring during any given fiscal year as established by section 24-30-204, including, but not limited to, state expenditures or reserve increases from:

(I) Moneys received by the state from enterprises; and

(II) Cash funds of state institutions of higher education. For purposes of this subparagraph (II), "cash funds" means funds received from tuition income, fees, indirect cost recoveries, and other sources of funds that can be appropriated as cash funds from state institutions of higher education, excepting those funds derived from gifts, federal funds, or other sources for which any expenditure or reserve increase is not subject to the provisions of section 20 of article X of the state constitution.

(III) and (IV) (Deleted by amendment, L. 2000, p. 2044, § 6, effective December 28, 2000.)

(b) "State fiscal year spending" does not include reserve transfers or expenditures or any state expenditures or reserve increases:

(I) For refunds of excess state revenues made in the current fiscal year or in the subsequent fiscal year;

(II) From gifts, including any interest earned thereon;

(III) From federal funds, including any interest earned thereon;

(IV) From collections for another government;

(V) From pension contributions by employees;

(VI) From pension fund earnings;

(VII) From damage awards, including any interest earned thereon;

(VIII) From property sales, including any interest earned on proceeds therefrom; and

(IX) From net proceeds from state-supervised lottery games, as defined in section 3 (1) of article XXVII of the state constitution.

24-77-103. Limitation on state fiscal year spending - legislative declaration. (1) For fiscal year 1993-94 and each fiscal year thereafter, state fiscal year spending shall not exceed an amount equal to:

(a) State fiscal year spending for the previous fiscal year as may be adjusted pursuant to the provisions of section 24-77-103.5; as modified by

(b) An amount equal to a percentage calculated pursuant to subsection (2) of this section times the state fiscal year spending for the previous fiscal year, as adjusted for qualification and disqualification of enterprises, as adjusted pursuant to the provisions of subsection (2.3) of this section, and as reduced by an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) The amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991; as modified by

(c) To the extent not otherwise included in state fiscal year spending for the previous fiscal year, an amount equal to:

(I) Annual debt service changes; and

(II) Refunds made pursuant to section 20 (1) and (3) (c) of article X of the state constitution; and

(III) An amount of any revenues resulting from approval by a majority of the registered electors of the state voting on the issue at a statewide election held after 1991.

(2) (a) (I) For purposes of paragraph (b) of subsection (1) of this section, and in accordance with section 20 (7) (a) of article X of the state constitution, the percentage of allowable increase in state fiscal year spending shall equal the sum of inflation as modified by the percentage change in state population in the prior calendar year.

(II) The general assembly hereby finds and declares that:

(A) Section 20 (7) (a) of article X of the state constitution requires the maximum annual percentage change in state fiscal year spending to equal inflation plus the percentage change in state population in the prior calendar year adjusted for revenue changes approved by voters.

(B) It is the considered judgment of the general assembly that the inclusion of inflation and the percentage change in state population in the prior calendar year when calculating the maximum annual percentage change in state fiscal year spending is designed to allow state fiscal year spending to increase to the extent necessary, but only to the extent necessary, to ensure that state population growth and inflation, which are factors beyond the direct control of state government, do not unduly affect the ability of the state to fund transportation projects and other projects and services needed to meet the demands of a growing population.

(III) The general assembly further finds and declares that:

(A) For the purpose of determining the maximum percentage change in state fiscal year spending for any given fiscal year, section 20 (7) (a) of article X of the state constitution requires the state to annually determine population by annual federal census

estimates and to further adjust the population determined every decade to match the decennial federal census.

(B) Section 20 (7) (a) of article X of the state constitution does not specify how adjustments to population to match the decennial federal census are to be made and it is therefore within the legislative prerogative to determine the manner in which such adjustments are to be made.

(C) The results of the 2000 federal census indicate that the annual federal census estimates used to determine population for the purpose of determining the maximum annual percentage change in state fiscal year spending in the fiscal years prior to the 2001-02 fiscal year underestimated population growth in the state, which caused a cumulative reduction in the maximum annual percentage change in state fiscal year spending during the prior fiscal years, resulted in over-refunds of state revenues during the prior fiscal years, and impaired the state's ability to fund transportation projects and other projects and services needed to meet the demands of the state's growing population.

(D) It is consistent with the purposes of section 20 (7) (a) of article X of the state constitution for the general assembly to enact legislation that will ensure that the state can recoup state revenues lost because the underestimates of population growth in the state in the fiscal years prior to the 2001-02 fiscal year resulted in over-refunds of state revenues and that the state can also recoup state revenues lost in the future due to over-refunds resulting from future underestimates of population growth.

(E) The mechanism for allowing the adjustment of population every decade to match the federal census to occur over more than one fiscal year when the actual amount of state fiscal year spending for the first fiscal year in which such an adjustment can be made is insufficient to allow the state to recoup the full amount of all over-refunds resulting from underestimates of population growth that is set forth in subparagraph (II.5) of paragraph (b) of this subsection (2), is reasonable, necessary, in the best interests of the state, and consistent with the requirements and objectives of section 20 (7) (a) of article X of the state constitution.

(b) (I) Except as otherwise provided in subparagraphs (II) and (II.5) of this paragraph (b), the percentage change in state population for any given calendar year shall be the percentage change between the estimate of state population due to be issued by the United States bureau of census in December of such calendar year with a reference date of July 1 of the same calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same calendar year with a reference date of July 1 of the immediately preceding calendar year.

(II) Except as otherwise provided in subparagraph (II.5) of this paragraph (b), for any calendar year for which an estimate of state population is not issued due to the federal census of the United States bureau of census, the percentage change in state population for such calendar year shall be the percentage change between the state population as reported in the federal census conducted by the United States bureau of census due in

December of such calendar year and the estimate of state population due to be issued by the United States bureau of census in December of the same year with a reference date of July 1 of the immediately preceding calendar year.

(II.5) (A) If the limitation on state fiscal year spending for a given fiscal year is calculated with a percentage of allowable increase in state fiscal year spending that includes a percentage change in state population determined in accordance with subparagraph (II) of this paragraph (b) and the limitation on state fiscal year spending exceeds the actual amount of state fiscal year spending for that fiscal year, the percentage change in state population shall be reduced so that the limitation on state fiscal year spending for that fiscal year calculated with a percentage of allowable increase in state fiscal year spending that includes such reduced percentage change in state population equals the amount of state fiscal year spending for that fiscal year.

(B) The difference between the percentage change in state population determined in accordance with subparagraph (II) of this paragraph (b) and the reduced percentage change in state population used to calculate the limitation on state fiscal year spending pursuant to sub-subparagraph (A) of this subparagraph (II.5) shall be carried forward as an adjustment of the percentage change in state population determined pursuant to subparagraph (I) of this paragraph (b) for a maximum period of nine fiscal years. If the amount of state fiscal year spending for the immediately subsequent fiscal year exceeds the limitation on state fiscal year spending for that fiscal year, the unused adjustment shall be added first to the percentage change in state population determined pursuant to subparagraph (I) of this paragraph (b) that is included in the percentage of the allowable increase in state fiscal year spending used in calculating the limitation on state fiscal year spending for that fiscal year to the greatest extent possible without causing the limitation on state fiscal year spending to exceed the actual amount of state fiscal year spending for that fiscal year.

(C) Any remaining portion of the unused adjustment shall continue to be added, to the greatest extent possible, to the percentage change in state population determined pursuant to subparagraph (I) of this paragraph (b) that is included in the percentage of allowable increase in state fiscal year spending used in calculating the limitation on state fiscal year spending for subsequent fiscal years without causing the limitation on state fiscal year spending for a given fiscal year to exceed the actual amount of state fiscal year spending for that fiscal year.

(D) Any portion of the unused adjustment that remains unused after the expiration of the maximum period of nine fiscal years shall not be included in the percentage of allowable increase in state fiscal year spending used in calculating the limitation on state fiscal year spending for any fiscal year subsequent to the expiration of such period.

(III) The department of local affairs shall notify the president of the senate, the speaker of the house of representatives, the governor, and the chairman of the joint budget committee of the general assembly of the percentage change in state population

calculated pursuant to this paragraph (b) no later than January 15 following the calendar year for which such percentage is calculated. Such percentage shall not be subject to later modification based upon any subsequent revision of census counts or population estimates issued by the United States bureau of the census.

(2.3) (a) The general assembly hereby finds and declares that section 20 of article X of the state constitution fails to provide guidance as to how the absorption of an existing local government district by the state is to be treated for purposes of compliance with said constitutional provision. The general assembly further finds and declares that it is not reasonable for state fiscal year spending to remain at the same level, with an accompanying reduction in revenues available to fund other state services, in order that the state may absorb local government districts that provide higher education services. The general assembly further finds and declares that the method of absorbing local government districts that provide higher education services by the state for purposes of compliance with section 20 of article X of the state constitution embodied in this subsection (2.3) reasonably restrains most the growth of government since government as a whole has not grown while preserving essential state services.

(b) For purposes of paragraph (b) of subsection (1) of this section, when any local government district that provides higher education services joins the state, the amount of state fiscal year spending allowable for the fiscal year in which such joinder takes effect shall be adjusted by the amount of fiscal year spending of such local government district that provides higher education services in accordance with section 20 of article X of the state constitution in the current fiscal year.

(3) The base for the calculation of state reserve increases for fiscal year 1992-93 shall be the state unrestricted year-end fund balances of the state general fund and of all state cash funds for fiscal year 1991-92. For purposes of this section, the amount of said state unrestricted year-end fund balances does not constitute and shall not be included in state fiscal year spending for fiscal year 1992-93.

(4) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, the state may refuse to accept any moneys, in whole or in part, from any enterprise in any given fiscal year, notwithstanding any law to the contrary.

(5) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, the state may refuse to accept any gift, including but not limited to real property, for which state expenditures would be required for the maintenance and operation of such gift and which does not include sufficient revenues for said purposes.

(6) (a) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, any moneys continuously appropriated by a permanent statute or constitutional provision shall be included in the general appropriation bill for informational purposes.

(b) The authority to expend such moneys shall be modified only by duly enacted amendment to the permanent statute or constitutional provision which continuously appropriates such moneys.

(c) Except as otherwise provided in this paragraph (c), any moneys continuously appropriated by a permanent statute or constitutional provision shall be subject to revenue and expenditure limits established annually by the general assembly as provided by law for the purpose of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section. The provisions of this paragraph (c) shall not apply to moneys continuously appropriated to the limited gaming control commission pursuant to section 9 of article XVIII of the state constitution.

(7) For purposes of complying with the limitation on state fiscal year spending set forth in subsection (1) of this section, each state institution of higher education shall prepare a written report for each quarter of the fiscal year which shall include the total amount of net revenues generated during such period from any facility, activity, or operation managed by such state institution of higher education which is an enterprise and the total amount of such net revenues and any other thing of value received by such state institution of higher education from such enterprises. Such report shall be filed with the president of the senate, the speaker of the house of representatives, and the chairman of the joint budget committee no later than thirty days after the close of such period.

24-77-103.5. Legislative declaration - correction of errors - authority of the controller and auditor. (1) The general assembly finds and declares that ascertaining compliance with the provisions of section 20 of article X of the state constitution requires that accurate calculations be made of state fiscal year spending. The general assembly further finds and declares that it is reasonable to account for any errors in calculating state fiscal year spending by authorizing the controller to make equivalent adjustments in state fiscal year spending for the fiscal year in which such errors are discovered in accordance with the provisions of this subsection (1).

(2) For purposes of section 24-77-103, for any given fiscal year, if the controller discovers an error involving a prior fiscal year by whatever means available affecting the calculation of state fiscal year spending, the controller may correct such error by increasing or decreasing in an appropriate amount the allowable state fiscal year spending for the fiscal year in which such error is discovered, subject to a review of such adjustment by the state auditor.

24-77-103.6. Retention of excess state revenues - general fund exempt account - required uses - excess state revenues legislative report. (1) (a) Notwithstanding any provision of law to the contrary, for each fiscal year commencing on or after July 1, 2005, but before July 1, 2010, the state shall be authorized to retain and spend all state revenues

in excess of the limitation on state fiscal year spending.

(b) Notwithstanding any provision of law to the contrary, for each fiscal year commencing on or after July 1, 2010, the state shall be authorized to retain and spend all state revenues that are in excess of the limitation on state fiscal year spending, but less than the excess state revenues cap for the given fiscal year.

(2) There is hereby created in the general fund the general fund exempt account, which shall consist of an amount of moneys equal to the amount of state revenues in excess of the limitation on state fiscal year spending that the state retains for a given fiscal year pursuant to this section. The moneys in the account shall be appropriated or transferred by the general assembly for the following purposes:

(a) To fund health care;

(b) To fund education, including any capital construction projects related thereto;

(c) To fund retirement plans for firefighters and police officers, so long as the general assembly determines that such funding is necessary; and

(d) To pay for strategic transportation projects included in the department of transportation's strategic transportation project investment program.

(3) The statutory limitation on general fund appropriations set forth in section 24-75-201.1 (1) (a), and the exceptions or exclusions thereto, shall apply to the moneys in the general fund exempt account.

(4) The approval of this section by the registered electors of the state voting on the issue at the November 2005 statewide election constitutes a voter-approved revenue change to allow the retention and expenditure of state revenues in excess of the limitation on state fiscal year spending.

(5) (a) For each fiscal year that the state retains and spends state revenues in excess of the limitation on state fiscal year spending pursuant to this section, the director of research of the legislative council shall prepare an excess state revenues legislative report that includes the following information:

(I) The amount of excess state revenues that the state retained; and

(II) A description of how the excess state revenues were expended.

(b) The report required by this subsection (5) shall be completed by October 15 following a fiscal year that the state retains and spends revenues in excess of the limitation on state fiscal year spending pursuant to this section and may be amended thereafter as necessary. The director of research shall publish and link to the official web site of the general assembly a copy of the report.

(6) As used in this section:

(a) "Education" means:

(I) Public elementary and high school education; and

(II) Higher education.

(b) (I) "Excess state revenues cap" for a given fiscal year means either of the following:

(A) If the voters of the state approve a ballot issue to authorize the state to incur multiple-fiscal year obligations at the November 2005 statewide election, an amount that is equal to the highest total state revenues for a fiscal year from the period of the 2005-06 fiscal year through the 2009-10 fiscal year, adjusted each subsequent fiscal year for inflation and the percentage change in state population, plus one hundred million dollars, and adjusting such sum for the qualification or disqualification of enterprises and debt service changes; or

(B) If the voters of the state do not approve a ballot issue to authorize the state to incur multiple-fiscal year obligations at the November 2005 statewide election, an amount that is equal to the highest total state revenues for a fiscal year from the period of the 2005-06 fiscal year through the 2009-10 fiscal year, adjusted each subsequent fiscal year for inflation, the percentage change in state population, the qualification or disqualification of enterprises, and debt service changes.

(II) As used in this paragraph (b), inflation and the percentage change in state population shall be the same rates that are used in calculating the maximum annual percentage change in state fiscal year spending pursuant to section 24-77-103, and the qualification or disqualification of an enterprise or debt service changes shall change the excess state revenues cap in the same manner as such change affects the limitation on state fiscal year spending.

(c) "State revenues" means state revenues not excluded from state fiscal year spending, as defined in section 24-77-102 (17).

24-77-103.7. Over-refunds of state revenues - definitions. (1) For purposes of this section, "over-refund" means a refund of state revenues that occurs when, through one or more mechanisms utilized pursuant to law to refund state revenues in excess of the limitation on state fiscal year spending for any given fiscal year, the amount of state revenues actually refunded during any given fiscal year exceeds the amount of state revenues in excess of the limitation on state fiscal year spending for the immediately preceding fiscal year required to be refunded without making any calculations or reductions as otherwise provided in this section.

(2) The amount of any over-refunds actually made in a fiscal year commencing on or after July 1, 2001, that have not been used to reduce the amount of state revenues in excess of the limitation on state fiscal year spending for said fiscal year in accordance with the provisions of this section shall be carried forward as a reduction of subsequent fiscal years' state revenues in excess of the limitation on state fiscal year spending and shall be applied first to the earliest fiscal years possible.

(3) For the fiscal year commencing on July 1, 2004, the controller shall:

(a) Calculate state fiscal year spending for the fiscal year in accordance with the provisions of section 24-77-103 without making any reduction in state fiscal year

spending for the amount of over-refunds actually made in said fiscal year or for the amount of any over-refunds made in the fiscal years commencing on or after July 1, 2001, but prior to July 1, 2004, that have been carried forward to said fiscal year in accordance with subsection (2) of this section; and

(b) Reduce the sum of the amount of state revenues in excess of the limitation on state fiscal year spending for said fiscal year and the amount of any unrefunded state revenues in excess of the limitation on state fiscal year spending for the fiscal years commencing on or after July 1, 2001, but prior to July 1, 2004, that have been carried forward to said fiscal year in accordance with section 24-77-103.8 (3) by an amount equal to the sum of the amount of over-refunds actually made in said fiscal year and the amount of any over-refunds made in the fiscal years commencing on or after July 1, 2001, but prior to July 1, 2004, that have been carried forward to said fiscal year in accordance with subsection (2) of this section; however, the amount of said reduction shall not exceed the amount of state revenues in excess of the limitation on state fiscal year spending for said fiscal year.

(4) For fiscal years commencing on or after July 1, 2005, the controller shall:

(a) Calculate state fiscal year spending for the fiscal year in accordance with the provisions of section 24-77-103 without making any reduction in state fiscal year spending for the amount of over-refunds actually made in said fiscal year or for the amount of any over-refunds made in previous fiscal years that have been carried forward to said fiscal year in accordance with subsection (2) of this section; and

(b) Reduce the sum of the amount of state revenues in excess of the limitation on state fiscal year spending for the fiscal year and the amount of any unrefunded state revenues in excess of the limitation on state fiscal year spending for previous fiscal years that have been carried forward to said fiscal year in accordance with section 24-77-103.8 (3) by an amount equal to the sum of the amount of over-refunds actually made in said fiscal year and the amount of any over-refunds made in previous fiscal years that have been carried forward to said fiscal year in accordance with subsection (2) of this section; however, the amount of said reduction shall not exceed the amount of state revenues in excess of the limitation on state fiscal year spending for said fiscal year.

(5) All calculations and reductions made by the controller pursuant to this section shall be subject to review by the state auditor.

24-77-103.8. Unrefunded state revenues. (1) Any amount of state revenues in excess of the limitation on state fiscal year spending for the 1996-97 fiscal year that voters statewide did not authorize the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution, but that are not refunded by the state as required, shall be added to and refunded with any state revenues in excess of the limitation on state fiscal year spending for the 1998-99 fiscal

year required to be refunded.

(2) Any amount of state revenues in excess of the limitation on state fiscal year spending for the 1997-98 fiscal year and every fiscal year thereafter through the 2000-01 fiscal year that voters statewide did not authorize the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution, but that are not refunded by the state as required, shall be added to and refunded with any state revenues in excess of the limitation on state fiscal year spending for the fiscal year following the fiscal year for which state revenues in excess of the limitation on state fiscal year spending were required to be refunded.

(3) Any amount of state revenues in excess of the limitation on state fiscal year spending for the 2001-02 fiscal year and for every fiscal year thereafter that voters statewide did not authorize the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution, but that are not refunded by the state as required, shall be carried forward and added to the amount of any unrefunded state revenues in excess of the limitation on state fiscal year spending for previous fiscal years that has been carried forward. Said aggregate amount of unrefunded state revenues shall be added to and refunded with subsequent fiscal years' state revenues in excess of the limitation on state fiscal year spending that are required to be refunded; however, the amount of state revenues in excess of the limitation on state fiscal year spending that was required to be refunded but was not refunded during the most recently completed fiscal year shall be applied first to the fiscal year immediately following the most recently completed fiscal year.

24-77-103.9. Over-refunds of and unrefunded state revenues - records and disclosure. (1) The department of revenue shall maintain a record of:

(a) Any amount of over-refund, as defined in section 24-77-103.7 (1), made in each fiscal year commencing on and after July 1, 2004; and

(b) Any amount of state revenues in excess of the limitation on state fiscal year spending for any fiscal year commencing on or after July 1, 2004, that voters statewide did not authorize the state to retain and spend and that are required to be refunded pursuant to section 20 (7) (d) of article X of the state constitution, but that are not refunded by the state as required by the end of the next fiscal year.

(2) The amount of any over-refunds or unrefunded excess state revenues, as determined by the records maintained pursuant to subsection (1) of this section, for any fiscal year commencing on and after July 1, 2004, shall be disclosed in the state financial report required to be prepared by the controller pursuant to section 24-77-106.5 for such fiscal year.

24-77-104. State emergency reserve - creation - declaration of emergency. (1) The state shall hereby establish a state emergency reserve which shall be held by the state for emergencies declared pursuant to subsection (3) of this section. Said state emergency reserve shall be no less than the following:

(a) For fiscal year 1993-94, one percent of state fiscal year spending minus annual bonded debt service;

(b) For fiscal year 1994-95, two percent of state fiscal year spending minus annual bonded debt service;

(c) For fiscal year 1995-96 and each fiscal year thereafter, three percent of state fiscal year spending minus annual bonded debt service.

(2) (a) The state emergency reserve shall consist of such moneys as are annually designated by the general assembly in the general appropriation bill or by separate bill to constitute said emergency reserve. For the fiscal year 1996-97 and each fiscal year thereafter, the principal of the controlled maintenance trust fund created in section 24-75-302.5 (2), may constitute all or some portion of the state emergency reserve.

(b) Repealed.

(3) The state emergency reserve may be expended in any given fiscal year upon:

(a) The declaration of a state emergency by the passage of a joint resolution which is approved by a two-thirds majority of the members of both houses of the general assembly and which is approved by the governor in accordance with section 39 of article V of the state constitution; or

(b) The declaration of a disaster emergency by the governor pursuant to section 24-33.5-704 (4).

(4) Nothing in this section shall be construed to limit, modify, or abridge the powers and duties of the governor to respond to disasters as provided for in part 7 of article 33.5 of this title.

(5) Nothing in this section shall be construed to limit the ability of the general assembly to define the term "emergency" pursuant to section 20 (2) (c) of article X of the state constitution.

24-77-104.5. General fund exempt account - appropriations to critical needs fund - specification of uses for health care and education - definitions. (1) The moneys in the general fund exempt account created in section 24-77-103.6 (2) shall be appropriated or transferred in the following manner:

(a) (I) If available, the amount set forth in subparagraph (II) of this paragraph (a) shall be used as follows:

(A) If the voters of the state approve the ballot issue set forth in House Joint Resolution 05-1057, enacted at the first regular session of the sixty-fifth general assembly and submitted to the voters as referendum "D", the general assembly may appropriate

moneys from the account to the critical needs fund created in section 24-115-111 to make payments on principal and interest on critical needs notes issued pursuant to section 24-115-110. Such an appropriation shall be an authorized use of moneys in the account pursuant to the provisions of section 24-77-103.6 (2) (b), (2) (c), and (2) (d).

(B) If the voters of the state do not approve referendum "D", if the principal and interest on notes issued pursuant to section 24-115-110 is less than the amount set forth in subparagraph (II) of this paragraph (a), or if the general assembly elects not to appropriate moneys to the critical needs fund to repay the principal and interest on notes issued pursuant to section 24-115-110, moneys in the account shall be used in a manner consistent with section 24-77-103.6 (2).

(II) The amount appropriated or transferred pursuant to this subsection (1) shall be fifty-five million dollars in the state fiscal year 2005-06, ninety-five million dollars in state fiscal year 2006-07, and one hundred twenty-five million dollars in each subsequent state fiscal year.

(b) If there are any moneys in the account after the appropriations or transfers required by paragraph (a) of this subsection (1) are made, then all moneys remaining in the account shall be split equally for the following three purposes:

(I) Funding for health care, which shall be limited to the uses set forth in subsection (2) of this section;

(II) Funding for preschool through twelfth grade education, which shall be limited to the uses set forth in subsection (3) of this section; and

(III) Funding for the benefit of students attending community colleges and other institutions of higher education, which shall be limited to the uses set forth in subsection (4) of this section.

(2) (a) Funding for health care, as used in subparagraph (I) of paragraph (b) of subsection (1) of this section, shall be limited to funding for:

(I) Health care for Colorado's elderly, low-income, and disabled populations, including:

(A) Physician visits;

(B) Hospital visits;

(C) Long-term care services, including nursing home care, home-based care, and community-based services;

(D) Prescription drugs;

(E) Mental health services;

(F) Prenatal care;

(G) Immunizations;

(H) Services for persons with developmental disabilities; and

(I) Medical services premiums.

(II) Programs to lower the cost of health insurance premiums for individuals and small businesses.

(b) All of the uses set forth in paragraph (a) of this subsection (2) are permitted under section 24-77-103.6 (2) (a). The general assembly shall not be required to appropriate or transfer moneys from the account for all of the programs and services set forth in paragraph (a) of this subsection (2).

(3) (a) Funding for preschool through twelfth grade education, as used in subparagraph (II) of paragraph (b) of subsection (1) of this section, shall be limited to funding for:

(I) Per-pupil funding for preschool through twelfth grade education through the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., or any successor act;

(II) Capital construction projects related to preschool through twelfth grade public education;

(III) Kindergarten and preschool programs;

(IV) Libraries;

(V) Textbooks;

(VI) Student assessment and accountability;

(VII) Repealed.

(VIII) School breakfast and lunch programs; and

(IX) Categorical programs as defined in section 17 (2) (a) of article IX of the state constitution.

(b) As used in section 24-77-103.6 (6) (a) (I), "public elementary and high school education" means preschool through twelfth grade public education. Accordingly, all of the uses set forth in paragraph (a) of this subsection (3) are permitted under section 24-77-103.6 (2) (b). The general assembly shall not be required to appropriate or transfer moneys from the account for all of the programs and services set forth in paragraph (a) of this subsection (3).

(c) Moneys from the account appropriated or transferred for funding for preschool through twelfth grade education may count as part of the general assembly's general fund maintenance of effort that is required pursuant to section 17 (5) of article IX of the state constitution.

(4) (a) Funding for the benefit of students attending community colleges and other institutions of higher education, as used in subparagraph (III) of paragraph (b) of subsection (1) of this section, shall be limited to funding for:

(I) Need-based financial aid;

(II) Merit-based financial aid;

(III) The college opportunity fund program created in article 18 of title 23, C.R.S.;

(IV) Fee-for-service contracts authorized pursuant to section 23-5-130, C.R.S.; and

(V) Capital construction projects related to higher education.

(b) All of the uses set forth in paragraph (a) of this subsection (4) are permitted under section 24-77-103.6 (2) (b). The general assembly shall not be required to

appropriate or transfer moneys from the account for all of the programs and services set forth in paragraph (a) of this subsection (4).

(5) As used in this section, "account" means the general fund exempt account created in section 24-77-103.6 (2).

24-77-105. Emergency taxes - declaration of emergency - limitation. (1) Emergency taxes may be imposed by the state pursuant to the requirements set forth in paragraph (a) of subsection (2) of this section without prior approval of the registered electors of the state; except that no state property tax shall be imposed as an emergency tax.

(2) (a) Any emergency tax may be imposed by the state upon:

(I) The declaration of a state emergency by the passage of a joint resolution which is approved by a two-thirds majority of the members of both houses of the general assembly and which is approved by the governor in accordance with section 39 of article V of the state constitution; and

(II) The imposition of an emergency tax by the passage of a bill which is approved by a two-thirds majority of the members of both houses of the general assembly and which is approved by the governor in accordance with section 11 of article IV of the state constitution.

(b) Any emergency tax which is imposed pursuant to paragraph (a) of this subsection (2) shall be subject to approval by a majority of the registered electors of the state at the next statewide election which occurs sixty days or more after the declaration of the emergency pursuant to subparagraph (I) of paragraph (a) of this subsection (2). Any emergency tax which is not approved at such election shall expire as of the last day of the month in which such election was held.

(3) Revenues from any emergency tax imposed pursuant to the provisions of subsection (2) of this section shall not be expended until all of the state emergency reserve has been expended for such emergency.

(4) Any emergency tax revenues which are not expended on the declared state emergency shall be refunded within one hundred eighty days after such emergency has ended.

24-77-106. Establishment of annual allowable uncommitted reserves - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution limits state fiscal year spending;

(b) Subject to certain exclusions specified in section 20 of article X of the state constitution, all state general fund revenues and all state cash fund revenues are included

in the limitation on state fiscal year spending;

(c) The legislative powers of the general assembly, including but not limited to its plenary power of appropriation, authorize and require the general assembly to assure compliance with the limitation on state fiscal year spending and to make fundamental fiscal policy decisions establishing the level of activity of all departments and agencies of state government, including those funded by revenues generated from fees; and

(d) Consonant with the exercise of such legislative powers, the general assembly must establish limits on the amount of uncommitted reserves that may be maintained by the departments and agencies of state government for cash funds under their control and must exercise any other necessary controls on cash fund revenues, including but not limited to the power of appropriation.

(2) (Deleted by amendment, L. 99, p. 1237, § 4, effective August 4, 1999.)

(3) For the 1999-2000 fiscal year and each fiscal year thereafter, each department or agency of state government shall maintain the uncommitted reserves of any cash fund under its control in accordance with section 24-75-402.

24-77-106.5. Annual financial report - certification of excess state revenues. (1) (a) For each fiscal year, the controller shall prepare a financial report for the state for purposes of ascertaining compliance with the provisions of this article. Any financial report prepared pursuant to this section shall include, but shall not be limited to, state fiscal year spending, reserves, revenues, revenues that the state is authorized to retain and spend pursuant to voter approval of section 24-77-103.6, and debt. Such financial report shall be audited by the state auditor.

(b) Based upon the financial report prepared in accordance with paragraph (a) of this subsection (1) for any given fiscal year, the controller shall certify to the governor, the general assembly, and the executive director of the department of revenue no later than September 1 following the end of a fiscal year the amount of state revenues in excess of the limitation on state fiscal year spending imposed by section 20 (7) (a) of article X of the state constitution, if any, for such fiscal year and the state revenues in excess of such limitation that the state is authorized to retain and spend pursuant to voter approval of section 24-77-103.6.

(2) Any financial report prepared and certification of state excess revenues made pursuant to subsection (1) of this section shall be audited by the state auditor. No later than September 15 following the certification made by the state controller for any given fiscal year, the state auditor shall report and transmit to the governor, the joint budget committee, the finance committees of the house of representatives and the senate, and the executive director of the department of revenue the results of any audit conducted in accordance with this subsection (2).

(3) Notwithstanding any generally accepted accounting principles to the contrary,

financial reports prepared pursuant to subsection (1) of this section shall not include any unrealized gains or losses on investments held by the state.

24-77-107. Construction. Nothing contained in this article shall be construed to apply to or impose, by implication or otherwise, any limitation, restriction, or prohibition upon or expansion of any local government fiscal policies.

FEDERAL MANDATES

ARTICLE 78

Federal Mandates Act

24-78-101 to 24-78-203. (Repealed)

INTERNET REGULATION

ARTICLE 79

Limitations on Sources of Revenue

24-79-101. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Free and unfettered access by Colorado's citizens to national and global communications media, including, without limitation, the internet, is essential to citizen participation in state and national affairs through the exchange of information and the continued vitality of commerce at the state, national, and international levels;

(b) Colorado's long-term economic health and competitiveness vis-à-vis the economies of other states and nations, including the benefits of full employment and the attraction of new businesses that may wish to locate here, depend on creating a business environment that is conducive to the continued growth of commerce via the internet and on-line services;

(c) A patchwork of local fees and taxes, or the addition of state fees and taxes to those already imposed on business activity, will tend to discourage new investment, reduce the number of jobs available in the state, and dissuade consumers and employers

from enjoying the economic, social, and environmental benefits offered by use of the internet, including but not limited to telecommuting, just-in-time inventory control, and advance reservation of goods and services;

(d) The cost of forgoing these benefits, even partially and even at a local level, will be borne by all citizens of the state in the form of increased traffic congestion, air pollution, a lower quality of life, and lost time and productivity. Therefore, this act addresses a matter of statewide concern.

(e) Until pending federal legislation resolves issues involving electronic commerce, including whether, and to what extent, state and local taxation of internet access services will further the interests of all participants in the national economy, including the citizens of Colorado, a moratorium of at least three years is appropriate on the imposition of such charges, consistent with the pending national plan.

24-79-102. Limitation on sources of revenue. (1) From May 1, 1998, to and including April 30, 2001, there shall be a temporary moratorium during which the state shall not impose, assess, or collect any tax, regulation, fee, or charge upon:

(a) The direct charges for provision of internet access services; or

(b) Any provider of internet access services as a means of collecting sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(1.5) On and after April 30, 2001, the state shall not impose, assess, or collect any tax, regulation, fee, or charge upon:

(a) The direct charges for provision of internet access services, whether offered separately or as part of a package or bundle of services; or

(b) Any provider of internet access services as a means of collecting sales or use taxes from persons who purchase taxable property or services through use of the internet unless such provider acts as a vendor of taxable property or services.

(2) As used in this section:

(a) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled, switched data networks.

(b) "Internet access services" means services that provide or enable computer access by multiple users to the internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

STATE DELINQUENCY CHARGES

ARTICLE 79.5

Delinquency Charges Imposed by the State

24-79.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Amount due" means the amount of a fee, fine, penalty, or other separate charge due and owing to the state.

(2) "Delinquency charge" means a separate fee, fine, or penalty levied as a result of the late payment of an amount due. For purposes of this article, a delinquency charge shall not include any fee, fine, or other penalty imposed:

(a) In accordance with the express terms of a written contractual provision;

(b) As a result of the late payment of a tax;

(c) By a state, county, municipal, or other court;

(d) As a result of a check, draft, or order for the payment of money that is not paid upon presentment;

(e) In connection with the unlawful stopping, standing, or parking of a motor vehicle;

(f) By a public library upon overdue, damaged, or destroyed materials; and

(g) By a local liquor licensing authority pursuant to article 47 of title 12, C.R.S.

(3) "State" shall have the same meaning as defined in section 11-54-102 (12), C.R.S.

24-79.5-102. Delinquency charges. (1) Notwithstanding any other provision to the contrary, the state shall not impose a delinquency charge except as provided in this section.

(2) No delinquency charge may be collected by the state on any amount due that is paid in full within five days after the scheduled due date.

(3) No delinquency charge shall exceed fifteen dollars or up to five percent per month, or fraction thereof, not to exceed a total of twenty-five percent of the amount due, whichever is greater.

(4) No more than the amount set forth in subsection (3) of this section shall be collected by the state on any amount due regardless of the period of time during which the amount due remains in default.

(5) In the event that an amount due is one of a series of payments to be made toward the satisfaction of a single fee, fine, penalty, or other charge assessed by the state, no more than the amount set forth in subsection (3) of this section shall be collected by the state on any one of such payments regardless of the period of time during which the payment remains in default.

(6) No interest shall be assessed on a delinquency charge.

(7) Nothing in this section shall be construed to prohibit the state from charging interest on an amount due. In no event shall such interest be charged upon a delinquency charge or any amount other than the amount due. In no event shall any such interest charge exceed an annual percentage rate of eighteen percent or the equivalent for a longer or shorter period of time.

(8) Nothing in this section shall be construed to prohibit the state from recovering the costs of collection, including but not limited to disconnection or reconnection fees or penalties assessed where fraud is involved.

STATE HISTORY, ARCHIVES, AND EMBLEMS

ARTICLE 80

State History, Archives, and Emblems

PART 1

STATE ARCHIVES AND PUBLIC RECORDS

24-80-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the value of the official governmental data contained therein. As used in this part 1, the following are excluded from the definition of records:

(a) Materials preserved or appropriate for preservation because of the value of the data contained therein other than that of an official governmental nature or because of the historical value of the materials themselves;

(b) Library books, pamphlets, newspapers, or museum material made, acquired, or preserved for reference, historical, or exhibition purposes;

(c) Private papers, manuscripts, letters, diaries, pictures, biographies, books, and maps, including materials and collections previously owned by persons other than the state or any political subdivision thereof and transferred by them to the state historical society;

(d) Extra copies of publications or duplicated documents preserved for

convenience of reference;

(e) Stocks of publications;

(f) Electronic mail messages, regardless of whether such messages are produced or stored using state-owned equipment or software, unless the recipient has previously segregated and stored such messages as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the government or because of the value of the official governmental data contained therein.

24-80-102. State archives and public records - personnel - duties - cash fund - rules - definition. (1) The department of personnel shall succeed to all records of the state of Colorado or any political subdivision thereof, as the same are defined in section 24-80-101. Except as provided in subsections (5), (6), and (7) of this section, the department of personnel shall be the official custodian and trustee for the state of all public records of whatever kind that are transferred to it under this part 1 from any public office of the state or any political subdivision thereof.

(2) The chief administrative officer over state archives and public records shall be the executive director of the department of personnel.

(3) The executive director of the department of personnel shall be responsible for the proper administration of public records under this part 1. It is the executive director's duty to determine and direct the administrative and technical procedures concerning state archives and public records. The executive director shall study the problems of preservation and disposition of records, as defined in section 24-80-101, and based on such study shall formulate and put into effect, to the extent authorized by law, within the department of personnel or otherwise, such program as the executive director deems advisable or necessary for public records conservation by the state of Colorado or political subdivisions thereof.

(4) To effectuate the purposes of this part 1, the governor may direct any political subdivision of the state to designate a records administrator to cooperate with and assist and advise the executive director of the department of personnel in the performance of the duties and functions concerning state archives and public records and to provide such other assistance and data as will enable the department of personnel to properly carry out its activities and effectuate the purposes of this part 1.

(5) Items in the present care, custody, and trusteeship of the executive director of the department of personnel which are not records, as defined by section 24-80-101, because of their historical, library, or museum interest or value, shall be retained by the state historical society, and items which are not records which are in the future proposed for disposition under the provisions of this part 1, but determined to be of historical, library, or museum interest or value, shall be transferred to the state historical society with its consent in accordance with the provisions set forth in section 24-80-104.

(6) The state historical society, qualified students, and scholars approved by the society or the state archivist and other appropriate persons shall have the right of reasonable access to all records in the custody of the executive director of the department of personnel for purposes of historical reference, research, and information, and the state historical society shall have the privilege of museum display of original historical records or facsimiles thereof, subject to the provisions of section 24-80-106. Copies of records, as defined in section 24-80-101, having historical, library, or museum interest or value shall be furnished to the state historical society by the state archivist upon request of the society in accordance with the provisions of sections 24-80-103 and 24-80-107.

(7) In the event of disagreement between the state historical society and the department of personnel as to the custody of any records, as defined in section 24-80-101, the governor, with the advice of the attorney general, shall make a final and conclusive determination and order and direct custody accordingly.

(8) Repealed.

(9) Publications of the department concerning state archives and public records circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(10) (a) Except as set forth in paragraph (b) of this subsection (10), the executive director of the department of personnel shall establish by rule any fees as are necessary to pay for the direct and indirect costs of responding to requests for information and research from state agencies and the general public. The executive director shall transmit all fees collected to the state treasurer, who shall credit the same to the state archives and public records cash fund, which fund is hereby created. The moneys in the fund are subject to annual appropriation by the general assembly for the direct and indirect costs of responding to requests for information and research from state agencies and the general public. All interest derived from the deposit and investment of moneys in the fund is credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and shall not be credited or transferred to the general fund or any other fund.

(b) (I) The department of personnel shall not charge any fees for responding to a request for information or research from a member of the general assembly or his or her agent or anyone from a legislative service agency if the request:

(A) Relates to an audio recording of a legislative proceeding or any document provided to the department of personnel by the legislative branch of the state; and

(B) Is made in the performance of the requester's official duties.

(II) As used in this paragraph (b), "legislative service agency" means the office of legislative legal services, legislative council staff, office of the state auditor, or staff of the joint budget committee.

(11) The powers, duties, and functions concerning state archives and public records shall be administered as if transferred by a **type 2** transfer to the department of

personnel.

24-80-102.5. Custody of state property. The department of personnel shall have the charge, care, and custody of the property of the state when no other provision is made.

24-80-102.7. Records management programs - records liaison officers. (1) As used in this section, unless the context otherwise requires, "state agency" means any department, division, board, bureau, commission, institution, or agency of the state.

(2) No later than January 1, 2004, each state agency shall:

(a) Establish and maintain a records management program for the state agency and document the policies and procedures of such program. The state agency shall ensure that such program satisfies the administrative and technical procedures for records maintenance and management established by the executive director of the department of personnel pursuant to this part 1.

(b) Designate a records liaison officer or officers from the state agency's existing personnel to cooperate with and assist and advise the executive director of the department of personnel in the performance of the duties and functions concerning state archives and public records and to provide such other assistance and data that will enable the department of personnel to properly carry out its activities and implement the purposes of this part 1. The duties of a records liaison officer shall include the following:

(I) Reviewing the policies and procedures of the state agency's records management program to ensure that such program efficiently manages the state agency's records and complies with all state and federal law;

(II) Establishing an inventory of the state agency's records;

(III) Establishing retention and disposition schedules for the state agency's records that are consistent with this part 1 and the administrative and technical procedures established by the executive director of the department of personnel;

(IV) Providing information about the storage of the state agency's records to the executive director of the department of personnel, including the number of records stored, the amount of storage space used, and the cost of such storage; and

(V) Ensuring adequate security, public access, and proper storage of the state agency's records.

(c) Notify the executive director of the department of personnel of the appointment of the records liaison officer or officers. Any subsequent change in the designation of a records liaison officer shall be reported in writing to the executive director within thirty days.

(3) Repealed.

24-80-103. Determination of value - disposition. No later than January 1, 2005, and January 1 every two years thereafter, every public officer of a state agency, as defined in section 24-80-102.7, who has public records in his or her custody shall consult with the department of personnel and the attorney general of the state, and such three officers shall determine whether the records in question are of legal, administrative, or historical value. Every public officer of a political subdivision who has public records in his or her custody shall consult periodically with the department of personnel and the attorney general of the state, and such three officers shall determine whether the records in question are of legal, administrative, or historical value. Those records unanimously determined to be of no legal, administrative, or historical value shall be disposed of by such method as such three officers may specify. A list of all records so disposed of, together with a statement certifying compliance with this part 1, signed by these three officers, shall be filed and preserved in the office from which the records were drawn and in the files of the department of personnel. Public records in the custody of the executive director of the department of personnel may be disposed of upon a similar determination by the attorney general, the executive director of the department of personnel, and the head of the state agency or political subdivision from which the records were received, or its legal successor.

24-80-104. Transfer of records to archives. Those records deemed by the public officer having custody thereof to be unnecessary for the transaction of the business of his or her office and yet deemed by the attorney general or the executive director of the department of personnel to be of legal, administrative, or historical value may be transferred, with the consent of the executive director, to the custody of the department of personnel, or a storage vendor approved by the executive director. A list of all records so transferred, together with a statement certifying compliance with this part 1, signed by such three officers, shall be preserved in the files of the office from which the records were drawn and in the files of the department of personnel.

24-80-105. Disposal of records. All public records of any public office, upon the termination of the existence and functions of that office, shall be checked by the executive director of the department of personnel and the attorney general and either disposed of or transferred to the custody of the department of personnel, in accordance with the procedure of this part 1 and the findings of such two officers. When a public office is terminated or reduced by the transfer of its powers and duties to another office or to other offices, its appropriate public records shall pass with the powers and duties so transferred.

24-80-106. Protection of records. The department of personnel and every other custodian of public records shall carefully protect and preserve them from deterioration, mutilation, loss, or destruction and, whenever advisable, shall cause them to be properly repaired and renovated. All paper, ink, and other materials used in public offices for the purpose of permanent records shall be of durable quality.

24-80-107. Reproduction on film - evidence. (1) Any public officer of the state or any county, city, municipality, district, or legal subdivision thereof may cause any or all records, papers, or documents kept by him to be photographed, microphotographed, or reproduced on film. Such photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the national bureau of standards, and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details. Such photographs, microphotographs, or photographic film shall be deemed to be original records for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, or certified copy thereof, for all purposes recited in this section, shall be deemed to be a transcript, exemplification, or certified copy of the original.

(2) Whenever such photographs, microphotographs, or reproductions on film properly certified are placed in conveniently accessible files and provisions made for preserving, examining, and using the same, any such public officer may cause the original records from which the photographs or microphotographs have been made, or any part thereof, to be disposed of according to methods prescribed by sections 24-80-103 to 24-80-106. Such copies shall be certified by their custodian as true copies of the originals before the originals are destroyed or lost, and the copies so certified shall have the same force and effect as the originals. Copies of public records transferred from the office of their origin to the department of personnel, when certified by the executive director of the department of personnel or the assistant to the executive director, shall have the same legal force and effect as if certified by the original custodian of the records.

24-80-108. Access to public records. The executive director of the department of personnel, in person or through a deputy, shall have the right of reasonable access to all nonconfidential public records in the state, or any public office of the state of Colorado, or any county, city, municipality, district, or political subdivision thereof, because of the historical and research value of data contained therein, with a view to securing their safety and determining their need for preservation or disposal.

24-80-109. Records may be replevined. On behalf of the state and the

department of personnel, the attorney general may replevin any public records which were formerly part of the records or files of any public office of the territory or state of Colorado.

24-80-110. Disagreement as to value of records. In the event the attorney general and the executive director of the department of personnel determine that any records in the custody of a public officer, including the executive director of the department of personnel, but not those in the custody of a public officer of any county, city, municipality, district, or political subdivision thereof, are of no legal, administrative, or, subject to section 24-80-211 (1) (b), historical value, but the public officer having custody of said records or from whose office records originated fails to agree with such determination or refuses to dispose of said records, the attorney general and the executive director of the department of personnel may request the governor to make his or her determination as to whether said records should be disposed of in the interests of conservation of space, economy, or safety.

24-80-111. Microfilm revolving fund. (Repealed)

24-80-112. Noneffect of sections. Sections 24-80-101, 24-80-102, and 24-80-211 shall in no way affect sections 24-80-104 to 24-80-110.

24-80-113. State archives - available storage space - report. (1) As the chief administrative officer over state archives and public records pursuant to section 24-80-102 (2), the executive director of the department of personnel or the director's designee shall be responsible for reviewing and assessing the use and amount of space available for records storage in state archives and public records every three years.

(2) (a) Repealed.

(b) The report shall include, but shall not be limited to, the following:

(I) An overall assessment of the amount of space available for records storage in the state archives;

(II) The approximate number of records or boxes of records that the state archives received for storage from the executive, judicial, and legislative branches of the state government over the past three years;

(III) The approximate number of records or boxes of records that the state archivist converted from paper to microfilm or digital format over the past three years, the amount of space conserved in the archives through such conversions, the approximate

number or percentage of records that the state archivist received for storage over the past three years that were already on microfilm or in digital format, and the amount of space saved due to receiving records in such format;

(IV) The approximate number of records or boxes of records that were transferred to the Colorado historical society or other state designated records collection facilities and the amount of storage space in the state archives that such transfers made available; and

(V) Any other information that the executive director, the director's designee, or the committee deems necessary or relevant.

24-80-114. Legislative digital policy advisory committee - report - definitions - repeal. (1) As used in this section, unless the context otherwise requires:

(a) "Advisory committee" means the legislative digital policy advisory committee created in subsection (2) of this section.

(b) "Archived recordings" means the audio records of the general assembly's legislative proceedings from 1973 to 2001 that are stored by the department of personnel.

(c) "Legal material" has the same meaning as set forth in section 24-71.5-102 (2).

(d) "Record" has the same meaning as set forth in section 24-71.5-102 (5).

(2) The legislative digital policy advisory committee is hereby created. The advisory committee consists of the following individuals, or their designees:

(a) The state archivist;

(b) The librarian of the supreme court library;

(c) The state librarian;

(d) The director of research of the legislative council;

(e) The director of the office of legislative legal services;

(f) The chief clerk of the house of representatives; and

(g) The secretary of the senate.

(3) The advisory committee shall develop a plan to digitize the archived recordings that:

(a) Defines the optimal digital audio file format;

(b) Identifies potential vendors and the cost to the state to:

(I) Digitize taped archived recordings to the optimal digital audio file format;

(II) Migrate digital archived recordings to the optimal digital audio file format; and

(III) Provide the information technology system for the ongoing archival storage and access;

(c) Identifies and prioritizes at least two funding options for the plan, including any grant opportunities or licensing contracts;

(d) Recommends a policy for limited-term storage of archived recordings, perpetual archival storage, and public access to all digital legislative audio recordings;

and

(e) Includes any other information that the advisory committee determines to be relevant.

(4) (a) The advisory committee shall develop a plan for implementation of the "Uniform Electronic Legal Material Act", article 71.5 of this title, for legislative electronic records that:

(I) Recommends a policy for limited-term legislative storage, perpetual archival storage, and public access to electronic legislative records;

(II) Identifies potential authentication systems for an electronic records authentication system, including the vendors and the costs to the state;

(III) Recommends the best electronic records authentication system for the state;

(IV) Identifies funding options for the authentication system; and

(V) Includes any other information that the advisory committee determines to be relevant.

(b) For purposes of the plan identified in this section, the advisory committee shall consider the digital records of legal materials specified in section 24-71.5-102 (2) and any other items that could be legal materials under the "Uniform Electronic Legal Material Act", including legislative audio recordings.

(5) (a) No later than November 1, 2013, the advisory committee shall submit a report to the committee on legal services and the joint budget committee that includes the plans required under this section.

(b) The advisory committee is exempt from joint rule number 24A (d) (2) of the senate and house of representatives.

(6) (a) This section is repealed, effective January 1, 2014.

(b) Notwithstanding section 2-3-1203, C.R.S., the advisory committee is not subject to the review required in section 2-3-1203, C.R.S., prior to repeal.

PART 2

STATE HISTORICAL SOCIETY

24-80-201. Society an educational institution. The state historical society, an incorporated organization, is hereby declared to be one of the educational institutions of the state of Colorado.

24-80-202. Trustee for state - exchange duplicates - lending materials. (1) Except as otherwise provided in part 1 of this article, the society shall be the trustee of the state and as such shall faithfully expend and apply all money received from the state to the uses and purposes directed by law, and shall hold its present and

future collections and property for the state, and shall not sell, mortgage, transfer, or dispose of in any manner or remove from the Colorado state museum any article thereof, or part of the same, without authority of law.

(2) Nothing in this section shall be construed to prevent the sale, exchange, or other disposition of materials held by the society that are determined by the president and board of directors of the society to be duplicates of other items held by the society, redundant examples of items of similar type held by the society, items that are beyond the scope of the society's mission statement or collections policy, or items that are lacking in usefulness or historical value.

(3) Nothing in this section shall be construed to prevent the loan for reasonable periods of time of materials or exhibits to responsible borrowers under adequate safeguards, or the transfer to other educational institutions of the state of property not deemed applicable to the purposes of the society.

(4) Revenue generated by the sale of such properties shall be held and disbursed pursuant to section 24-80-209.

24-80-202.5. Funding recommendations. The president of the society shall make funding recommendations to the governor and the general assembly for the operation of the state historical society. The general assembly shall make annual appropriations, in such form as the general assembly shall determine appropriate, for the operation of the state historical society.

24-80-203. Publications.

(1) Repealed.

(2) Publications of the society circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

24-80-204. Employees. The board of directors of the society shall appoint its employees and fix their salaries, subject to the provisions and exemptions of section 13 of article XII of the state constitution; but for the purposes of this part 2, all officers, curators, assistant curators, and teachers of the society, so designated by the board of directors, are hereby declared, as a matter of legislative determination, to be officers and teachers in an educational institution and therefore not under the state personnel system.

24-80-205. Disposition of duplicate specimens - loans authorized. (1) Whenever the state historical society possesses natural history books,

specimens, and documents which are duplicates of or similar to others possessed by the society or which are considered useless by the board of directors for the history of the state or more useful for exchange, the society is authorized to return such books or the material to the donors, to government departments, or to state institutions, to loan or deposit with its branch societies or exchange for other similar material, or otherwise to dispose of the same as provided by law.

(2) The state historical society is authorized to loan, for reasonable periods of time, materials and exhibits possessed by the society to responsible borrowers under adequate safeguards.

24-80-206. Society to accept gifts. The state historical society is hereby authorized to accept and receive gifts and donations to carry out and promote the objects and purposes of the society.

24-80-207. Purpose of donations. Donations of moneys, securities, or other property may be made to and for the sole use of any one or more of the departments or bureaus of the society, and donations so made shall be kept in a separate fund for the use of such department.

24-80-208. Donations providing conditions on use. Donations made with the provision that the interest or income only therefrom shall be used by the society, if accepted, shall be received by the society, and the intent of the donor with reference to the same shall be observed and carried out, and the principal of said gift, if money, and such other funds as are available shall be invested by the state treasurer as state custodian of those funds, and the interest or income therefrom shall be available for the society for the purposes given.

24-80-209. Title to property - disbursement of revenues. The title to all property acquired by the society by gift, purchase, or otherwise shall absolutely vest in and belong to the state of Colorado when accepted or received by the society, and all moneys or securities received by it, whether from gifts, sale of duplicate or undesired books, specimens, documents, exhibits, or other properties, sale of microfilms or other copies, publication or sale of books, magazines, postcards, pamphlets, maps, or other materials, admissions, dues, operation or rental of concessions or facilities, rendering of services, or from any other source shall be held by the state treasurer as custodian separate and apart from other funds and may be withdrawn from his custody for the purposes and

under the control of the society, only upon the issuance of vouchers signed by the president or vice-president and treasurer or secretary of the society and upon warrants drawn against such funds by the controller.

24-80-210. Collections classed and catalogued. Collections of a scientific or historical nature shall be properly classed and catalogued and shall be at all reasonable hours open for public inspection and examination but under such rules and regulations as shall be prescribed or adopted by said society.

24-80-211. Society and division. (1) The state historical society shall continue as an educational institution of the state, considered as a division of the department of higher education for the purpose of determining the order of its appropriation; except that:

(a) (Deleted by amendment, L. 96, p. 1531, § 93, effective June 1, 1996.)

(b) The executive director of the department of personnel shall consult with the state historical society with respect to the proposed destruction under part 1 of this article of any documentary, library, or museum materials, whether or not defined in section 24-80-101 as records, and shall not consent to the destruction of any such materials determined by the state historical society to be of historical value; and

(c) The installation of any museum display or exhibition of historical materials in the department of personnel shall be with the guidance and counsel of the state historical society.

24-80-212. Transfer of mineral exhibits and documents. On July 1, 1959, there shall be transferred from the bureau of mines of the state of Colorado to the state historical society that certain mineral exhibit presently maintained by the bureau of mines in the Colorado state museum building, together with all mineral and other collections, specimens, exhibits, displays, records, documents, cases, and other materials pertaining to said exhibits and all collections and exhibits subordinate thereto. The said exhibit shall be and remain from the date of such transfer part of the general collections of the state historical society as described in this part 2, subject to the obligations and powers of the state historical society as set forth in this part 2. That portion of the Colorado state museum building now occupied by the said exhibit shall be transferred on July 1, 1959, to the occupancy and control of the state historical society.

24-80-213. Assistance from educational institutions. At the request of the state historical society, officials of the bureau of mines of the state of Colorado, the Colorado

school of mines, the university of Colorado, and other state educational institutions shall consult with the state historical society and shall assist and advise the society concerning the technical aspects, maintenance, display, and utilization of any part or all of the mineral exhibit described in section 24-80-212.

24-80-214. State museum cash fund. There is hereby created in the state treasury the state museum cash fund, referred to in this section as the "cash fund". The cash fund shall consist of all moneys transferred to the cash fund from the state historical fund pursuant to section 12-47.1-1201 (5), C.R.S.; moneys transferred from the justice center cash fund pursuant to section 13-32-101 (7) (b), C.R.S.; and any other moneys appropriated to the cash fund by the general assembly. Moneys in the cash fund shall be subject to annual appropriation by the general assembly to the state historical society to pay for the planning, design, acquisition, and construction of and relocation to a new state museum, and exhibits for the museum. Appropriations from the cash fund shall remain available to the state historical society for a period of four years. Any moneys in the cash fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the cash fund shall be credited to the cash fund. Any unexpended and unencumbered moneys remaining in the cash fund at the end of a fiscal year shall remain in the cash fund and shall not be credited or transferred to the general fund or another fund.

PART 3

COUNTY HISTORICAL SOCIETIES

24-80-301. County units. Each county is authorized, through its board of county commissioners, to create and maintain a county unit, tributary to the state historical society, and having in view the same objectives as the state society.

24-80-302. Office in county courthouse. Whenever there is organized in any one of the several counties a patriotic society to promote these objectives and composed of members of character and standing, whether called an early settlers' society or by some other name, it is the duty of the executive officers of said county to permit the use of a room in the courthouse for its meetings and otherwise; but such use shall not interfere with the usual legitimate purpose of such room.

24-80-303. County to pay expenses. The executive officials of the county shall provide suitable room and furniture for the safekeeping and exhibition of the collections of the county unit or society as in their judgment may seem proper and shall pay the cost of same from the general fund from any moneys not otherwise appropriated.

24-80-304. Title to property. While the collection and supervision of the county library, museum, and curio collection, here authorized, shall be entrusted to a patriotic society, united for the purpose, the title to all property thus accumulated shall be in the executive officers of the county where located and their successors in office.

24-80-305. Custodian - finance board - indebtedness. The secretary of the patriotic society in charge shall be the custodian of all property of the county unit or society. The secretary of the county unit and the chairman of the board of county commissioners shall be a board to control the finances and to make needed purchases. The patriotic society in charge shall incur no debt.

24-80-306. Collection of material - expense. To bind and preserve copies of newspapers published in the county where located; to preserve manuscripts and photographs of local interest; to procure copies of all books pertaining to the Rocky Mountain country; and especially to preserve to the fullest extent possible the history of our soldiers in the recent world war shall be prime objectives of each county society. Payment for the same shall be made by the board of county commissioners from the general fund of the county at its discretion.

24-80-307. Duty of secretary-custodian - report. It is the duty of the secretary-custodian of every county unit taking advantage of this part 3 to report from time to time to the state historical society of Colorado on matters which relate to the historical development of that county or of the state and also to make annually a report to the state historical society containing such information and submitted at such a time as the state historical society shall require.

PART 4

HISTORICAL, PREHISTORICAL, AND ARCHAEOLOGICAL RESOURCES

24-80-401. Title to historical, prehistorical, and archaeological

resources. (1) The state of Colorado reserves to itself title to all historical, prehistorical, and archaeological resources in all lands, rivers, lakes, reservoirs, and other areas owned by the state or any county, city and county, city, town, district, or other political subdivision of the state. Historical, prehistorical, and archaeological resources shall include all deposits, structures, or objects which provide information pertaining to the historical or prehistorical culture of people within the boundaries of the state of Colorado, as well as fossils and other remains of animals, plants, insects, and other objects of natural history within such boundaries.

(2) As used in this part 4, "historical, prehistorical, and archaeological resources" includes, in addition to the specific site or deposit, rights-of-way access on state-owned land from a maintained public road for the exploration, protection, preservation, interpretation, and enhancement of the site or deposit proper.

24-80-402. Administration of part 4. In addition to any other powers and duties conferred by law, the state historical society of Colorado, referred to in this part 4 as the "society", shall administer the provisions of this part 4, and the duties and powers of the state archaeologist described in this part 4 shall be exercised under the direction of its board of directors.

24-80-403. Office of state archaeologist - purpose. There is hereby established the office of state archaeologist, which shall be a section within the society in the department of higher education. The purpose of the office of state archaeologist shall be to coordinate, encourage, and preserve by the use of appropriate means the full understanding of this state's archaeological resources as the same pertain to man's cultural heritage, the study and understanding of which within the state of Colorado will result in an ultimate benefit to the citizens of this state.

24-80-404. State archaeologist - appointment - qualifications. The board of directors of the society is hereby authorized to and shall appoint a state archaeologist pursuant to the provisions of section 13 of article XII of the state constitution. The state archaeologist shall be the head of the office of state archaeologist. He shall be a graduate of a recognized college or university with a post-graduate degree in archaeology or anthropology and shall have had sufficient practical experience and knowledge in archaeology to qualify for the purposes of this part 4. The activities of the state archaeologist shall be closely coordinated with the other activities of the society.

24-80-405. Objectives and duties of the state archaeologist. (1) The state archaeologist shall function to provide assistance to and cooperate with the general public, industries, and agencies of local, state, and federal government, including institutions of higher education, in pursuit of the following objectives:

(a) To assist, consult with, and advise state and local governmental agencies and private persons on archaeological problems;

(b) To promote development of archaeological resources for educational purposes;

(c) To conduct studies to develop archaeological information;

(d) To inventory and analyze this state's archaeological resources as to location, quantity, and their cultural significance;

(e) To collect and preserve archaeological resources;

(f) To advise the state and to act as liaison agency in transactions dealing with archaeological resources between state agencies and other states and between state agencies and the federal government on common problems and studies;

(g) To issue permits to qualified applicants for the conduct of archaeological studies;

(h) To arrange for the care, use, and storage of any archaeological resources collected;

(i) To prepare, publish, and distribute reports, maps, and bulletins when necessary to achieve the purposes of this part 4;

(j) To accept and, through the department of personnel, to use, disburse, and administer all federal funds or other property, services, and moneys allotted to the office of state archaeologist for the purposes of this part 4 and to prescribe, by regulation not inconsistent with the laws of this state, the conditions under which such funds, property, services, or moneys shall be accepted and administered. On behalf of the state, the society is empowered to make such agreements with the approval of the attorney general, not inconsistent with the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance.

(k) To implement a program of salvage archaeology, which shall include surveys and either the salvage or the preservation of sites or antiquities imperiled by construction or other earth-movement projects;

(l) To establish and coordinate a procedure by which an historical, prehistorical, or archaeological resource belonging to the state of Colorado may be removed from Colorado on a loan basis, subject to its return pursuant to section 24-80-406.

(2) The duties of the state archaeologist are to fulfill the objectives of this part 4 and, together with other employees of the society, to work for the maximum beneficial conservation of the archaeological resources of the state of Colorado and the acquisition and dissemination of knowledge pertaining to archaeology.

24-80-406. Permits. (1) (a) The society shall issue or deny permits for the investigation, excavation, gathering, or removal from the natural state of any historical, prehistorical, and archaeological resources within the state and determine whether or not the applicants for such permits are duly qualified to conduct investigations in the field for which the permit is requested.

(b) The issuance, denial, or revocation of permits shall be made in conformity with article 4 of this title.

(2) Permits shall carry the following stipulations, in addition to such others as the society may require:

(a) The investigations, excavations, gatherings, and removals shall be undertaken only for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such resources; and such activities shall be conducted for permanent preservation, either on the site or in museums, open to the public and available to qualified students.

(b) All permit holders shall provide the state archaeologist, within one year after the start of the investigation, excavation, gathering, or removal, with a preliminary report of progress. If such activity continues for more than one year, an annual progress report shall be made. The permit holder shall furnish a final report of the activity undertaken within three years after termination of the field work.

(c) An inventory of all materials recovered during the course of the investigation, excavation, gathering, or removal shall be supplied to the state archaeologist.

(d) Upon receipt of the final report of the activity undertaken by a permit holder, the state archaeologist may require that a representative collection of the materials recovered be delivered to the state of Colorado and shall determine a repository for the same.

(e) Any permit issued by the society may be revoked by the society, pursuant to article 4 of this title, at any time if there is evidence that the activity authorized by the permit is being unlawfully or improperly conducted or if the permit holder does not honor the conditions of the permit. When a permit is revoked, all recovered materials, catalogues, maps, field notes, and other records necessary to identify the same shall be surrendered immediately to the society.

24-80-407. Agreements. The society may enter into agreements with the department of transportation, the federal bureau of public roads, or other agencies, private corporations, or individuals controlling highway and other construction activities which might, in any way, involve historical, prehistorical, and archaeological resources of the state of Colorado.

24-80-408. Properties not owned by the state. Upon the request of any municipality, county, or governmental agency, the society shall, and, upon the request of any corporation or private individual whose property is affected, the society may, undertake the powers provided for in sections 24-80-405 to 24-80-407 with respect to historical, prehistorical, or archaeological resources on private or public lands, owned by the entity so requesting, within the boundaries of Colorado. The state archaeologist may adopt rules and regulations governing the extent of responsibility he will assume and the conditions pertaining thereto.

24-80-409. Penalty - injunction - temporary restraining order. (1) Any person who knowingly appropriates, excavates, injures, or destroys any historical, prehistorical, or archaeological resource on land owned by the state or any county, city and county, city, town, district, or other political subdivision of the state without a valid permit 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 thirty days, or by both such fine and imprisonment. All articles and materials illegally taken and all moneys and materials derived from the sale or trade of the same shall be forfeited to the society.

(2) When the society has cause to believe that a person has engaged in or is engaging in any unlawful conduct as defined in subsection (1) of this section, it may apply for and obtain, in an action in any district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof.

24-80-410. State monuments. The governor of the state of Colorado is hereby authorized, upon recommendation of the society and approval of both the state agency having jurisdiction over the same and the county or municipality within which the same are located, to declare by public proclamation that any particular historic and prehistoric or archaeological structures, deposits, sites, and other objects of scientific or historic interest that are situated upon lands owned by the state of Colorado shall be state monuments, and he may designate as a part thereof such state-owned parcels of land as he may deem necessary for the proper access, care, and management of the objects so designated.

24-80-411. Applicability of this part 4 to human remains. The treatment of human remains is governed by both this part 4 and part 13 of this article. In case of any

conflict between said parts, part 13 shall control.

PART 5

HISTORICAL MONUMENTS

24-80-501. Monuments enumerated - control. Bent's Old Fort on the Arkansas River, Chief Ouray Memorial near Montrose, Pike's Stockade on the Conejos River, Fort Garland in the San Luis Valley, Healy House and Dexter Cabin in Leadville, and such other historical sites and structures as may from time to time be acquired by the state historical society on behalf of the state of Colorado are hereby declared state historical monuments. The state historical society shall have exclusive management and control over such historical monuments and shall reconstruct, restore, repair, construct, install, and furnish, in its discretion and to the extent of moneys available to it, such buildings, museums, or other structures and such exhibits, displays, and other items on or in such historical monuments as it deems advisable.

24-80-502. Survey - report - acquisition. The state historical society is hereby authorized to survey and study all sites and structures in Colorado deemed by it of historical interest or importance or suitable for local historical museums and to draft for submission to the general assembly and the governor and to revise from time to time a list and description of such sites and structures, together with its recommendations for their preservation, restoration, and construction, and a long-range program for the development of historical monuments in Colorado. The state historical society is further authorized, in its discretion and from time to time, to acquire on behalf of the state of Colorado by gift or devise or by purchase, to the extent moneys are available to it, such sites and structures in Colorado as it deems advisable for historical monuments.

PART 6

COLORADO RIVER

24-80-601. Name changed from Grand. The name of the Grand river in Colorado is hereby changed to the Colorado river, by which name said river, after March 24, 1921, shall be known from its source to where it crosses the western boundary of the state of Colorado.

24-80-602. Effect. The change of the name of said river shall in no way affect the

rights of this state or of any county, municipality, corporation, association, or person; and all laws, records, surveys, maps, and other public or private documents of every kind and nature in which the said river is mentioned or referred to under or by the name of the Grand river, after March 24, 1921, shall refer to the same river and with the same purport and effect, under and by the name of the Colorado river.

PART 7

MOUNT MESTAS

24-80-701. Name changed from Veta peak. From and after March 23, 1949, Veta peak, situated in the Sangre de Cristo range in Huerfano county, now known as Baldy peak, shall be known as Mount Mestas.

PART 8

SANTA FE TRAIL

24-80-801. Penalty for damaging monuments. Any person who destroys, defaces, removes, or injures the monuments or marks erected to mark the Santa Fe Trail in the state of Colorado is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or by both such fine and imprisonment.

24-80-802. Historic trail - marking. The general assembly hereby recognizes and commends the designation by the congress of the United States of the Santa Fe trail as a national historic trail and declares that portion of the Santa Fe trail occurring in the state of Colorado to be a valuable and noteworthy historic resource that should be identified for the traveling public where it travels on or crosses the highways of the state of Colorado. Therefore, the executive director of the department of transportation is directed to mark with suitable signs significant route segments and sites recognized as associated with the primary route of the historic Santa Fe trail in Colorado, as generally depicted on a map entitled "The Santa Fe Trail" contained in the final report of the secretary of the interior of the United States dated July 1976, where the trail travels on and crosses the highways of this state. The cost of implementing the purposes of this section shall be derived from any gifts, donations, or in-kind contributions to the department of transportation for this purpose.

PART 9

STATE EMBLEMS AND SYMBOLS

24-80-901. Size and description of seal. The seal of the state shall be such size as specified by the secretary of state by rule adopted in accordance with article 4 of this title, with the following device inscribed thereon: An heraldic shield bearing in chief, or upon the upper portion of the same, upon a red ground three snow-capped mountains; above surrounding clouds; upon the lower part thereof upon a golden ground a miner's badge, as prescribed by the rules of heraldry; as a crest above the shield, the eye of God, being golden rays proceeding from the lines of a triangle; below the crest and above the shield, as a scroll, the Roman fasces bearing upon a band of red, white, and blue the words, "Union and Constitution"; below the whole the motto, "Nil Sine Numine"; the whole to be surrounded by the words, "State of Colorado", and the figures "1876".

24-80-902. Punishment for illegal use. Any person who illegally uses or affixes the seal of this state to any written or printed document whatever, or fraudulently forges, defaces, corrupts, or counterfeits the same, or affixes said forged, defaced, corrupted, or counterfeited seal to any commission, deed, warrant, pardon, certificate, or other written or printed instrument, or has in his or her possession or custody any such seal, knowing it to be falsely made and counterfeited, and willfully conceals the same, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

24-80-903. Secretary of state alone can affix - custodian. The secretary of state is alone authorized to use or affix the seal of this state to any document whatever, and he only in pursuance of law. The secretary is made the custodian of the seal of the state and responsible for its safekeeping.

24-80-904. State flag. A state flag is hereby adopted to be used on all occasions when the state is officially and publicly represented, with the privilege of use by all citizens upon such occasions as they may deem fitting and appropriate. The flag shall consist of three alternate stripes to be of equal width and at right angles to the staff, the two outer stripes to be blue of the same color as in the blue field of the national flag and the middle stripe to be white, the proportion of the flag being a width of two-thirds of its length. At a distance from the staff end of the flag of one-fifth of the total length of the flag there shall be a circular red C, of the same color as the red in the national flag of the United States. The diameter of the letter shall be two-thirds of the width of the flag. The inner line of the opening of the letter C shall be three-fourths of the width of its body or bar, and the outer line of the opening shall be double the length of the inner line thereof.

Completely filling the open space inside the letter C shall be a golden disk; attached to the flag shall be a cord of gold and silver intertwined, with tassels one of gold and one of silver. All penalties provided by the laws of this state for the misuse of the national flag shall be applicable to the said state flag.

24-80-905. Columbine. The white and lavender columbine is hereby made and declared to be the state flower of the state of Colorado.

24-80-906. Duty to protect. It is hereby declared to be the duty of all citizens of this state to protect the white and lavender Columbine Aquilegia, Caerulea, the state flower, from needless destruction or waste.

24-80-907. Limitation on picking state flower. It is unlawful for any person to tear the state flower up by the roots when grown or growing upon any state, school, or other public lands or in any public highway or other public place or to pick or gather upon any such public lands or in any such public highway or place more than twenty-five stems, buds, or blossoms of such flower in any one day; and it is also unlawful for any person to pick or gather such flower upon private lands without the consent of the owner thereof first had or obtained.

24-80-908. Violation a misdemeanor - penalty. Any person who violates any provision of section 24-80-907 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five nor more than fifty dollars.

24-80-909. State song. That certain song entitled "Where the Columbines Grow", the words of which were written by A. J. Fynn and the music of which was composed by A. J. Fynn, is hereby adopted as the official state song of Colorado to be used on all appropriate occasions.

24-80-909.5. State folk dance. Square dancing, the American folk dance which traces its ancestry to the English country dance and the French ballroom dance, and which is called, cued, or prompted to the dancers and includes squares, rounds, clogging, contra, line, the Virginia reel, and heritage dances, is hereby made and declared to be the state folk dance of the state of Colorado.

24-80-910. Lark bunting. The lark bunting, scientifically known as calamospiza melancorys stejneger, is hereby made and declared to be the state bird of the state of Colorado.

24-80-910.5. State pets. Dogs (canis lupus familiaris) and cats (felis catus) that are adopted from Colorado animal shelters and rescues are hereby made and declared to be the state pets of the state of Colorado.

24-80-911. State animal. The rocky mountain bighorn sheep (ovis canadensis) is hereby made and declared to be the state animal of the state of Colorado, and no person may pursue, take, hunt, wound, or kill any rocky mountain bighorn sheep, except as provided in title 33, C.R.S.

24-80-911.3. State reptile. The western painted turtle (chrysemys picta bellii) is hereby made and declared to be the state reptile of the state of Colorado.

24-80-911.4. State amphibian. The western tiger salamander (ambystoma mavortium) is hereby made and declared to be the state amphibian of the state of Colorado.

24-80-911.5. State fish. The greenback cutthroat trout (oncorhynchus clarki stomias) is hereby made and declared to be the state fish of the state of Colorado.

24-80-912. State gemstone. The aquamarine is hereby made and declared to be the state gemstone of the state of Colorado.

24-80-912.5. State mineral. Rhodochrosite is hereby made and declared to be the state mineral of the state of Colorado.

24-80-912.7. State rock. Yule marble is hereby made and declared to be the state rock of the state of Colorado.

24-80-913. State insect. The Colorado hairstreak (hypaurotis crysalus), a butterfly, is hereby made and declared to be the state insect of the state of Colorado.

24-80-914. State museum. The wings over the rockies air and space museum is hereby made and declared to be the official state air and space museum of the state of Colorado.

PART 10

DR. FLORENCE RENA SABIN MEMORIAL COMMISSION

24-80-1001. Legislative declaration. Dr. Florence Rena Sabin, deceased, is hereby declared to be the person designated by the state of Colorado as the citizen of the state of Colorado illustrious for her historic renown and for her distinguished civic services and deemed worthy of commemoration pursuant to Act of Congress of July, 1864 (U.S. Code, Title 40, Sec. 187), and Congressional House Concurrent Resolution No. 47 passed February 24, 1933 (47 Stat. 1784), and whose statue shall be placed in the national statuary hall in the capitol of the United States.

PART 11

1976 COLORADO CENTENNIAL - BICENTENNIAL COMMISSION

24-80-1101 to 24-80-1110. (Repealed)

PART 12

GHOST TOWNS

24-80-1201. Ghost towns - historical society may designate. (1) To assist in preserving historical monuments of Colorado, the state historical society of Colorado may designate any appropriate area within the state as a ghost town, unless the private or public owner of such property objects.

(2) Upon designation of an area as a ghost town, the state historical society shall erect the necessary number of signs, markers, or plaques at the site of such ghost town to apprise persons of the designation of such area as a ghost town, the name of the ghost town, the historical significance of the ghost town, other pertinent historical data, and the penalty for destruction or vandalism to the ghost town. Each such sign, marker, or plaque

shall also bear the inscription: "The historical heritage of the state of Colorado can only be preserved by the citizens themselves."

24-80-1202. Destruction of ghost town - penalty. No person shall destroy, damage, deface, or take anything from an area designated and marked as a ghost town by the state historical society, except by the owner or the designated agent of the owner of such property. Any person violating this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than two thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

PART 13

UNMARKED HUMAN GRAVES

24-80-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "Commission" means the commission of Indian affairs.

(2) "Disturb" means to move, open, expose, dig up, disinter, excavate, remove, carry away, damage, injure, deface, desecrate, loot, vandalize, mutilate, or destroy.

(3) "Human remains" means any part of the body of a deceased human being in any stage of decomposition.

(4) "Land" means all lands, including submerged lands, located within the state of Colorado which are owned by the state or its political subdivisions, agencies, or instrumentalities or by any private person.

(5) "Person" means an individual, limited liability company, corporation, unincorporated association, partnership, proprietorship, or governmental entity.

(6) "Unmarked human burial" means any interment of human remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

24-80-1302. Discovery of human remains. (1) Except as provided in section 24-80-1303 with regard to anthropological investigations, any person who discovers on any land suspected human skeletal remains or who knowingly disturbs such remains shall immediately notify the coroner or medical examiner of the county wherein the remains are located and the sheriff, police chief, or land managing agency official.

(2) The coroner or medical examiner shall conduct an on-site inquiry within forty-eight hours after such notification to attempt to determine whether such skeletal remains

are human remains and to determine their forensic value. If it is confirmed that the remains are human remains and of forensic value, the coroner or medical examiner shall take legal custody of the human remains pursuant to section 30-10-606 (1.2), C.R.S. If it is confirmed that the remains are human remains but of no forensic value, the coroner or medical examiner shall notify the state archaeologist of the discovery. The state archaeologist shall recommend security measures for the site.

(3) Prior to further disturbance, the state archaeologist shall cause the human remains to be examined by a qualified archaeologist to determine whether the remains are more than one hundred years old and to evaluate the integrity of their archaeological context. Complete documentation of the archaeological context of the human remains shall be accomplished in a timely manner.

(4) (a) If the on-site inquiry discloses that the human remains are native American, the state archaeologist shall notify the commission.

(b) The remains shall be disinterred unless the landowner, the state archaeologist, and the chairman of the commission or his designee unanimously agree to leave the remains in situ.

(c) Disinterment shall be conducted carefully, respectfully, and in accordance with proper archaeological methods and by an archaeologist who holds a permit issued under sections 24-80-405 and 24-80-406. In the event the remains are left in situ, they shall be covered over.

(d) Without the landowner's express consent for an extension of time, disinterment shall be accomplished no later than ten consecutive days after the state archaeologist has received notification from the coroner or medical examiner pursuant to subsection (2) of this section.

(e) The archaeologist who conducts the disinterment will assume temporary custody of the human remains, for a period not to exceed one year from the date of disinterment, for the purpose of study and analysis. In the event that a period in excess of one year is required to complete such study and analysis, the commission shall hold a hearing and may, based upon its findings, grant an extension. During the period that the human remains are in the temporary custody of the archaeologist who conducted the disinterment, an archaeological analysis and report shall be prepared. At the same time, a physical anthropological study shall be conducted to include, but not be limited to, osteometric measurement, pathological analysis, and age, sex, and cause of death determinations. The cost of the disinterment, archaeological analysis, and physical anthropological study shall be borne by the state archaeologist except when the human remains are recovered from private lands. In the latter case, if no party can be identified who will bear the cost of such scientific study, the state archaeologist shall bear such costs.

(f) Upon completion of the studies pursuant to paragraph (e) of this subsection (4), the state archaeologist shall consult with the commission regarding reinterment.

(5) Those remains which are verifiably nonnative American and are otherwise unclaimed will be delivered to the county coroner or medical examiner for further conveyance to the Colorado state anatomical board.

24-80-1303. Discovery of human remains during an anthropological investigation. (1) Prior to the commencement of an anthropological investigation in which it is probable that skeletal remains will be discovered, the anthropologists conducting such an investigation shall apply to the state archaeologist for an excavation permit issued under the authority of section 24-80-405 (1) (g). Upon receipt of said permit by a qualified applicant, he shall notify the coroner and sheriff of the county in which the investigation shall be conducted.

(2) When skeletal remains are discovered during such an investigation, the anthropologists shall determine whether such skeletal remains are human remains, and, if such remains are determined to be human remains, the anthropologists shall determine, whenever possible, the age and cultural affiliation of the individual. Based on such determinations, the anthropologists shall proceed as follows:

(a) If it is determined that the human remains are of an individual who has been dead less than one hundred years, the anthropologists shall notify the coroner of the discovery and shall offer an opinion as to the forensic significance of the human remains. The coroner shall respond to such notification within twenty-four hours, during which time all activity which could disturb such human remains shall cease. If, on the basis of the anthropologists' opinion or on an independent on-site inquiry, the coroner determines that the human remains are of no forensic significance, the anthropologists shall notify either the state archaeologist, if the human remains are those of a native American, or the Colorado state anatomical board, if the human remains are those of a human being who was not a native American.

(b) If it is determined that the skeletal remains are human remains but of an individual who has been dead for more than one hundred years, notwithstanding the provisions of section 30-10-606 (1.2), C.R.S., the anthropologists need not notify the coroner but shall notify either the state archaeologist, if the human remains are those of a native American, or the Colorado state anatomical board, if the remains are of a nonnative American.

(3) Upon notification by the anthropologists of the discovery of the human remains of a native American, the state archaeologist shall notify the commission and shall thereafter proceed in accordance with the provisions of section 24-80-1302 (4).

24-80-1304. Rule-making authority - state archaeologist. (1) In accordance with the provisions of the "State Administrative Procedure Act", article 4 of this title, the

state archaeologist may adopt rules and regulations implementing the administrative procedures of this part 13. When adopting such rules and regulations, the state archaeologist shall consider the following:

(a) The rights and interests of landowners;

(b) The sensitivity of human beings for treating human remains with respect and dignity;

(c) The value of history and archaeology as a guide to human activity; and

(d) Applicable laws, standards, and guidelines for the conduct of archaeology and codes of ethics for participation in archaeology.

24-80-1305. Violation and penalty. (1) Any person who knowingly disturbs an unmarked human burial in violation of this part 13 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who has knowledge that an unmarked human burial is being unlawfully disturbed and fails to notify the local law enforcement agency with jurisdiction in the area where the unmarked human burial is located commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

PART 14

COLORADO VETERANS' MONUMENT PRESERVATION TRUST FUND

24-80-1401. Colorado veterans' monument preservation trust fund - preservation trust committee. (1) There is hereby created in the state treasury the Colorado veterans' monument preservation trust fund, referred to in this section as the "trust fund", the principal of which shall consist of funds made available from private donations received by the department of personnel and any funds appropriated thereto by the general assembly. All moneys deposited in the trust fund and all interest earned in the trust fund shall remain in the trust for the purposes as set forth in this part 14, and no portion thereof shall be expended or appropriated for any other purpose.

(2) There is hereby created a preservation trust committee for the purpose of overseeing and making allocations out of the trust fund. The preservation trust committee shall be comprised of four members. One member shall be a representative or designee of the Colorado board of veterans affairs, created in section 28-5-702, C.R.S., one member shall be a member or designee of the state capitol building advisory committee, created in section 24-82-108, one member shall be a veteran appointed jointly by the speaker of the house of representatives and the president of the senate, and one member shall be a representative of the division of central services in the department of personnel, created in

part 1 of article 30 of this title, that oversees real estate services, who shall be an ex-officio nonvoting member.

(3) (a) The initial term for the member representing the Colorado board of veterans affairs and for the member representing the state capitol building advisory committee shall be three years. Thereafter, those members' terms shall be two-year terms. Except as provided in paragraph (b) of this subsection (3), the member appointed by the speaker of the house of representatives and the president of the senate shall serve a two-year term. Any vacancy on the committee shall be filled in the same manner provided for original appointments for the remainder of an unexpired term.

(b) The term of the member appointed by the speaker of the house of representatives and the president of the senate and who is serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall jointly appoint or reappoint one member in the same manner as provided in paragraph (a) of this subsection (3). Thereafter, the term of the member appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(4) The preservation trust committee shall have discretion in determining the amount of funds to allocate from the trust fund to meet the purposes of this part 14; except that only the interest derived from the principal in the trust fund may be expended by the preservation trust committee. All gifts, grants, and donations received by the department of personnel pursuant to subsection (5) of this section shall be credited to the trust fund and retained as principal in the trust fund. All interest earned on the investment of moneys in the fund shall be continuously appropriated to the department of personnel for allocation to the preservation trust committee. The preservation trust committee shall determine annually how much of the interest generated from the principal in the trust fund will be spent and shall determine and approve what types of maintenance and repair work will be performed for the purposes of maintaining, enhancing, and repairing the Colorado veterans' monument and any fallen heroes memorials in Lincoln park in Denver, Colorado, and for maintaining Lincoln park. The principal of the trust fund and any unappropriated interest earned on the principal of the trust fund at the close of any fiscal year shall remain in the trust fund and shall not be transferred to or revert to the general fund.

(5) The department of personnel is authorized to receive gifts, grants, and donations from private or public sources for the trust fund. Such gifts, grants, and

donations, together with any other moneys appropriated or transferred by the general assembly, shall be transmitted to the state treasurer who shall credit the same to the trust fund. Moneys in the trust fund shall be used for maintaining and enhancing the Colorado veterans' monument and Lincoln park, but shall not be used to supplant existing appropriations for maintenance of the monument or Lincoln park. For purposes of section 20 of article X of the state constitution, any donations received for the trust fund shall not be included in state fiscal year spending.

24-80-1402. Fallen heroes memorial commission - fund - repeal. (1) (a) There is hereby created in the department of personnel the fallen heroes memorial commission, referred to in this section as the "commission", to erect memorials near the Colorado veterans monument in Lincoln park to commemorate the lives of Coloradans who died during specific military conflicts. The commission shall consist of five members. The governor, president of the senate, minority leader of the senate, speaker of the house of representatives, and minority leader of the house of representatives shall each appoint one member of the commission. The appointing authorities are encouraged to appoint veterans of foreign wars to the commission. Members of the commission shall serve terms of four years. A member may be reappointed to serve only one additional term.

(b) Notwithstanding the provisions of section 2-2-307, C.R.S., members of the commission, including any legislative members, shall not receive compensation for serving on the commission, but may be reimbursed for necessary expenses out of the fallen heroes memorials construction fund created in subsection (3) of this section.

(c) The commission shall elect from its members a chair and vice-chair and may establish procedures for the commission to follow.

(d) The commission shall make recommendations on the design and siting of appropriate memorials for such commemoration to the preservation trust committee created pursuant to section 24-80-1401. The preservation trust committee shall submit a proposal for the design and siting of appropriate memorials to the state capitol building advisory committee created pursuant to section 24-82-108. The state capitol building advisory committee shall be responsible for the final approval of the design and siting of the appropriate memorials.

(e) In preparing its proposal for the design and siting of appropriate memorials pursuant to this section, the preservation trust committee shall coordinate with the planning department for the city and county of Denver.

(f) The first memorial shall be to honor servicemen and servicewomen killed after September 11, 2001, during the war on terrorism, including but not limited to those killed in Afghanistan and Iraq. The proposal submitted by the preservation trust committee pursuant to paragraph (d) of this subsection (1) may include memorials for servicemen and servicewomen killed during the first world war, the second world war, the Korean

war, the Vietnam war, and such other military conflicts as the preservation trust committee may determine are appropriate.

(2) (a) The commission is authorized to solicit and accept gifts, grants, and donations to erect and maintain fallen heroes memorials. Any moneys received by the board shall be deposited in the fallen heroes memorials construction fund created in subsection (3) of this section. The commission shall not incur any obligation for the memorials in excess of the moneys available in the fund.

(b) The department of personnel shall not provide any assistance to the commission until it can do so within existing appropriations.

(3) (a) There is hereby created in the state treasury the fallen heroes memorials construction fund, referred to in this section as the "fund". The fund shall consist of:

(I) All general fund moneys appropriated to the fund; and

(II) All private and public funds received through gifts, grants, or donations for the design or construction of fallen heroes memorials.

(b) Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(c) Once the preservation trust committee determines that appropriate memorials have been erected, the committee may request that the treasurer transfer, and the treasurer shall transfer, any moneys remaining in the fund to the Colorado veterans' monument preservation trust fund created pursuant to section 24-80-1401.

(4) This section is repealed, effective July 1 of the year following the receipt by the revisor of statutes of certification from the executive director of the department of personnel that the appropriate memorials have been erected and any moneys remaining in the fund have been transferred pursuant to paragraph (c) of subsection (3) of this section.

ARTICLE 80.1

Register of Historic Places

24-80.1-101. Legislative declaration. The general assembly hereby declares that sites and structures possessing historical significance are cultural resources of this state; that the preservation of such resources is in the interest of the citizens of the state; and that the planning and activities of state agencies should include the preservation of such resources. It is the intent of the general assembly to provide that such resources be

preserved to the extent possible for the education and enjoyment of the residents of this state, present and future.

24-80.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Action" means any state activity, program, project, or undertaking or the approval, sanction, assistance, or support of any activity, policy, program, project, or undertaking, including but not limited to:

(a) Recommendations or reports relating to legislation, including requests for appropriations;

(b) New and continuing activities, programs, projects, or undertakings directly engaged in by agencies or supported in whole or in part through state contracts, grants, subsidies, loans, or other forms of funding assistance or involving a state lease, permit, license, certificate, or other entitlement of use;

(c) The sale or transfer of state properties;

(d) Comprehensive or areawide planning in which provisions may be made for any actions or which may result in a proposed action.

(2) "Agency" means any principal department of this state as provided in section 24-1-110.

(3) "Comment" means any notation, observation, remark, or recommendation made in response to a proposed agency action.

(4) "Decision" means the exercise of agency authority at any stage of an action where alterations might be made in the action to modify its impact upon cultural properties.

(5) "Effect" means any change in the quality of the historical, archaeological, or architectural character that qualified property for entry in the state register.

(6) "Historical significance" means having importance in the history, architecture, archaeology, or culture of this state or any political subdivision thereof or of the United States, as determined by the society.

(7) "Local government" means a municipality or a county.

(8) "National register" means the national register of historic places maintained pursuant to 16 U.S.C. sec. 470a.

(9) "Preservation" means the protection, enhancement, and maintenance of historic properties.

(10) "Properties" means the resources, including buildings, structures, objects, sites, districts, or areas, that are of historical significance.

(11) "Review" means the examination of information related to agency actions in order to assess the effect of such actions on properties listed in the state register.

(12) "Society" means the state historical society.

(13) "State register" means the state register of historic properties.

(14) "Water supply structure" means a head gate, ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other facility, structure, or device used to store, divert, transport, or control water, and any appurtenances thereto. "Water supply structure" includes any grouping of such structures.

24-80.1-103. State register - creation. There is hereby created a state register of historic properties in the state historical society which shall be administered by and under the control of the society.

24-80.1-104. Effect of state register - exception - legislative declaration. (1) Except as otherwise provided in subsection (3) of this section, properties included or nominated for inclusion in the state register are protected from any action initiated by a state agency until a final determination concerning the effect of the action on such properties is made pursuant to subsection (2) of this section.

(2) (a) At the earliest stage of planning or consideration of a proposed action or when it is anticipated that properties of historical significance may be adversely affected in the course of an agency action and in all cases prior to an agency decision concerning an action that may have an effect on properties listed in the state register, the agency initiating the action shall identify such properties located within the area of the proposed action, notify the society of the proposed action, request a determination of effect on such properties, and afford the society a period of thirty days in which to review the proposed action. Notification shall include sufficient and relevant information needed to make a determination of effect. Comments made by the society which include specific recommendations to prohibit or alter all or some aspects of the proposed action shall be implemented by the agency subject to paragraphs (b) and (c) of this subsection (2).

(b) If the agency rejects some or all of the comments of the society relative to the proposed action, the agency shall be afforded a period of thirty days during which to negotiate a satisfactory agreement with the society.

(c) If no agreement is reached or if any party to any such agreement is dissatisfied therewith, an appeal may be made to the governor for a final determination. The governor shall make such determination within thirty days after such appeal.

(3) (a) Subsections (1) and (2) of this section do not apply to actions initiated, taken, or authorized by the department of natural resources or the department of public health and environment or any subdivisions of those departments that affect or potentially affect water supply structures.

(b) The general assembly finds that water supply structures in Colorado are critical both to filling the projected shortfall in water supplies for current and future

residents of the state and to protecting the state's agricultural lands from a loss of water supplies. The general assembly further finds that water supply structures and the ability to repair, replace, and change water supply structures are keys to the economic future of Colorado. For these reasons, the general assembly hereby determines and declares that it is necessary to exempt state agencies that take action concerning water supply structures from subsections (1) and (2) of this section.

24-80.1-105. Procedure for inclusion in state register. (1) Properties may be nominated to the state register by the owner thereof, a local government, an agency, or the society.

(2) Upon nomination, the society shall determine whether the property is to be included in the state register. Such determination shall be based on information made available to the society, including but not limited to information submitted with the nomination, information obtained through independent research efforts, information obtained through hearings and private conferences, and any other information or data which may come to the attention of the society.

(3) Property included in the national register shall be included in the state register without determination by the society, by reason of such inclusion.

24-80.1-106. Designation as area of state interest. Property nominated to or accepted by the state register may be designated as an area of state interest by a local government in accordance with article 65.1 of this title.

24-80.1-107. Criteria for nomination. (1) Criteria for consideration of property for nomination to or inclusion in the state register shall include, but not be limited to, the following:

(a) The association of such property with events that have made a significant contribution to history;

(b) The connection of such property with persons significant in history;

(c) The apparent distinctive characteristics of a type, period, method of construction, or artisan;

(d) The geographic importance of the property;

(e) The possibility of important discoveries related to prehistory or history.

(2) Written approval of the owner of the land and the property is required for nomination to or inclusion in the state register.

24-80.1-108. Duties of the society. (1) In order to carry out the provisions of this article, the society shall:

(a) Prepare, expand, and maintain a state register of historic properties and establish and promulgate criteria and procedures by which properties shall be determined to be eligible for, nominated to, and listed in the state register, no later than December 31, 1975;

(b) Regularly notify agencies of additions or deletions to the state register;

(c) Prepare, no later than June 30, 1976, a preservation plan which it shall review and revise annually after said date.

(2) The society has the power to prepare and promulgate rules and procedures to implement this article.

(3) The society shall assist the agencies in evaluating state-owned properties and in reviewing activities, programs, projects, undertakings, and all other agency actions for adequacy in addressing the preservation of properties in the state register.

24-80.1-109. Water supply structure - nomination for inclusion in the state register or national register - multiple property documentation form. (1) (a) Before acting upon a nomination of a water supply structure for inclusion in the state register or national register, the society shall:

(I) Submit, to the water clerks for the water divisions in which the water supply structure is located, notice of the proposed nomination, for publication as set forth in section 37-92-302 (3) (a) and (3) (b), C.R.S.; and

(II) Send written notice of the proposed nomination by first-class mail to every person having a property interest in the water supply structure or water rights used through the water supply structure. In order to comply with this paragraph (a), the society may rely upon the real property records of the county assessor for the counties in which the water supply structure is located to determine persons having real property interests and, to determine the identity of persons having water right interests, the society may rely upon the records of the division engineer in the water divisions in which the water supply structure is located, as set forth under part 2 of article 92 of title 37, C.R.S.

(b) (I) The society shall not proceed with a nomination for inclusion in the state register if a person having a real property interest in the water supply structure or an interest in water that is used in the water supply structure files a letter of objection to the proposed nomination with the society within one hundred twenty days after receiving notice under this subsection (1).

(II) For a nomination to include a water supply structure in the national register, the society shall not proceed with the nomination if objection is made in accordance with 36 CFR 60.6.

(2) (a) Prior to taking any action to request approval from the keeper of the

national register of a multiple property documentation form in which any or all of the multiple property types or associated property types are water supply structures, the society shall procure the approval of the state engineer appointed pursuant to section 37-80-101, C.R.S.

(b) (I) The society shall provide notice to all persons having a property interest in a water supply structure included in a multiple property documentation form using the procedure set forth for substitute water supply plans in section 37-92-308 (5) (a), C.R.S.; except that the time requirements for any actions by the state engineer under this subsection (2) do not apply. The state engineer shall act solely at his or her discretion to consider and approve or disapprove the multiple property documentation form at a time he or she sees fit.

(II) The society shall enter into a programmatic agreement with the state engineer that requires, at a minimum, that any person having an interest in the water supply structure who objects to inclusion of the owners' water supply structure may have the water supply structure removed from the multiple property documentation form.

(3) Nothing in this section limits communications between the society and the keeper of the national register that are required under 16 U.S.C. 470a (b) (3) (I). The state engineer shall not review any such communications in which water supply structures are only incidentally described.

ALLOCATION FOR ART

ARTICLE 80.5

Allocation for Art

24-80.5-101 and 24-80.5-102. (Repealed)

STATE PROPERTY

ARTICLE 82

State Property

PART 1

CAPITOL BUILDINGS - ACQUISITION OF PROPERTY

24-82-101. Control of legislative space in the capitol, the legislative services building, and the state office building at 1525 Sherman street - responsibility of department of personnel for supervision of maintenance in capitol buildings group - exception - capitol complex master plan. (1) In accordance with the provisions of section 2-2-321, C.R.S., concerning space for the legislative department, subject to appropriations made by the general assembly and subject to the provisions of section 24-82-108, concerning preservation of the state capitol building, the legislative department, acting through the executive committee of the legislative council:

(a) Shall have control of legislative spaces in the capitol, the legislative services building, and the state office building at 1525 Sherman street, and the grounds adjacent to the capitol within the area bounded on the north by east Colfax avenue, on the west by Lincoln street, on the south by Fourteenth avenue, and on the east by Grant street, as shown on the official maps of the city and county of Denver, the state-owned grounds adjacent to the legislative services building at Fourteenth avenue and Sherman street, and the tunnels connecting the subbasements of the capitol, the legislative services building, and the state office building at 1525 Sherman street, together with all furniture, fixtures, furnishings, and equipment and all exhibits placed in and about said buildings; and

(b) Shall be responsible for the supervision of the provision of maintenance for legislative spaces in the capitol, the legislative services building, and the state office building at 1525 Sherman street, and the grounds and tunnels specified in paragraph (a) of this subsection (1) if the executive committee of the legislative council adopts a resolution assuming such responsibility. The executive committee shall deliver a copy of any resolution it adopts pursuant to this paragraph (b) to the executive director of the department of personnel.

(2) Except as otherwise provided in section 2-2-321, C.R.S., the department of personnel shall have control of executive space in the capitol and the grounds and any other property the state may acquire adjacent to the capitol other than the grounds and tunnels specified in paragraph (a) of subsection (1) of this section, together with all furniture, fixtures, furnishings, and equipment and all exhibits placed in and about such space or property, subject to appropriations made by the general assembly and subject to the provisions of section 24-82-108, concerning preservation of the state capitol building. Except as otherwise provided in paragraph (b) of subsection (1) of this section, the department of personnel shall be responsible for the supervision of the provision of maintenance for the state capitol buildings group, including assignment of all executive space owned and rented in the capitol buildings group, subject to appropriations made by the general assembly and subject to the provisions of section 2-2-321, C.R.S., concerning space for the legislative department, and subject to the provisions of section 24-82-108, concerning preservation of the state capitol building.

(3) (a) The department of personnel shall enter into competitive negotiations for

the acquisition of professional services, as specified in part 14 of article 30 of this title, to develop a master plan for the capitol complex.

(b) The master plan is subject to final approval from the office of state planning and budgeting and the capital development committee. The master plan must be completed no later than December 1, 2014, and shall:

(I) Determine space utilization needs for state agencies located in and near the capitol complex;

(II) Prioritize the location of various state agencies based on their service functions;

(III) Consider the symbolic importance of certain capitol complex buildings and grounds;

(IV) Identify opportunities for co-locating state agencies;

(V) Identify the most appropriate use of state-owned and leased space for state agencies;

(VI) Identify opportunities for energy cost savings and improved sustainability within state-owned facilities;

(VII) Assess and improve security for state-owned facilities, especially for those state agencies performing sensitive government functions;

(VIII) Establish guidelines regarding the appropriate use and maintenance of grounds within the capitol complex;

(IX) Assess existing parking capacity and identify the current and future need for capitol complex tenants, including the location of parking facilities;

(X) Establish guidelines for future development within the capitol complex, including a multi-year plan for:

(A) New and renovated capital construction projects;

(B) Controlled maintenance projects; and

(C) Real estate acquisition or disposition transactions as applicable;

(XI) Review the pedestrian circulation around the capitol complex;

(XII) Suggest financing options for future improvements and development;

(XIII) Make recommendations on buying, selling, constructing, financing, or leasing properties in the capitol complex based on factors such as land use and centralization versus decentralization of state functions; and

(XIV) Address any other issues that the office of the state architect deems important in relation to the goals of the master plan.

(c) Notwithstanding any law to the contrary, all real estate-related capital requests by executive branch departments or the legislative branch for the capitol complex shall be evaluated by the office of state planning and budgeting and the capital development committee against the capitol complex master plan developed pursuant to paragraph (a) of this subsection (3).

(d) The capitol complex master plan shall be kept and maintained by the office of

the state architect.

(e) (I) The capitol complex master plan may be modified by the department of personnel on an as-needed basis, subject to approval by the office of state planning and budgeting and the capital development committee.

(II) At a minimum, an updated capitol complex master plan must be completed by the department of personnel every ten years. Prior to completion of the updated master plan, the department of personnel shall seek approval from the office of state planning and budgeting and the capital development committee of all amendments to the master plan.

(f) For purposes of this subsection (3), the "capitol complex" includes the following buildings, facilities, and surface parking lots:

(I) 1570 Grant street, Denver;

(II) 1575 Sherman street, Denver;

(III) 1525 Sherman street, Denver, and the surface parking lots located west and north of the building;

(IV) 201 East Colfax avenue, Denver, and the surface parking lot located north of the building;

(V) The state capitol building and grounds, 200 East Colfax avenue, Denver;

(VI) 200 East 14th avenue, Denver;

(VII) 1375 Sherman street, Denver;

(VIII) 1341 Sherman street, Denver;

(IX) 1313 Sherman street, Denver, and the surface parking lot located north of the building;

(X) 1350 Lincoln street, Denver;

(XI) 251 East 12th avenue, Denver;

(XII) 690 Kipling street, Lakewood;

(XIII) 700 Kipling street, Lakewood;

(XIV) Executive residence, 400 East 8th avenue, Denver;

(XV) 1881 Pierce street, Denver;

(XVI) North campus buildings (north, east, and west), 1001 East 62nd avenue, Denver; and

(XVII) Any other buildings, facilities, and surface parking lots acquired after May 28, 2013.

24-82-102. State authorized to acquire property - disposition. (1) (a) On behalf of the state of Colorado and with the approval of the governor, the executive director of the department of personnel is authorized to acquire fee simple title, or any lesser interest therein, to any real property for present or future use by the state. Title to such property may be acquired by purchase, donation, or lease-purchase agreements or by

the exercise of the power of eminent domain through condemnation proceedings in accordance with law from funds appropriated by the general assembly or from funds donated to the state for the purpose. In the event that the executive director plans to acquire any real property by any of the means authorized by this paragraph (a), except for easements or rights-of-way, or to sell or otherwise dispose of such property, the executive director shall first submit a report to the capital development committee which outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations which may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state which will result from such acquisition. The capital development committee shall review the reports submitted by the executive director and make recommendations to the executive director concerning the disposition of the real property. The executive director shall not acquire, sell, or otherwise dispose of any real property without considering the recommendations of the capital development committee.

(b) Any lease-purchase agreement that is entered into pursuant to paragraph (a) of this subsection (1) shall comply with the requirements of section 24-82-801.

(c) to (e) (Deleted by amendment, L. 2009, (HB 09-1218), ch. 132, p. 570, § 3, effective July 1, 2009.)

(f) As used in this section, "lease-purchase agreement" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

(2) (a) Said executive director, with the approval of the governor, may rent or lease any such property not presently needed for state use and, under any such lease, with specific legislative authorization, may authorize the construction by the lessee on such property of any improvement which may be suitable for state use upon the termination of the lease, which improvement shall become the property of the state upon such termination at no additional cost to the state unless such costs are paid from funds appropriated by the general assembly or donated to the state for the purpose.

(b) Repealed.

24-82-103. Off-street parking - financing. (1) The department of personnel shall have the authority to acquire land for off-street parking and to construct related facilities, subject to specific appropriation for land acquisition and construction.

(2) The department of personnel shall develop and execute priorities for assignment of off-street parking. Rentals and charges for state-owned parking in the capitol buildings group shall not be less than those charges applicable to comparable parking offered privately and shall be reviewed annually prior to July 1.

(2.5) Notwithstanding the provisions of subsection (2) of this section, preferential

rates shall be granted for parking spaces assigned to vehicles which are used by more than one person in going to and returning from work. Such rate shall be determined based upon the number of persons regularly going to and returning from work in the vehicle which is to be charged a preferential rate and shall decrease as the number of persons regularly going to and from work in such vehicle increases; except that no parking charge shall be made for any vehicle which regularly carries four or more persons, including the driver, in going to or returning from work. The office of state planning and budgeting shall provide that not less than ten percent of the available off-street parking shall be reserved for vanpool and carpool parking.

(3) All existing balance in the capitol parking account and the farmers' union amortization account shall be transferred to the capital construction fund.

(4) (a) Moneys received pursuant to this section in excess of those necessary to pay current capital and operating costs, which moneys to pay such costs are hereby appropriated, shall be deposited to the credit of a special account within the state treasury, and such moneys shall be expended only for incentives and programs to increase state employee participation in ridesharing arrangements, as defined in section 39-22-509 (1) (a) (II), C.R.S., and state employee use of bicycles or mass transit.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (4), the department of personnel is authorized, subject to appropriation by the general assembly, to expend moneys in the special account described in paragraph (a) of this subsection (4) for the purpose of demolishing the state-owned buildings in the capitol complex at 1550 Lincoln street and making payments on a lease-purchase agreement for a parking structure on the southeast corner of fourteenth avenue and Lincoln street in the capitol complex.

(5) (a) There is hereby created in the department of personnel the capitol parking authority, referred to in this subsection (5) as the "authority", which shall be under the direction of the executive director of the department of personnel and the director of the division of central services. The authority shall constitute an enterprise for the purposes of section 20 of article X of the state constitution so long as the authority retains the authority to issue revenue bonds pursuant to paragraph (b) of this subsection (5), and the authority receives less than ten percent of its total annual revenues from grants, as defined in section 24-77-102 (7), from all Colorado state and local governments combined. So long as the authority constitutes an enterprise pursuant to this section, the authority shall not be subject to any of the provisions of section 20 of article X of the state constitution.

(b) Subject to approval by the general assembly, either by bill or by joint resolution, and after approval by the governor pursuant to section 39 of article V of the state constitution, the authority is hereby authorized to issue revenue bonds to finance the acquisition of land for off-street parking or the construction of related facilities.

24-82-104. Capitol thoroughfares - city and county of Denver regulation. (1) The driveways now existing upon the state capitol grounds at Denver, Colorado, extending from Colfax avenue to Fourteenth avenue and connecting with Sherman street at said intersections, are hereby declared to be reserved principally for the usage of employees and members of the executive department and the legislative department in the performance of their duties and for the usage of members of the public while attending functions at the state capitol.

(2) The city and county of Denver is hereby granted jurisdiction to make such regulations as are deemed necessary to accomplish the purposes of subsection (1) of this section and shall have authority to enforce such regulations by means of any police powers established by ordinance of the city and county of Denver or other provisions of law for the management and control of other streets, highways, and public thoroughfares within said city and county.

(3) The jurisdiction hereby granted shall not be deemed to convey any right, title, or interest in said driveways other than expressly provided and shall only extend to the purposes specified in this section, and the state of Colorado reserves the right at all times to revoke the powers hereby granted by act of the general assembly.

24-82-105. Security for state capitol buildings group - jurisdiction of law enforcement personnel on state property. (1) (a) The city and county of Denver is granted jurisdiction to enforce the laws of the state of Colorado for the security of persons and property in the state capitol buildings group. In addition, the city and county of Denver is granted jurisdiction to enforce the ordinances of the city and county of Denver for the security of such persons and property. For the purposes of this subsection (1) and such enforcement, the ordinances of the city and county of Denver relating to access to and conduct on properties of the city and county of Denver referred to as parks shall likewise apply to the grounds of the state capitol buildings group, as to persons not having business thereon; except that the powers of the manager of parks and recreation enumerated in such ordinance shall not apply to such grounds. As used in this subsection (1), "state capitol buildings group" means those state-owned buildings, together with the state-owned grounds adjacent thereto, in the city and county of Denver within the area bounded on the north by Sixteenth avenue, on the west by Broadway, on the south by Eleventh avenue, and on the east by Grant street, as shown on the official maps of the city and county of Denver.

(b) Repealed.

(2) In addition to any other provision of law concerning jurisdiction of law enforcement personnel on state property, there is hereby vested in city police, town marshals, and county sheriffs, their undersheriffs and deputy sheriffs, jurisdiction to enforce the laws of this state on any state-owned or state-operated properties within their

respective jurisdictions and to cooperate with members of the Colorado state patrol and other state law enforcement officers in such enforcement.

24-82-106. Acceptance - governor's approval. The department of personnel is authorized in the name and on behalf of the state to accept any devise or gifts inter vivos of property that may be donated to the state for the purpose of an executive mansion; but such acceptance shall be made only upon the approval of such donation by the governor.

24-82-107. Transfer of employees and property. Effective July 1, 1979, the officers and employees of the office of state planning and budgeting engaged prior to such date in the performance of the powers, duties, and functions vested by this part 1 in the department of personnel shall become employees of the department and shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. Effective July 1, 1979, all of the books, records, reports, equipment, property, accounts, liabilities, and funds of the office of state planning and budgeting which pertain to the powers, duties, and functions vested by this part 1 in the department of personnel shall be transferred thereto.

24-82-108. State capitol building advisory committee - creation - repeal. (1) It is the intent of the general assembly to ensure that the historic character and architectural integrity of the capitol building and grounds be preserved and promoted. Because the rose onyx, marble, granite, gold, oak woodwork, and brass fixtures and trim are deemed to be historic, it is the intent of the general assembly to provide for special procedures to be followed in any project affecting such items. In order to ensure that structural changes and innovations do not injure or dramatically change the state capitol building or the historic items contained within the building or other areas set forth in paragraph (a) of subsection (3) of this section, there is hereby created the state capitol building advisory committee, which shall review plans to restore, redecorate, or reconstruct space within the state capitol building and make recommendations to the capital development committee based on such plans.

(2) (a) (I) The state capitol building advisory committee shall be composed of the following twelve members: Three members appointed by the speaker of the house of representatives, at least one of whom shall be a member of the house of representatives who has served at least one year in the house of representatives; three members appointed by the president of the senate, at least one of whom shall be a member of the senate who has served at least one year in the senate; three members appointed by the governor; an architect, appointed by the governor, who is a person knowledgeable about the historic

and architectural integrity of the state capitol building; and the following ex officio members: The president of the state historical society or a designee of the president; and the executive director of the department of personnel or a designee of the executive director. Of the members scheduled to be appointed by the speaker of the house of representatives on July 1, 2001, one shall serve a term of one year and two shall serve terms of two years. Except as provided in subparagraph (II) of this paragraph (a), all members appointed by the speaker of the house of representatives thereafter shall serve two-year terms. Of the members scheduled to be appointed by the president of the senate on July 1, 2001, one shall serve a term of one year and two shall serve terms of two years. Except as provided in subparagraph (II) of this paragraph (a), all members appointed by the president of the senate thereafter shall serve two-year terms. Of the members scheduled to be appointed by the governor on July 1, 2000, one member shall serve a term of one year, one member shall serve a term of two years, and two members shall serve terms of three years. All members appointed by the governor thereafter shall serve two-year terms.

(II) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members in the same manner as provided in subparagraph (I) of this paragraph (a). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president 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 president and the speaker shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(b) Ex officio members of the advisory committee shall serve as long as their office is held.

(c) The advisory committee shall meet at the state capitol no less than three times per year at the call of the chairman. One meeting shall be designated as the annual meeting.

(d) At the annual meeting, the advisory committee members shall elect a chairman from among its members to serve as chairman for one year of such member's term.

(e) All members of the committee shall be volunteers and shall serve without per diem; except that members of the committee shall be reimbursed for necessary and actual expenses incurred in the performance of their duties.

(3) The advisory committee shall have the following duties:

(a) The advisory committee shall review, advise, and make recommendations to the capital development committee with respect to plans to restore, redecorate, and reconstruct space within the public and ceremonial areas of the state capitol buildings group, the legislative services building and the surrounding grounds of such building, and the surrounding grounds of the state capitol building bounded by Colfax avenue on the north, Grant street on the east, Fourteenth avenue on the south, and Broadway on the west, in the city and county of Denver. This shall include but not be limited to the corridors, rotundas, lobbies, entrance ways, stairways, restrooms, porticos, steps, and elevators. The committee shall not have responsibility for reviewing, advising, or making recommendations concerning the outer office of the executive suite and the areas used for office space, legislative chambers, and legislative committee meeting rooms, except as to structural modifications affecting the rose onyx, marble, granite, gold, oak woodwork, or brass fixtures and trim as provided for in paragraph (b) of this subsection (3).

(b) The advisory committee shall review all planned construction projects affecting the rose onyx, marble, granite, gold, oak woodwork, and brass fixtures and trim of the state capitol building, and shall submit a written report to the capital development committee containing the advisory committee's findings. No such project affecting the rose onyx, marble, granite, gold, oak woodwork, and brass fixtures and trim shall be made without review by said advisory committee and the consent of the capital development committee. No alteration to the above listed items shall be permitted in any area of the state capitol building until such project is reviewed by the advisory committee and approved by the capital development committee. Notwithstanding the provisions of this paragraph (b), the department of personnel shall have the authority to perform emergency repairs where the safety of persons or the well-being of the building would be jeopardized by delay. Such emergency repairs shall be undertaken in a manner to prevent or minimize any damage to the rose onyx, marble, granite, gold, oak woodwork, or brass fixtures and trim of the state capitol building.

(b.5) Repealed.

(c) The advisory committee, in cooperation with the department of personnel and with the approval of the capital development committee, may engage in long-range planning for modifications and improvements to the state capitol building and its surrounding grounds.

(d) The advisory committee shall identify all furniture original to the state capitol building and create an inventory of such furniture. Any costs associated with identifying and inventorying furniture original to the state capitol building shall be paid with moneys raised through private sources and shall not be paid from the general fund. The department of personnel is hereby granted the authority to collect and use such moneys raised by private sources for the purpose of identifying and inventorying all furniture original to the state capitol building. The possession of all furniture original to the state capitol building shall be retained by the department of administration and shall be made

available for use in the state capitol building. The furniture original to the state capitol building shall remain in the state capitol building at all times.

(e) The advisory committee shall determine which damaged pieces of furniture original to the state capitol building should be restored or renovated and shall make recommendations to the capital development committee regarding such furniture.

(f) (I) For the purpose of promoting historic interest in the state capitol building and for producing moneys to enhance preservation of original and historic elements of the state capitol building, the advisory committee shall formulate a plan for publishing publications on the history of the state capitol building and for developing other state capitol building memorabilia for sale to the public. This plan shall be presented to the capital development committee no later than October 1, 1991. All moneys received from the sale of such items shall be credited to a special account within the public buildings trust fund established by section 8 of the "Enabling Act of Colorado", which account is hereby established.

(II) The committee is authorized to accept gifts, grants, or donations of any kind from any private or public source to carry out the purposes of this paragraph (f). All such gifts, grants, or donations shall be transmitted to the state treasurer who shall credit the same to the special account created by this paragraph (f) within the public buildings trust fund.

(III) Moneys in the special account are hereby continuously appropriated to the advisory committee for republishing and reissuing publications on the history of the state capitol building and other state capitol building memorabilia, for restoring, repairing, and enhancing the state capitol building, the legislative services building, and the grounds of said buildings, and for such other purposes as are necessary or incidental to accomplish the purposes of this paragraph (f).

(g) The advisory committee shall evaluate proposals for uses of the state capitol driveways in addition to those authorized in section 24-82-104. The advisory committee shall evaluate any proposals which are received from the general assembly, the governor, or the city and county of Denver. Such evaluation shall consider any potential threat to the safety of individuals who are in or around the state capitol building, any potential interference with the operations of the executive department which are posed by any proposed additional use, and the relevant provisions of any current master plan for the state capitol building and surrounding area. Notwithstanding the provisions of section 24-82-104 (2), if the advisory committee determines the proposed use to be reasonable, the proposal shall be directed to the capital development committee and the governor for approval. No additional use of the state capitol driveways shall be effective without the approval of the capital development committee and the governor.

(h) (I) Except as provided in subparagraph (II) of this paragraph (h), all proposals involving the gift or loan of objects of art and memorials to be placed on a permanent or temporary basis in the state capitol building or on its surrounding grounds and proposals

for fund-raising efforts to place objects of art or memorials in the state capitol building or on its surrounding grounds shall be submitted to the advisory committee for evaluation. The advisory committee shall develop criteria and a procedure for such evaluations, which procedure shall include consulting with knowledgeable advisors to assist in evaluating each object of art or memorial individually. The advisory committee shall evaluate all such proposals and present recommendations resulting from such evaluations as follows:

(A) Proposals pertaining to all public areas of the state capitol building, including but not limited to the corridors, rotunda, lobbies, entrance ways, stairways, restrooms, porticos, steps, and elevators shall be submitted to the capital development committee for approval. No such proposal shall be permitted to proceed without the prior approval of the capital development committee.

(B) Proposals pertaining to the surrounding grounds of the capitol building bounded by Colfax avenue on the north, Grant street on the east, Fourteenth avenue on the south, and Broadway on the west, in the city and county of Denver, shall be submitted to the capital development committee and the governor for approval. No such proposal shall be permitted to proceed without the prior approval of the capital development committee and the governor.

(II) The provisions of this paragraph (h), shall not apply to proposals pertaining to the outer office of the executive suite and those areas of the first floor used as office space by the executive department.

(III) The advisory committee is authorized to direct the removal of any objects of art or memorials that are placed in the state capitol building or on its surrounding grounds that have not been submitted to the advisory committee for evaluation and approval pursuant to the criteria and procedure developed by the advisory committee pursuant to subparagraph (I) of this paragraph (h). This subparagraph (III) shall not apply to objects of art or memorials placed prior to the formation of the advisory committee.

(4) The advisory committee may call upon the staff of the legislative council and the department of personnel to provide any necessary assistance in carrying out the committee's duties. Proposed plans to restore, redecorate, or reconstruct the building, or make alterations affecting the rose onyx, marble, granite, gold, oak woodwork, and brass fixtures or trim in the building shall be submitted in writing to the staff of the legislative council and the department of personnel at least thirty days before such work is scheduled to begin.

(5) Repealed.

24-82-109. State capitol building renovation fund. The department of personnel shall have the authority to accept any bequests, gifts, and grants of any kind from any private source or from any governmental unit to be used for the renovation of the

Colorado state capitol building. For the purposes of this section, "renovation" means the repair, remodeling, restoration, and preservation of the Colorado state capitol building and any fixtures or improvements associated therewith. The use of such bequests, gifts, and grants shall be subject to the conditions upon which the bequests, gifts, and grants are made; except that no bequest, gift, or grant shall be accepted if the conditions attached thereto require the use or expenditure thereof in a manner contrary to law or require expenditures from the general fund or any other fund in the state treasury unless such expenditures are approved by the general assembly. Such bequests, gifts, and grants, together with any other moneys appropriated or transferred by the general assembly, shall be credited to the Colorado state capitol building renovation fund, which fund is hereby created in the state treasury. The moneys in said fund shall be continuously appropriated to the department for expenditures recommended by the state capitol building advisory committee, created in section 24-82-108, and approved by the capital development committee and the joint budget committee for the purpose of renovating the Colorado state capitol building. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. All unencumbered moneys in the fund at the end of any fiscal year not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state.

PART 2

EASEMENTS IN STATE LANDS

24-82-201. Power to grant - utilities - public streets and highways. All state institutions, departments, and other state agencies have the power to give and grant easements or rights-of-way across land owned by or under the control of the state or its institutions, departments, or agencies for construction and maintenance of public utilities, or of public streets and highways, or of public services, including but not limited to sanitary sewer lines, water lines, gas lines, telephone lines, electric power lines, or other services owned and controlled by a political subdivision or public corporation of the state of Colorado or of the United States, in accordance with the provisions of this part 2.

24-82-202. Approval. Any easement or right-of-way given or granted under this part 2 shall be only upon approval of the chief executive officer and the commission or board, if any, of the institution, department, or agency across the premises of which such easement or right-of-way shall cross, the executive director of the department of personnel, the governor, and the attorney general as to the legal form of the easement or right-of-way.

24-82-203. Terms - limitations - moneys. Any easement or right-of-way given or granted under this part 2 shall be upon such terms and limitations and for such consideration as the officials approving such easement or right-of-way may require. All moneys received for any easement or right-of-way under the provisions of this part 2 shall be paid into the state treasury to the credit of the institution, department, or agency which was in possession of said property.

24-82-204. Part 2 supplementary. The provisions of this part 2 are supplementary and in addition to any acts allowing any state institution, department, or agency to give or grant easements or rights-of-way.

PART 3

ATMOSPHERIC RESEARCH CENTER

24-82-301. Contract of purchase authorized. At the direction of the governor, the attorney general is authorized to enter into contracts or agreements on behalf of the state of Colorado with the federal government, or any of its duly constituted agencies, to procure and convey to the federal government, or any of its duly constituted agencies, all lands and rights pertaining to the site situate in Boulder county, Colorado, containing five hundred and fifty acres, more or less, selected as the location for the facilities and laboratories of the national center for atmospheric research.

24-82-302. Acquisition and conveyance. (1) At the direction of the governor, the attorney general is further authorized to acquire fee simple title, or lesser interest therein, to said lands and rights pertaining or appurtenant thereto, or other interests therein, in the name of the state of Colorado, by donation, purchase, or by the exercise of the power of eminent domain through condemnation proceedings in accordance with law. He is further authorized to receive and apply gifts of money to be used in the acquisition of such lands and to contract for such services as may be required and to institute other types of legal proceedings and take such further action as may be necessary to fully accomplish his duties as prescribed in this part 3.

(2) Such lands and rights pertaining thereto shall be conveyed to the federal government or its duly constituted agencies on behalf of the state of Colorado by the governor by appropriate deeds without warranty. Such property may be conveyed to the federal government or its duly constituted agencies with or without compensatory payment, and the deeds thereto may contain provisions for reversion of title to said property to the state of Colorado if said property is not used or ceases to be used for or in

connection with the purposes and functions of a national center for atmospheric research.

PART 4

STATE AGENCY FOR SURPLUS PROPERTY

24-82-401. State agency for surplus property. There is hereby created, in the division of correctional industries in the department of corrections, a Colorado state agency for surplus property, the powers and duties of which are provided in this part 4.

24-82-402. Director - staff. The Colorado state agency for surplus property, referred to in this part 4 as the "state agency", shall consist of a director, who shall be the executive officer of the state agency, and such deputies, assistants, and employees as in the opinion of the director and the governor are necessary to carry out the provisions of this part 4. The director shall be the director of the division of correctional industries. All deputies, assistants, and employees shall be appointed by the director pursuant to section 13 of article XII of the state constitution and shall receive such compensation and reimbursement of expenses incurred in the performance of their duties as other employees of the state government are paid. All employees of the state agency on July 1, 1987, shall remain employees of such agency without the need for further appointment due to the transfer of the state agency from the department of personnel. The employees of the state agency shall not exceed ten employees.

24-82-403. State agency - powers and duties. (1) The state agency is hereby authorized:

(a) To acquire from the United States under and in conformance with the provisions of section 203 (j) of the "Federal Property and Administrative Services Act of 1949", as amended, such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States as may be usable and necessary for educational purposes, public health purposes, or civil defense, including research for any such purpose, and for such other purposes as may be authorized by federal law;

(b) To warehouse such property; and

(c) To distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, and to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges, and universities which are exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, to civil

defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may become eligible under federal law to acquire such property.

(2) The state agency is authorized to receive applications from eligible institutions listed in subsection (1) (c) of this section for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations as to the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203 (k) of the "Federal Property and Administrative Services Act of 1949", as amended.

(3) For the purpose of executing its authority under this part 4, the state agency is authorized to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary and to take such other actions as are deemed necessary and suitable in the administration of this part 4 to assure maximum utilization by and benefit to health, educational, and civil defense institutions and organizations within the state from property distributed under this part 4.

(4) The state agency is authorized to make such certification, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other with reimbursement), require such reports and make such investigations as may be required by law or regulation of the United States in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency from the United States.

(5) The state agency is authorized to act as a clearinghouse of information for the public and private nonprofit institutions, organizations, and agencies referred to in subsection (1) of this section and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States, to ascertain the terms and conditions under which such property may be obtained, to receive requests from said institutions, organizations, and agencies, and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations, and agencies in every way possible in the consummation of acquisitions or transactions under this part 4.

(6) The state agency, in the administration of this part 4, shall cooperate to the fullest extent consistent with the provisions of this part 4 with the department or agencies of the United States and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with this part 4, and make such reports in such form and

containing such information as the United States or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States and the rules and regulations of any of the departments or agencies of the United States governing the allocation, transfer, use, or accounting for property donable or donated to the state.

(7) The director of the agency shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the agency. Publications of the agency circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

24-82-404. Delegation of power. The director may delegate to any employee of the state agency such power as he deems reasonable and proper for the effective administration of this part 4. The director of the state agency shall be bonded in an amount determined proper and sufficient by the governor, and the director may in his discretion, with the approval of the governor, bond any person in the employ of the state agency handling moneys, signing checks, or receiving or distributing property from the United States under authority of this part 4.

24-82-405. Transfer charges. The director is hereby authorized to make charges and to assess fees from the recipient of any surplus property acquired and distributed under this part 4. Any charges made or fees assessed by the state agency for the acquisition, warehousing, distribution, or transfer of any property of the United States for educational, public health, or civil defense purposes, including research for such purposes, and for such other purposes as may be authorized by federal law shall be limited to reasonable administrative costs of the state agency and costs reasonably related to the care and handling in respect to its acquisition, receipt, warehousing, distribution, or transfer by the state agency, and, in the case of real property, such charges and fees shall be limited to the reasonable administrative costs of the state agency incurred in effecting transfer.

24-82-406. Authority to secure surplus property - revocation. Any provision of law to the contrary notwithstanding, the governing board or, in case there is none, the executive head of any state department, instrumentality, or agency or of any city, county, school district, or other political subdivision may, by order or resolution, confer upon any officer or employee thereof continuing authority from time to time to secure the transfer

to it of surplus property through the state agency under the provisions of section 203 (j) of the "Federal Property and Administrative Services Act of 1949", as amended, and to obligate the state or political subdivision and their funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation has been received by the state agency.

24-82-407. Funds transferred. The state treasurer shall hold the funds of the state agency separate and distinct from state funds for the use and purposes defined in this part 4, and the state treasurer is authorized to make disbursements from such funds for the purposes designated or for administrative costs, upon warrants drawn by the controller upon vouchers signed by the director or deputy director of the state agency.

24-82-408. Purchases - how made. All purchases of equipment, supplies, and material required for the operation of the state agency shall be made through the executive director of the department of personnel.

24-82-409. Revolving fund. There is hereby created a revolving fund into which all charges and fees made under the provisions of this part 4 shall be paid for the use of the state agency in administering this part 4. The revolving fund shall continue as long as this part 4 is in effect.

24-82-410. Liquidation or disposal of surplus equipment, property, and supplies. (Repealed)

PART 5

SOLAR ENERGY RESEARCH INSTITUTE

24-82-501. Short title. This part 5 shall be known and may be cited as the "Solar Energy Research and Development Act of 1977".

24-82-502. Legislative declaration. The general assembly hereby finds and declares that the enactment of this part 5 is in the interest of the people of the state of

Colorado and of the United States and is for a public purpose; that the selection of a site within the state of Colorado for the construction and operation of a federal facility for the purpose of conducting solar energy research and development and other related forms of energy research is desirable and consistent with scientific, industrial, and commercial development of this state; and that the state should facilitate research which will protect and enhance the preservation of natural resources and the environment of the state, including its land, air, and water and the health and welfare of its citizens. It is the purpose of this part 5 to facilitate the acquisition and use of land or interests in land which may be needed or desirable for a permanent site suitable for a federal facility to conduct solar energy research and development. It is further declared that the development of renewable, fuel resource-conserving, and nonpolluting forms of energy is a matter of statewide concern and affected with the public interest and that the provisions of this part 5 are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

24-82-503. Conveyance of state lands authorized - description. (1) Any other provision of law to the contrary notwithstanding, including, but not limited to, section 28-3-106, C.R.S., the adjutant general and the governor, assisted by the attorney general, may enter into an option agreement, exercisable by the federal government at any time within a five-year period, to convey, and may convey within such period, to the federal government, without compensation, approximately three hundred acres of the real property interest of the state of Colorado in section thirty-six, township three south, range seventy west of the sixth principal meridian, located in Jefferson county, or so much thereof as the governor, in consultation with the appropriate federal agency, deems necessary for purposes of a solar energy research institute. The state's interest in this property shall not be conveyed in any other manner or for any other purpose.

(2) (a) A conveyance made pursuant to subsection (1) of this section shall be made only when the federal government is prepared to accept the conveyance according to a schedule for site preparation and construction of the facility as it deems appropriate. A conveyance made pursuant to subsection (1) of this section may be made by dividing the three hundred acres to be conveyed into two parcels. The first parcel, parcel A, may be of approximately one hundred forty-five acres, to be used for the main test site and for utility improvements. The title to parcel A shall revert to the state of Colorado after a period of five years from the date of the deed unless within such period the federal government commences construction of improvements to be made on parcel A, at which time the reversionary provision shall become null and void. The second parcel, parcel B, may be of approximately one hundred fifty-five acres, to be used for additional test sites and for office and laboratory facilities. The title to parcel B shall revert to the state of Colorado after a period of five years from the date of the deed unless within such period the federal

government causes the reversionary provision concerning parcel A to become null and void.

(b) If the reversionary provision concerning parcel A becomes null and void, parcel B shall revert to the state of Colorado twenty years from the date of the deed unless either of the following occur, at which time the reversionary provision shall become null and void:

(I) The federal government has indicated that it has approved programs and appropriated funds and is prepared to commence construction of either an office building or laboratory building on either parcel A or parcel B; or

(II) The federal government commences construction of permanent improvements on said parcel B.

(3) The provisions of this section shall not apply to any interest in such property retained as state school land indemnity interest, but the state board of land commissioners, in a manner consistent with federal law and the constitution of the state, may subordinate such interest to facilitate the conveyance to the federal government pursuant to subsections (1) and (2) of this section. The procedural requirements of article 1 of title 36, C.R.S., regarding leasing or sale of state lands shall not apply to such subordination. Any subordination of the state school land indemnity interest made pursuant to this subsection (3) may contain provisions for a termination of the subordination under the same terms and conditions as reversion of the land conveyed pursuant to subsections (1) and (2) of this section.

24-82-504. Siting of institute. Any other provision of law to the contrary notwithstanding, including, but not limited to, article 23 of title 31, article 28 of title 30, article 65.1 of this title, and part 3 of article 1 of title 34, C.R.S., use of the property described in section 24-82-503 (1) is authorized and approved for purpose of a solar energy research facility by the federal government, but, insofar as feasible, the facility shall conform to the substantive standards of any state or local building, fire, safety, health, and environmental control code or any other requirement which would otherwise be applicable.

PART 6

STATE-OWNED FACILITIES - ENERGY CONSERVATION

24-82-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Description" means a nontechnical explanation of all passive solar design and energy conservation features.

(2) "Fifty-five thousand Btu/square foot/year energy performance goal" means the goal for the amount of energy to be consumed or used on-site for the purposes of heating, cooling, lighting, and ventilation, but the term does not include energy losses associated with energy transmission, generation, or distribution.

(3) "Renewable energy systems" means passive and active solar systems, wind energy systems, biomass energy source systems, geothermal energy systems, hydroelectric energy systems, cogeneration systems, waste heat recovery systems, and other innovative energy recovery systems which meet the energy performance goal as provided in this part 6.

(4) "Unconditioned space" means buildings and structures or portions thereof which are neither heated nor cooled by fuel or electrical energy, including buildings or portions of buildings used primarily for the storage of materials and are uninhabited, except for the handling of those materials, and are not heated to fifty degrees Fahrenheit.

24-82-602. Required energy performance goal. (1) All state buildings, and improvements thereto, with design commencing on or after July 1, 1981, shall be designed:

(a) To achieve a fifty-five thousand Btu/square foot/year energy performance goal for heating, cooling, lighting, and ventilation energy;

(b) To make maximum use of passive solar concepts such as energy conservation, natural lighting, and orientation and incorporation of thermal-mass;

(c) To make maximum use of economically feasible renewable energy systems;

(d) To achieve the ease of retrofit with renewable energy systems.

(2) A description of said system shall be posted or filed at the construction site, and copies thereof shall be made available to any interested party upon request.

(3) State buildings which are not office buildings shall be designed for maximum use of passive solar concepts, economically feasible renewable energy systems, and ease of renewable energy system retrofit but may exceed the fifty-five thousand Btu/square foot/year energy performance goal if approved by the department of personnel for each building on a case-by-case basis. Said goal may also be adjusted by the department of personnel to accommodate different climate zones in the state.

(4) This section shall not apply to space or buildings which are unconditioned or which are listed in the historical registry.

PART 7

MASTER LEASING

24-82-701. Definitions. As used in this part 7, unless the context otherwise

requires:

(1) "Additional lease-purchase agreement" means any transaction entered into on or after July 1, 1987, in which the state, acting by and through the department of personnel as provided by this part 7, is the lessee of real or personal property which shall be used by the state and in which the state has an option to purchase such real or personal property.

(2) "Director" means the executive director of the department of personnel.

(3) "Existing lease-purchase agreement" means any lease-purchase agreement entered into prior to July 1, 1987, in which the state is the lessee of real or personal property which shall be used by the state and in which the state has an option to purchase such real or personal property.

(3.5) "Lease purchase" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

(4) "Master lease program" means the refinancing, revising, replacement, or consolidation of any existing or additional lease-purchase agreement or agreements.

(5) "State" means the state of Colorado or any department, agency, or commission thereof, including any state institution of higher education and the board of directors of the Auraria higher education center, but does not include the legislative department when acting pursuant to section 2-2-320 (2) (b), C.R.S.

24-82-702. Lease-purchase agreements. (1) If the director determines that the state will realize economic or other benefits by revising or replacing existing lease-purchase agreements, or by entering into additional lease-purchase agreements, or by combining all or any portion of existing or additional lease-purchase agreements authorized by appropriations made by the general assembly, the director may develop a master lease program and execute such agreements. Any additional lease-purchase agreement executed by the director pursuant to this part 7 may include personal property which is the subject of an existing lease-purchase agreement or personal property for which an appropriation has been made by the general assembly for the fiscal year commencing July 1, 1987, and any fiscal year thereafter. An additional lease-purchase agreement executed by the director pursuant to this part 7 may include real property only if the initial acquisition of such property by means of a lease-purchase agreement was specifically authorized by a separate bill enacted by the general assembly pursuant to section 24-82-801. For the purposes of this subsection (1), appropriations made by the general assembly do not include continuing appropriations made by permanent statute.

(2) Repealed.

24-82-703. Lessor. (1) The lessor under any additional lease-purchase agreement entered into by the director pursuant to the provisions of this part 7 shall be any for-profit or nonprofit corporation, trust, or commercial bank as trustee.

(2) On and after August 11, 2010:

(a) The director is authorized to execute on behalf of the nonprofit corporation abolished by Senate Bill 10-122, enacted in 2010, any documents related to any additional lease-purchase agreement for which said nonprofit corporation was the lessor pursuant to the provisions of this part 7;

(b) The director is authorized to expend moneys of the nonprofit corporation abolished by Senate Bill 10-122, enacted in 2010, as is necessary and appropriate to wind up the affairs of the nonprofit corporation. After receiving written notification from the director that the affairs of the nonprofit corporation have been concluded, the state treasurer shall transfer the remaining balance of any account in the state treasury containing moneys of the nonprofit corporation to the general fund.

(c) The state treasurer is authorized to accept on behalf of the nonprofit corporation abolished by Senate Bill 10-122, enacted in 2010, any revenues to which the nonprofit corporation would otherwise be legally entitled. Any revenues so received by the state treasurer shall be credited to the general fund.

24-82-704. Payment obligations subject to annual appropriation by the general assembly. Every additional lease-purchase agreement authorized by the director pursuant to the provisions of this part 7 shall provide that all payment obligations of the state under such additional lease-purchase agreement are subject to annual appropriation by the general assembly and that such obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the Colorado constitution or the laws of the state of Colorado concerning or limiting the creation of indebtedness by the state of Colorado.

24-82-705. Terms and conditions of lease-purchase agreements. Any additional lease-purchase agreement entered into by the director pursuant to the provisions of this part 7 may contain such terms, provisions, and conditions as the director may deem appropriate. Such provisions may allow the state to receive fee title to the real and personal property which is the subject of such additional lease-purchase agreement on or prior to the expiration of the entire term of the agreement, including all optional renewal terms. Any additional lease-purchase agreement entered into pursuant to the provisions of this part 7 may further provide for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made and to be made under such additional lease-purchase agreement, but only if and after a court of competent

jurisdiction renders a final decision as to the constitutionality of the issuance of certificates of participation or other instruments evidencing the commitment of a district to make payments in subsequent fiscal years of moneys due under an installment purchase agreement for the purchase of real or personal property which requires payments during more than one fiscal year, or any agreement for the lease or rental of real or personal property which requires payments during more than one fiscal year and under which such district is entitled to receive title to the property at the end of the term for nominal or no additional consideration. Such instruments shall not be notes, bonds, or any other evidence of indebtedness of the state of Colorado within the meaning of any provision of the Colorado constitution or the laws of the state of Colorado concerning or limiting the creation of indebtedness by the state of Colorado. Interest paid under any additional lease-purchase agreement entered into pursuant to this part 7, including interest represented by such instruments, shall be exempt from Colorado income tax. Any such additional lease-purchase agreements shall provide an option for the state to purchase the property which is the subject of the lease prior to the termination of such additional lease-purchase agreement. In no event shall any individual representing a firm which was the successful bidder for a proposed financial services contract, which contract related to a master leasing program, prior to June 20, 1987, be allowed to become the underwriter or financial advisor for any master leasing agreement entered into by the director prior to June 30, 1988, pursuant to the provisions of this part 7.

24-82-706. Subsequent payments. Rentals and other payments made by the state under any additional lease-purchase agreement entered into pursuant to the provisions of this part 7 may be made from moneys appropriated by the general assembly without the necessity of a separate bill.

24-82-707. Ancillary agreements. The director may enter into or execute or may negotiate with any officer of the state to enter into or execute any deed, conveyance, escrow agreement, or other agreement or instrument which he deems necessary or appropriate in connection with any additional lease-purchase agreement entered into pursuant to this part 7.

24-82-708. Fiscal rules inapplicable - independent powers. (1) The provisions of section 24-30-202 (5) (b) shall not apply to any additional lease-purchase agreement or ancillary agreement entered into pursuant to this part 7. Any provision of the fiscal rules promulgated pursuant to section 24-30-202 (1) and (13) which the controller deems to be incompatible or inapplicable with respect to any such lease-purchase agreement or

ancillary agreement may be waived by the controller or his designee.

(2) The powers conferred by this part 7 are in addition to any other law, and the limitations imposed by any other law do not affect the powers conferred by this part 7 and do not apply to the financing and refinancing contemplated by this part 7.

24-82-709. Participation by institutions of postsecondary education. Institutions of postsecondary education, including the board of directors of the Auraria higher education center, may utilize the provisions of this part 7 so long as the criteria established by this part 7 for inclusion in a master lease are satisfied and so long as such institutions act in a manner which is consistent with the provisions of section 23-1-104, C.R.S.

PART 8

LEASE-PURCHASE AGREEMENTS FOR ACQUISITION OF REAL OR PERSONAL PROPERTY

24-82-801. Lease-purchase agreements for acquisition of real or personal property. (1) (a) Except as provided in subsection (6) of this section, no lease-purchase agreement for real property that requires total payments exceeding five hundred thousand dollars over the term of the agreement shall be entered into unless such agreement is specifically authorized, prior to its execution, by a bill enacted by the general assembly, other than the annual general appropriation act or a supplemental appropriation act.

(b) Except as provided in subsection (6) of this section, no lease-purchase agreement for personal property that requires total payments exceeding five hundred thousand dollars over the term of the agreement shall be entered into unless such agreement is specifically authorized, prior to its execution, by a bill enacted by the general assembly, other than the annual general appropriation act or a supplemental appropriation act, or specifically authorized by appropriation in the annual general appropriation act or a supplemental appropriation act.

(c) Subsequent to the general assembly's authorization of a lease-purchase agreement as specified in paragraphs (a) and (b) of this subsection (1), rentals and other payments by the state under any such lease-purchase agreement may be made from moneys appropriated by the general assembly as a separate line item in the capital construction or operating section of an annual general appropriation act or a supplemental appropriation act.

(2) Except as provided in subsection (6) of this section, lease-purchase agreements that require total payments of five hundred thousand dollars or less over the term of the agreement shall require an appropriation by the general assembly in an annual general

appropriation act or a supplemental appropriation act.

(3) A lease-purchase agreement that requires total payments in excess of five hundred thousand dollars over the term of the agreement shall require, prior to its execution, approval by the state controller as authorized by section 24-30-202.

(4) As used in this section, "lease-purchase agreement" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

(5) A lease-purchase agreement may further provide for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made by the state, but only if the lease-purchase agreement includes a provision that payments made by the state are subject to annual appropriation. A lease-purchase agreement shall not include notes, bonds, or any other evidence of indebtedness of the state within the meaning of any provision of the constitution or laws of the state of Colorado concerning or limiting the creation of indebtedness by the state.

(6) (a) Notwithstanding any provision of this section to the contrary, the department of transportation, institutions of higher education, the Auraria higher education center established in article 70 of title 23, C.R.S., and the state treasurer may enter into lease-purchase agreements if the state controller as authorized by section 24-30-202 approves each lease-purchase agreement that requires total payments in excess of five hundred thousand dollars over the term of the agreement or as otherwise provided by law.

(b) Notwithstanding any provision of this section to the contrary, the legislative department may enter into lease-purchase agreements pursuant to section 2-2-320, C.R.S.

(7) Nothing in this section shall be construed to impair any contract or instrument in existence on July 1, 2009, if the contract was validly entered into or the instrument was validly issued under the law in effect at the time of entering into said contract or issuing said instrument.

(8) All lease-purchase agreements described in section 24-48.5-312 (3) (a) (II) shall include the terms specified in said section.

24-82-802. Lease-purchase agreements for real property - definitions - lease-purchase rental cash fund. (1) As used in this section, unless the context otherwise requires:

(a) (I) "Annual lease-purchase payment" means the total amount due from the state on property subject to a lease-purchase agreement and includes:

(A) The annual base rent scheduled to be paid and the additional rent estimated to be paid on or pursuant to the lease-purchase agreement and any ancillary agreements that may include, but need not be limited to, any of the following that are paid on a current basis and not paid by a lessor or other third party as part of a lease-purchase agreement:

All acquisition costs, such as due diligence costs associated with evaluation of an existing building; land acquisition; penalties for breaking lease agreements; a capital reserve for space planning and capital improvements needed in the building for demolition and construction of tenant space for state agencies or the release to existing tenants; relocation costs; office furniture and equipment; insurance; and the costs associated with any lease-purchase financing; plus

(B) Operating and maintenance costs and a reserve for controlled maintenance costs.

(II) For the construction of a new building on land owned or leased by the state, the acquisition costs may also include the architectural and engineering design and engineering costs, site preparation, provisions for utilities and tap fees, and materials and construction costs.

(b) "Annual rent costs" means base rent typically found in the leased space line item in the annual general appropriation bill plus all operation, maintenance, and related costs paid to a lessor or other third party.

(c) "Department" means the department of personnel, created in section 24-1-128.

(d) "Executive director" means the executive director of the department of personnel.

(e) "Lease-purchase agreement" shall have the same definition as provided in section 24-82-801 (4).

(2) (a) Subject to the provisions of this section, the state treasurer, on behalf of the state of Colorado for the use of the department, is authorized to enter into one or more lease-purchase agreements for real and associated personal property existing or to be constructed pursuant to requirements of the state to be exclusively used, possessed, and managed by the department for state agencies and nonstate lessees of the department as the executive director may solely determine according to the plan approved pursuant to subsection (4) of this section and subject to the terms of the lease-purchase agreement.

(b) Subject to the provisions of section 2 of article XI of the state constitution, the state treasurer, for the use and benefit of the department, may enter into such lease-purchase agreements in conjunction with the state board of land commissioners, created pursuant to section 9 of article IX of the state constitution, or with a private person. The state treasurer shall transfer all benefits and responsibilities under the lease-purchase agreement to the department. The department shall manage the property for the state as the executive director may solely determine, subject to the terms of the lease-purchase agreement.

(3) The state treasurer shall enter into a lease-purchase agreement authorized pursuant to subsection (2) of this section on behalf of the state for the use and benefit of the department only if, at the time that the lease-purchase agreement is executed:

(a) The state agencies that will be located in the property that is the subject of the lease-purchase agreement are funded, in whole or in part, by appropriations and a portion

of the appropriations are being expended to pay rent to a lessor;

(b) The projected annual rent costs of the state agencies that will be located in the property plus any current rental payments or rental payments projected to be received from nonstate lessees for each fiscal year during the maximum term of the lease-purchase agreement exceed the annual lease-purchase payment for the property, adjusted as appropriate to account for any differences in services provided to, or costs paid for the benefit of, the state under the related leases and lease-purchase agreements;

(c) The property or proposed construction plan for the property has been reviewed by the state architect who shall make written recommendations to the executive director for controlled maintenance needs during the term of the lease-purchase agreement;

(d) The plan for the lease-purchase transaction has been approved first by the office of state planning and budgeting and the capital development committee of the general assembly pursuant to subsection (4) of this section;

(e) The executive director acknowledges his or her approval of the terms of the lease-purchase agreements and any ancillary agreements;

(f) The agreements for the lease-purchase transaction accurately reflect the plan approved by the office of state planning and budgeting and the capital development committee; and

(g) The state controller has approved all agreements pursuant to section 24-30-202.

(4) Prior to the state treasurer entering into any lease-purchase agreement pursuant to this section, the executive director shall submit the report required by section 24-82-102 (1) and the plan for the lease-purchase transaction to the office of state planning and budgeting. If the office of state planning and budgeting approves the report and the plan, it shall submit the report and the plan to the capital development committee of the general assembly. The capital development committee shall approve the plan or refer its recommendations regarding the plan, with written comments, to the executive director and the office of state planning and budgeting.

(5) Approval of the plan by the office of state planning and budgeting shall not authorize the department to expend any moneys on the annual lease-purchase payment in any fiscal year in an amount greater than the projected annual rent costs of the state agencies plus any rental payments projected to be received from nonstate lessees for such fiscal year, adjusted as appropriate to account for any differences in services provided to, or costs paid for the benefit of, the state under the related leases and lease-purchase agreements.

(6) The state of Colorado, acting by and through the state treasurer, for the use and benefit of the department may, at the state treasurer's sole discretion, enter into one or more lease-purchase agreements authorized by subsection (2) of this section with any for-profit or nonprofit corporation, trust, or commercial bank as a trustee, as lessor.

(7) (a) A lease-purchase agreement authorized in subsection (2) of this section

shall provide that all of the obligations of the state under the lease-purchase agreement shall be subject to the action of the general assembly in annually making moneys available for all payments thereunder. The lease-purchase agreement shall also provide that the obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the state constitution or the laws of the state of Colorado concerning or limiting the creation of indebtedness by the state of Colorado and shall not constitute a multiple fiscal-year direct or indirect debt or other financial obligation of the state within the meaning of section 20 (4) of article X of the state constitution. In the event the state of Colorado does not renew a lease-purchase agreement authorized in subsection (2) of this section, the sole security available to the lessor shall be the property encumbered to secure the nonrenewed lease-purchase agreement or equivalent substitute collateral provided by the state.

(b) A lease-purchase agreement authorized in subsection (2) of this section may contain such terms, provisions, and conditions as the state treasurer, acting on behalf of the state of Colorado and for the use and benefit of the department, may deem appropriate, including all optional terms; except that a lease-purchase agreement:

(I) Shall not exceed in its term the shorter of the remaining useful life of the building or twenty-five years; and

(II) Shall specifically authorize the state of Colorado:

(A) To receive title to all real and personal property that is the subject of the lease-purchase agreement on or prior to the expiration of the terms of the lease-purchase agreement; and

(B) To reduce the term of the lease through prepayment of rental and other payments subject to the terms of the lease-purchase agreement and any ancillary agreement.

(c) A lease-purchase agreement authorized in subsection (2) of this section may provide for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made and to be made under the lease-purchase agreement. The instruments shall not be notes, bonds, or any other evidence of indebtedness of the state within the meaning of any provision of the state constitution or the law of the state concerning or limiting the creation of indebtedness of the state and shall not constitute a multiple fiscal-year direct or indirect debt or other financial obligation of the state within the meaning of section 20 (4) of article X of the state constitution.

(d) Interest paid under a lease-purchase agreement authorized in subsection (2) of this section, including interest represented by the instruments, shall be exempt from Colorado income tax.

(e) The state of Colorado, acting through the state treasurer, for the use and benefit of the department, is authorized, if the executive director concurs, to enter into ancillary agreements and instruments as are deemed necessary or appropriate in connection with a lease-purchase agreement, including but not limited to ground leases,

site leases, easements, or other instruments relating to the real property on which the facilities are located; except that no ancillary agreement is authorized that would cause the annual lease-purchase payment to exceed the annual rent costs appropriated to the state agencies prior to the lease-purchase agreement plus any rent projected to be received from nonstate lessees.

(f) A lease-purchase agreement authorized in subsection (2) of this section may require the state to provide insurance; except that no insurance is authorized that would cause the annual lease-purchase payment to exceed the annual rent costs of the state agencies prior to the lease-purchase agreement plus any rent projected to be received from nonstate lessees, adjusted as described in paragraph (b) of subsection (3) of this section. The insurance may be provided through the self-insured property fund created pursuant to section 24-30-1510.5.

(8) Any provision of the fiscal rules promulgated pursuant to section 24-30-202 (1) and (13) that the state controller deems to be incompatible or inapplicable with respect to said lease-purchase agreements or any such ancillary agreement may be waived by the controller or his or her designee.

(9) If a lease-purchase agreement authorized pursuant to subsection (2) of this section is executed, during the term of the lease-purchase agreement, moneys that at the time of the execution are appropriated to a state agency for rental payments in an amount equal to the annual lease-purchase payment, less any payments projected to be received from nonstate lessees pursuant to subsection (10) of this section, shall be transferred to the lease-purchase servicing account of the capital construction fund, created in section 24-75-302 (3.5), and, subject to annual appropriation, shall be used to pay the annual lease-purchase payments for the property that is the subject of the lease-purchase agreement or for operating, maintenance, and controlled maintenance costs for the property subject to the lease-purchase agreement. Moneys held in the lease-purchase servicing account shall be for the benefit of the department.

(10) (a) If the executive director determines that, in a property subject to a lease-purchase agreement authorized pursuant to subsection (2) of this section, there is space that is not needed by a state agency, the executive director, separately or in conjunction with the state board of land commissioners or another person, may:

(I) Hire a building manager to manage the space; or

(II) Subject to the approval of the office of state planning and budgeting, lease the space to any person on commercially reasonable terms.

(b) (I) Any moneys received by the executive director on behalf of nonstate lessees pursuant to paragraph (a) of this subsection (10) shall be transmitted to the state treasurer, who shall credit the same to the lease-purchase rental cash fund for the benefit of the department, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of personnel and shall only be used for the annual lease-

purchase payments for lease-purchase agreements authorized pursuant to subsection (2) of this section or for operating, maintenance, and controlled maintenance costs for the buildings subject to the lease-purchase agreements.

(II) Any moneys in the fund not expended for the purpose of this subsection (10) may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

PART 9

OUTDOOR LIGHTING FIXTURES

24-82-901. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

(2) "Full cutoff luminaire" means a luminaire that allows no direct light emissions above a horizontal plane through the luminaire's lowest light-emitting part.

(3) "Glare" means direct light emitting from a luminaire that causes reduced vision or momentary blindness.

(4) "Light pollution" means the night sky glow caused by the scattering of artificial light in the atmosphere.

(5) "Light trespass" means light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located.

(6) "Luminaire" means the complete lighting system, including the lamp and the fixture.

(7) (a) "Outdoor lighting fixture" means any type of fixed or movable lighting equipment that is designed or used for illumination outdoors and includes:

(I) Area lighting; and

(II) Billboard lighting, street lights, searchlights, and other lighting used for advertising purposes.

(b) "Outdoor lighting fixture" does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft or watercraft.

(8) "Special event or situation" includes, but is not limited to, sporting events and the illumination of monuments, historic structures, or flags.

24-82-902. Outdoor lighting fixtures funded by the state - standards. (1) On or after July 1, 2002, any new outdoor lighting fixture installed by or on behalf of the state using state funds shall meet at least the following requirements:

(a) For outdoor lighting fixtures with a rated output greater than three thousand two hundred lumens, the fixture is a full cutoff luminaire;

(b) The minimum illuminance adequate for the intended purpose is used with consideration given to recognized standards, including, but not limited to, recommended practices adopted by the illuminating engineering society of North America (IESNA);

(c) Full consideration has been given to costs, energy conservation, glare reduction, the minimization of light pollution, and the preservation of the natural night environment; and

(d) For purposes of lighting a designated highway in the state highway system, the department of transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or informational signs, or other effective methods that do not require the use of artificial light.

(2) The provisions of subsection (1) of this section shall not apply if:

(a) A federal law or regulation preempts state law;

(b) The outdoor lighting fixture is used on a temporary basis to provide illumination for emergency personnel in an emergency situation;

(c) The outdoor lighting fixture is used on a temporary basis for nighttime work;

(d) Additional illumination is required for a special event or situation; except that any additional illumination required for a special event or situation shall be installed so as to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution;

(e) The outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object; or

(f) A compelling safety interest exists that cannot be addressed by another method.

(3) The provisions of subsection (1) of this section shall serve only as guidelines for and shall not be binding on any state prison facility or any private contract prison in the state.

PART 10

LEVERAGED LEASING

24-82-1001. Legislative declaration - exclusion of proceeds of leveraged leasing agreements from fiscal year spending - voter approval not required. (1) The general assembly hereby finds and declares that:

(a) Section 20 of article X of the state constitution limits state fiscal year spending.

(b) Section 20 (2) (e) of article X defines "fiscal year spending" to include all revenues and expenditures except those for refunds and those from certain sources, such as property sales.

(c) Monetary consideration paid to the state by a private person in connection with a leveraged leasing agreement constitutes revenues to the state from a property sale because the consideration is paid in exchange for a property interest in a qualified state asset and constitutes revenues from a property sale, and such revenues are therefore excluded from state fiscal year spending.

(2) The general assembly further finds and declares that:

(a) Section 20 of article X of the state constitution requires voter approval in advance for creation of any multiple-fiscal year financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(b) The sublease of a qualified state capital asset from a private person to the state under a leveraged leasing agreement is a multiple-fiscal year financial obligation of the state under section 20 of article X of the state constitution, but the state may enter into a leveraged leasing agreement without voter approval in advance because a leveraged leasing agreement requires the state to deposit into a specified account adequate cash reserves pledged irrevocably for sublease payments in all future fiscal years.

24-82-1002. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "Leveraged leasing agreement" means an agreement or a series of agreements between the state and a private person under which:

(a) In exchange for monetary consideration paid in a lump sum when the lease closes, the state leases a qualified state capital asset to a private person for a term of sufficient length to allow the private person to depreciate the asset for federal income tax purposes under the federal "Internal Revenue Code of 1986", as amended, or any successor provision thereto, and retains a right to cancel the lease in exchange for specified consideration;

(b) The private person subleases the qualified state capital asset back to the state pursuant to a sublease contract that:

(I) Is for a term shorter than the term of the lease;

(II) Gives the private person leasehold rights in the asset; and

(III) Requires an amount of the monetary consideration paid in a lump sum to the state when the lease closes that is adequate to meet all lease payments to be made by the state under the terms of the sublease contract to be deposited into a specified account

established pursuant to the sublease contract as adequate cash reserves pledged irrevocably for sublease payments in all future fiscal years; and

(c) The state retains the right to the use of the qualified state capital asset for the duration of the term of the sublease.

(2) "Qualified state capital asset" or "asset" means qualified technological equipment as defined by section 168 (i) (2) (A) of the federal "Internal Revenue Code of 1986", as amended, or any successor provision thereto.

24-82-1003. Leveraged leasing. (1) On and after May 14, 2003, the executive director of the department of personnel, with the approval of the director of the office of state planning and budgeting, may enter into leveraged leasing agreements on behalf of the state.

(2) The executive director of the department of personnel may retain attorneys, consultants, or financial professionals to the extent necessary to protect the interests of the state and to ensure the proper execution of a leveraged leasing agreement. The executive director shall use a competitive selection process approved by the director of the office of state planning and budgeting to select any attorneys, consultants, or financial professionals to be retained, but execution of such retention agreements shall not be governed by the "Procurement Code", articles 101 to 112 of this title. Any fees charged by any persons retained shall be paid only from the lump sum paid to the state in connection with the leveraged leasing agreement and shall not be paid from any other source.

(3) The state treasurer shall credit all monetary consideration paid in a lump sum to the state under the terms of a leveraged leasing agreement when the agreement closes that is not required to be deposited into a specified account established pursuant to a sublease contract as adequate cash reserves pledged irrevocably for sublease payments in all future fiscal years to the controlled maintenance trust fund created in section 24-75-302.5.

24-82-1004. Leased assets not subject to taxation. A qualified state capital asset that is the subject of a leveraged leasing agreement shall be treated for tax purposes as tax-exempt property owned by the state.

24-82-1005. Liability not created by leveraged leasing agreement - indemnification agreements. (1) The lease of a qualified state capital asset by the state to a private person and the sublease of the asset back to the state by the private person pursuant to a leveraged leasing agreement shall not cause the private person to whom the

qualified state capital asset is being leased to incur any liability in any type of action by virtue of the private person's status as a lessor under the leveraged leasing agreement.

(2) As part of a leveraged leasing agreement, the executive director of the department of personnel, with the approval of the director of the office of state planning and budgeting, may enter into an indemnity agreement with the private person to whom the qualified state capital asset is being leased.

PART 11

SALES OF STATE PROPERTY AND LEASE-PURCHASE AGREEMENTS

24-82-1101 to 24-82-1103. (Repealed)

PART 12

LEASES OF BUILDING PROJECTS

24-82-1201. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Approved building project" means a capital construction project involving a lease that receives approval from the capital development committee and the joint budget committee pursuant to section 24-82-1202 (2).

(2) "Commission" means the Colorado commission on higher education established pursuant to section 23-1-102, C.R.S.

(3) "State department" means a department or agency of the state, but does not include the legislative department when acting pursuant to section 2-2-320 (2) (b), C.R.S.

24-82-1202. Leases of buildings. (1) Subject to the provisions of this part 12, the executive director of a state department, or the governing board of an institution of higher education, is authorized to execute a lease agreement for up to thirty years for the rental of an approved building project.

(2) (a) Prior to executing a lease agreement authorized pursuant to this part 12, the executive director of the leasing state department shall submit a report to the office of state planning and budgeting on the proposed approved building project, including the proposed terms of the lease agreement, through the budgeting process established pursuant to section 24-37-304. If the office of state planning and budgeting approves the

proposed approved building project and the lease, it shall make recommendations concerning the proposed approved building project and the lease to the capital development committee. If the capital development committee approves the proposed approved building project and the lease for the proposed approved building project, it shall make recommendations concerning the proposed approved building project and the lease to the joint budget committee. Following receipt of the recommendations, if the joint budget committee approves the proposed approved building project and the lease, it shall include any necessary moneys for the approved building project in its recommendations for the next long appropriations bill.

(b) Prior to executing a lease agreement authorized pursuant to this part 12, the governing board of a leasing institution of higher education shall submit a report to the Colorado commission on higher education on the proposed approved building project, including the proposed terms of the lease agreement, pursuant to the provisions of section 23-1-106, C.R.S. If the proposed approved building project does not require the approval of the capital development committee pursuant to section 23-1-106, C.R.S., the commission may approve the proposed approved building project and the lease. If the proposed approved building project is subject to the approval of the capital development committee pursuant to section 23-1-106, C.R.S., and if the commission approves the proposed approved building project and the lease, the commission shall make recommendations concerning the proposed approved building project and the lease to the capital development committee. If the capital development committee approves the proposed approved building project and the lease for the proposed approved building project, it shall make recommendations concerning the proposed approved building project and the lease to the joint budget committee. Following receipt of the recommendations, if the joint budget committee approves the proposed approved building project and the lease, it shall include any necessary moneys for the approved building project in its recommendations for the next general appropriation bill.

24-82-1203. Payment obligations subject to annual appropriation by the general assembly. Each lease agreement entered into pursuant to the provisions of this part 12 shall provide that all payment obligations of the state under the lease agreement are subject to annual appropriation by the general assembly and that the obligations shall not be deemed or construed as creating an indebtedness of the state within the meaning of any provision of the Colorado constitution or the laws of the state of Colorado concerning or limiting the creation of indebtedness by the state of Colorado.

24-82-1204. Terms and conditions of lease agreements. (1) A lease agreement entered into pursuant to the provisions of this part 12 may contain such terms, provisions,

and conditions as the executive director of the leasing state department or the governing board of the leasing institution may deem appropriate. Any lease agreement entered into pursuant to this part 12 shall comply with the requirements of section 24-82-801.

(2) As used in this section, "lease agreement" means a capital lease as defined in the generally accepted accounting principles issued by the governmental accounting standards board that the controller prescribes for the state as specified in section 24-30-202 (12).

24-82-1205. Ancillary agreements. The executive director of a leasing state department or the governing board of the leasing institution may enter into or execute, or may negotiate with an officer of the state to enter into or execute, a deed, conveyance, escrow agreement, or other agreement or instrument that he or she or the board deems necessary or appropriate in connection with a lease agreement entered into pursuant to this part 12.

24-82-1206. Fiscal rules inapplicable - independent powers. (1) The provisions of section 24-30-202 (5) (b) shall not apply to a lease agreement or ancillary agreement entered into pursuant to this part 12. Any provision of the fiscal rules promulgated pursuant to section 24-30-202 (1) or (13) which the controller deems to be incompatible with or inapplicable to a lease agreement entered into pursuant to this part 12 or ancillary agreement may be waived by the controller or his or her designee.

(2) The powers conferred by this part 12 are in addition to any other law, and the limitations imposed by any other law shall not affect the powers conferred by this part 12.

24-82-1207. Inapplicability of part 7. The provisions of part 7 of this article shall not apply to leases entered into pursuant to this part 12.

ARTICLE 82.5

Tobacco Litigation Settlement Financing Corporation

24-82.5-101 to 24-82.5-118. (Repealed)

STATE ASSISTANCE - DENVER CONVENTION CENTER

ARTICLE 83

State Assistance - Denver Convention Center

24-83-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The location, construction, operation, and maintenance of a convention center within the boundaries of the city and county of Denver affects and impacts the people of all areas of this state;

(b) The location, construction, operation, and maintenance of a convention center within the boundaries of the city and county of Denver will promote diversified economic development across this state;

(c) The location, construction, operation, and maintenance of a convention center within the boundaries of the city and county of Denver with statewide impact is a matter of statewide concern;

(d) Cooperation by the state and the city and county of Denver in the location, construction, operation, and maintenance of such convention center with statewide impact will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado;

(e) In consideration of the statewide impact, the convention center should be named "the Colorado convention center".

24-83-102. State assistance for payment of obligations. (1) In 1987, the general assembly authorized state assistance to the city and county of Denver in connection with land acquisition for the proposed Denver convention center, in accordance with the provisions of this article.

(2) A contract, referred to in this article as the "contract", to accomplish the provisions of this article was required to be and was negotiated between the city and county of Denver and the state of Colorado, acting through the department of personnel. The contract was required to contain as a minimum the requirements of this article which relate to the mutual obligations of the city and county of Denver and of the state, and the provisions of this article which relate to the obligations that continue after the completion of the state's payment obligations shall continue to be contained in a contract between the city and county of Denver and the state.

(3) The contract provides that the state was obligated to pay six million dollars to the city and county of Denver on July 1, 1988, and on July 1 of each year thereafter through July 1, 1993. The total of such payments was thirty-six million dollars.

(4) The contract provides that amounts paid to the city and county of Denver pursuant to subsection (3) of this section were required to be applied for the payment of the obligations of the city and county in connection with its acquisition of land as the site for the proposed Denver convention center.

(5) and (6) (Deleted by amendment, L. 94, p. 497, § 1, effective March 31, 1994.)

24-83-103. Proposal selection - criteria - committee created - timetable. (Repealed)

24-83-104. Source of state payments - state executive committee. (Repealed)

24-83-105. Other contractual provisions. (1) The contract shall include the following provisions:

(a) Since the question of residency requirements as a condition of employment at a convention center facility constructed on land acquired with state assistance is a matter of statewide concern, a provision that no charter provision to require residency in the city and county of Denver shall be imposed or enforced at the convention center;

(b) Provisions by which the city and county of Denver agrees to make suitable display space, as defined by rules and regulations promulgated by the executive director of the department of personnel, available in the convention center on a time-share basis to counties, municipalities, and state agencies and private nonprofit or commercial organizations whose purpose is the promotion of tourism and of Colorado businesses and products, in order that the entire state may share in the advertising opportunities provided by the convention center. The contract shall also include provisions which assure that appropriate space will be made available for the promotion of tourism, education, business, and agricultural efforts and activities outside the metropolitan area. Entities using the display space shall make their own determination as to whether union or nonunion labor or volunteers shall setup, service, or dismantle any displays; except that entities using the display space shall conform to any contracts executed before June 1, 1991.

24-83-106. Department of personnel - authority to manage space. (1) The department shall establish a graduated fee schedule for the use of the display space in the convention center in a manner which will enable a wide variety of organizations to use the display space and which takes into account the different types, sizes, and financial ability of such organizations; except that no fees shall be assessed against any counties,

municipalities, or state agencies for the use of such display space. The department shall collect only such fees as are necessary to pay for the expenses of the department which are not covered by other moneys available to the department. The revenue from such fees shall be credited to the convention center fund, which fund is hereby created. In addition to fees, the department is authorized to accept any other moneys available to the department for the purpose of utilizing the display space, which other moneys shall include, but shall not be limited to, donations by public or private entities, loans from the state treasury, or other gifts, grants, or loans. Such moneys shall be credited to the convention center fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(2) All moneys in the convention center fund shall be subject to annual appropriation by the general assembly to the department and shall only be used for the purchase of equipment, the production of programs, the costs of managing, scheduling, and promoting the display space, and any other reasonable and necessary expenses related to the utilization of such display space or any other duties of the department pursuant to this section.

(3) The executive director of the department may contract with any public or private entity to manage, schedule, or promote the display space.

INFORMATION TECHNOLOGY ACCESS FOR BLIND

ARTICLE 85

Information Technology Access for Individuals
Who are Blind or Visually Impaired

24-85-101. Legislative declaration. The general assembly hereby finds that the state needs to improve nonvisual access to information, whether by speech, Braille, or other appropriate means.

24-85-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

(2) "Blind or visually impaired individual" means an individual who:

(a) Has a visual acuity of 20/200 or less in the better eye with corrective lenses or has a limited field of vision so that the widest diameter of the visual field subtends an

angle no greater than twenty degrees;

(b) Has a medically indicated expectation of visual deterioration; or

(c) Has a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

(3) Repealed.

(4) "Information technology" means all electronic information processing hardware and software, including telecommunications.

(5) "Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

(6) "State agency" means the state or any of its principal departments, agencies, or boards or commissions.

(7) "Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means.

24-85-103. Nonvisual access standards. (1) The chief information officer in the office of information technology, created in section 24-37.5-103, shall maintain nonvisual access standards for information technology systems employed by state agencies that:

(a) Provide blind or visually impaired individuals with access to information stored electronically by state agencies by ensuring compatibility with adaptive technology systems so that blind and visually impaired individuals have full and equal access when needed; and

(b) Are designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use, such as the use of text-only options.

(2) The chief information officer in the office of information technology, created in section 24-37.5-103, shall consult with state agencies and representatives of individuals who are blind or visually impaired in maintaining the nonvisual access standards described in subsection (1) of this section and the procurement criteria described in section 24-85-104.

(3) The head of each state agency shall establish a written plan, as part of its annual information technology plan, and develop any proposed budget requests for implementing the nonvisual access standards for its agency at facilities accessible by the public.

24-85-104. Procurement requirements - criteria - implementation. (1) The office of information technology, created in section 24-37.5-103, shall approve minimum standards and criteria to be used in approving or rejecting procurements by state agencies

for adaptive technologies for nonvisual access uses.

(2) Nothing in this article shall require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired. Nothing in this article shall be construed to require the purchase of nonvisual adaptive equipment by a state agency.

(3) Notwithstanding the provisions of subsection (2) of this section, the applications, programs, and underlying operating systems, including the format of the data, used for the manipulation and presentation of information shall permit the installation and effective use of and shall be compatible with nonvisual access software and peripheral devices.

(4) Compliance with the procurement requirements of this section with regard to information technology purchased prior to July 1, 2001, shall be achieved at the time of procurement of an upgrade or replacement of existing information technology equipment or software.

LIBRARIES

ARTICLE 90

Libraries

PART 1

LIBRARY LAW

24-90-101. Short title. This part 1 shall be known and may be cited as the "Colorado Library Law".

24-90-102. Legislative declaration. The general assembly hereby declares that it is the policy of this state, as a part of its provision for public education, to promote the establishment and development of all types of publicly-supported free library service throughout the state to ensure equal access to information without regard to age, physical or mental health, place of residence, or economic status, to aid in the establishment and improvement of library programs, to improve and update the skills of persons employed in libraries through continuing education activities, and to promote and coordinate the sharing of resources among libraries in Colorado and the dissemination of information regarding the availability of library services.

24-90-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Academic library" means a library established and maintained by a state-supported institution of higher education primarily for the use of its students and faculty.

(2) "County library" means a public library established and maintained by a county.

(3) "Governmental unit" means any county, city, city and county, town, or school district of the state of Colorado.

(3.5) "Institutional library" means a library, with the exception of a law library, contained within a correctional, residential, or mental health facility operated by the state.

(4) "Joint library" means a library established and jointly funded through an agreement by two or more governmental units or by one or more governmental units and an institution of higher education providing at least two of the following types of library services: Academic, public, or school.

(4.5) "Legal service area" means the geographic area for which a public library has been established to offer services and from which, or on behalf of which, the library derives income. A "legal service area" shall be defined in terms of geographic units for which official population estimates can be obtained or derived annually from the Colorado state data center. Legal service area population estimates shall be collected and reported according to guidelines developed by the state library. "Legal service area" includes any areas served under contract for which the library is the primary provider of library services and for which the library receives funds to serve.

(5) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit or in a library district or that undertakes other action on behalf of the governmental unit or library district as specified in this article. Governing bodies to which the term legislative body may apply include but are not limited to a board of county commissioners, a city council, a town board of trustees, or a library board of trustees as the context requires.

(5.5) "Library" means an entity that provides:

(a) An organized collection of printed or other resources or a combination of such resources;

(b) Paid staff;

(c) An established schedule in which services of the staff are available to its clientele; and

(d) The facilities necessary to support such collection, staff, and schedule.

(6) "Library district" means a public library established as its own taxing authority by one or more governmental units or parts thereof. A library district shall be a political subdivision of the state.

(7) "Library network" means libraries or other organizations cooperatively interconnected by communication links or channels which can be used for the exchange

or transfer of materials and information.

(8) and (9) (Deleted by amendment, L. 2003, p. 2442, § 1, effective August 15, 2003.)

(9.5) "Metropolitan area" means a geographical area designated as a metropolitan area by the office of management and budget of the United States government.

(10) "Municipality" means any city or any town operating under general or special laws of the state of Colorado or any home rule city or town, the charter or ordinances of which contain no provisions inconsistent with the provisions of this part 1.

(11) "Municipal library" means a public library established and maintained by a municipality.

(12) "Notice" means publication, once a week for two consecutive weeks, in one newspaper of general circulation in the library service area or proposed library service area or by more than one such newspaper if no single newspaper is generally circulated throughout said area. Not less than seven days, excluding the day of the first publication but including the day of the last publication, shall intervene between the first and last publications.

(13) (a) "Public library" means an administrative entity that is:

(I) Operated and maintained for the free use of the public residing within its legal service area;

(II) Operated and maintained in whole or in part with money derived from local taxation; and

(III) Open to the public a minimum number of hours per week in accordance with rules established by the state library.

(b) An administrative entity may provide public library services through a single public outlet or any combination of any of the following types of outlets: A central or main library, branch libraries, or bookmobiles.

(13.5) "Public library services" means services customarily provided by a public library.

(14) "Publicly-supported library" means a library supported principally with money derived from taxation. Publicly-supported libraries shall include all public libraries and may include academic libraries, school libraries, and special libraries.

(15) "Registered elector" or "elector" means a person who is registered to vote at general elections in this state.

(15.5) "Regional library authority" means a separate governmental entity created by an agreement entered into by any two or more governmental units for the purpose of providing and funding public library services to the residents of the governmental units that are parties to the agreement.

(16) "Regional library service system" means an organization of publicly-supported member libraries, established to provide, develop, and coordinate cooperative interlibrary services within a designated geographical area, that is governed by an

independent board.

(17) "Resource center" means a library designated through contractual arrangements with the state library to provide specialized, statewide library services.

(18) "School library" means a library established and maintained by a school district for the use of its students and staff as well as for the general public under such regulations as the board of education of the school district may prescribe.

(19) "Special library" means a library established and maintained primarily for the use of a specialized population, including libraries operated by an Indian tribe having a reservation in this state; except that, where the specialized population that is an Indian tribe having a reservation in this state requests classification of a library established and maintained for its use as a public library and the library satisfies the definition of a public library as specified in subsection (13) of this section, the library shall be treated as a public library for purposes of this article.

(20) (Deleted by amendment, L. 2003, p. 2442, § 1, effective August 15, 2003.)

(21) "State library" means the state library created pursuant to section 24-90-104.

24-90-103.5. Acts and elections conducted pursuant to provisions that refer to qualified electors or registered electors. Any elections, and any acts relating thereto, carried out under this article, that were conducted prior to July 1, 2003, pursuant to provisions that refer to a qualified elector rather than a registered elector and that were valid when conducted shall be deemed and held to be legal and valid in all respects.

24-90-104. State library created - administration. (1) The state library is hereby created as a division of the department of education, and its operation is declared to be an essential administrative function of the state government.

(2) The commissioner of education, as ex officio state librarian, has charge and direction of the state library but may delegate to the assistant commissioner in charge of the state library any or all of the powers given to the state librarian in this article for such periods and under such restrictions as the commissioner sees fit, upon approval of the state board of education.

(3) The commissioner of education shall appoint an assistant commissioner, office of library services, in accordance with the provisions of section 13 of article XII of the state constitution. Said assistant commissioner shall have at least a master's degree from a library school accredited by the American library association and shall have at least seven years of progressively responsible library experience, five of which shall have been in administrative positions.

24-90-105. Powers and duties of state librarian. (1) The state librarian has the following powers and duties with respect to the state library:

(a) (I) To make reasonable rules and regulations for the administration of the provisions of this part 1 and parts 2, 3, 4, and 5 of this article; for the use of state library materials; and for the purchase, control, and use of books and other resources;

(II) Rules or regulations promulgated under provisions of this part 1 shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-4-108.

(b) To appoint all professional and clerical help in the state library, subject to the provisions of section 13 of article XII of the state constitution;

(c) To furnish or contract for the furnishing of library or information services to state officials and departments;

(d) To furnish or contract for the furnishing of library service to institutional libraries, and to make reasonable rules for the establishment, maintenance, and operation of institutional libraries; except that any such rules shall not conflict with any rules promulgated by the department of corrections;

(e) To furnish or contract for the furnishing of library services to persons who are blind and physically disabled, including persons who cannot use printed materials in their conventional format;

(f) To contract for the furnishing of library resources to ensure equal access to information for all Coloradans;

(g) To coordinate programs and activities of the regional library service systems, as provided by the rules of the regional library service system created in section 24-90-115;

(h) To provide for the collection, analysis, publication, and distribution of statistics and information relevant to the state library and to public, school, academic, and institutional libraries. Publications circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136.

(i) To conduct or contract for research projects necessary to plan and evaluate the effectiveness of library programs in the state;

(j) To contract for the lending of books and other resources to publicly-supported libraries and institutions, including, without limitation, the Colorado resource center at the Denver public library and any other resource centers as may be designated;

(k) To report to the state board of education at such times and on such matters as the board may require;

(l) To accept gifts and bequests of money or property, and, subject to the terms of any gift or bequest and to applicable provisions of law, to hold in trust, invest, or sell any gift or bequest of money or property, and to use either the principal or interest or the proceeds of sale for programs or purposes specified in the gift or bequest as approved by the state board of education. The use of gifts and bequests shall be subject to audit by the state auditor or his designee. The principal of any gift or bequest and the interest received

thereon from investment shall be available for use by the state library in addition to any funds appropriated by the general assembly. The acceptance of any gift or bequest under this paragraph (l) shall not commit the state to any expenditure of state funds.

(m) To serve as the repository of the bylaws and the legal service area maps of all library districts within the state.

(2) The state librarian has the following powers and duties with respect to other publicly-supported libraries in the state:

(a) To further library development and to provide for the supplying of consultative assistance and information to all types of publicly-supported libraries in the state through field visits, conferences, institutes, correspondence, statistical information, publications, and electronic media; and to do any and all things that may reasonably be expected to promote and advance library services;

(a.3) To develop and promulgate service standards for school, public, and institutional libraries to guide the development and improvement of such libraries; except that any such standards shall not conflict with any standards promulgated by the department of corrections;

(a.5) To encourage contractual and cooperative relations to enhance resource sharing among all types of libraries and agencies throughout the state;

(b) To serve as the agency of the state to receive and administer state or federal funds that may be appropriated to further library development within the state upon approval of the state librarian; except that this paragraph (b) shall not preclude other governmental units, including, but not limited to, municipalities, counties, a city and county, and library districts, from applying for, receiving, or administering such state or federal funds;

(c) To develop regulations under which state grants are distributed for assisting in the establishment, improvement, or enlargement of libraries or regional library service systems and to develop all necessary procedures to comply with federal regulations under which such grants are distributed for assisting in the establishment, improvement, or enlargement of libraries;

(d) (Deleted by amendment, L. 2003, p. 2445, § 5, effective August 15, 2003.)

(e) To cooperate with local legislative bodies, library boards, library advisory committees, appropriate professional associations, and other groups in the development and improvement of libraries throughout the state;

(f) To carry out the functions and responsibilities of the Colorado virtual library network pursuant to part 3 of this article.

24-90-105.5. Radio reading services. (1) The general assembly hereby declares that there is a growing need for reading services in Colorado to serve the citizens of the state. The general assembly recognizes that the state has numerous citizens who are blind

or visually impaired or who have physical impairments which make the use of printed materials difficult or impossible and further recognizes that the aging of the population of Colorado is increasing the number of such citizens. Because of the need for reading assistance to inform and inspire individuals who cannot use printed materials and because of the unique ability of radio reading services to reach individuals in every corner of the state who require reading services, the general assembly finds that radio reading services should be encouraged and should be made available throughout the state.

(2) In addition to any other powers granted to the state librarian under this article, the state librarian shall have the power with respect to the state library to contract with entities for the furnishing of radio reading services to individuals who are blind or visually impaired or who have physical disabilities which impair their use of printed materials.

(3) The furnishing of radio reading services shall include, but shall not be limited to, the production of reading service radio programs, the broadcast of reading services over a subcarrier frequency, and the provision of radio receivers to listeners for use in receiving reading service broadcasts.

(4) The reading materials for radio reading services shall include, but shall not be limited to, newspapers, periodicals, local calendars of events, consumer information, best seller books, and information concerning pending legislative matters.

(5) The general assembly hereby recognizes the importance of privately operated reading services to enable those persons who cannot effectively read newspapers or other printed documents to gain access to such otherwise inaccessible print materials. The state librarian shall have the authority to administer funds in the reading services for the blind cash fund, which is hereby created, for the support of said privately operated reading services. The fund shall consist of any public or private moneys transferred, appropriated, or otherwise credited thereto. All moneys credited to the fund and all interest earned on the investment of moneys in the fund shall be a part of the fund and 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. The general assembly shall make annual appropriations from the reading services for the blind cash fund to the state librarian to carry out the purposes of this subsection (5).

24-90-106. Participation of existing libraries in the formation of new libraries. (1) Any governmental unit of the state of Colorado has the power to establish and maintain a public library under the provisions of this part 1, either by itself or in cooperation with one or more other governmental units. Whenever a county library or library district is proposed to be formed, specific written notification of the proposed establishment shall be given at least ninety days prior to anticipated action on the proposed establishment to each governmental unit maintaining a public library in the legal

service area of the proposed library and the board of trustees of each library. The legislative body of any governmental unit that maintains a public library within the territory to be served by a county library or a library district or the board of trustees of an established library district shall decide, by resolution or ordinance, whether or not to participate in the county library or library district. If participation in the county library or library district is to be funded by any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors, the resolution or ordinance shall state that the electors of the library district or governmental unit must approve that levy before participation can be effected. Written notice of a decision not to participate shall be filed with the board of county commissioners in the case of a proposed county library or with the boards of county commissioners of each county having territory within the library's legal service area in the case of a proposed library district. The notice shall be filed at least thirty days prior to action being taken on the resolution or ordinance to create a county library or library district or on the resolution to conduct an election to create the county library or library district.

(2) and (3) (Deleted by amendment, L. 2003, p. 2446, § 6, effective August 15, 2003.)

24-90-106.3. Inclusion of a governmental unit into an existing library district - procedure. (1) Any governmental unit sharing at least one common boundary with an existing library district may become part of the district upon a resolution executed by the board of trustees of the district and the adoption of an ordinance or resolution, as applicable, by the legislative body of the governmental unit approving the inclusion of the governmental unit into the district. If the tax levy imposed by the district pursuant to section 24-90-112 has not been previously approved by the registered electors of the governmental unit, the electors shall approve the levy before the governmental unit may be included in the district. Any such election shall be held in accordance with the requirements specified in section 20 of article X of the state constitution, articles 1 to 13 of title 1, C.R.S., and article 10 of title 31, C.R.S., as applicable, and the election shall be held on the date of the state biennial general election, the first Tuesday in November in odd-numbered years, or, if the governmental unit is a municipality, on the date of the regular election of the municipality.

(2) Upon the inclusion of a governmental unit into a library district in accordance with the requirements of subsection (1) of this section, the legislative body of the governmental unit and the board of trustees of the district shall enter into a written agreement within ninety days of the election that sets forth fully the rights, obligations, and responsibilities, financial and otherwise, of the parties to the agreement.

(3) In the case of a governmental unit that has a portion included within a library district and a portion that is not included within the district, the governmental unit may

follow the procedures specified in subsections (1) and (2) of this section to bring about the inclusion of the entire governmental unit into the district; except that, in such circumstances, only the registered electors residing within the portion of the governmental unit that is not included within the district at the time of the commencement of the inclusion proceedings shall be allowed to vote on the question of approval of the district tax levy.

24-90-106.5. Establishment or removal of a municipal library in an existing county library or library district. If a municipality is in the legal service area of an existing county library or library district, public library service shall not be refused or discontinued other than as provided in this article. The municipality may establish its own municipal library only by choosing to do so by means of financial support that does not affect the financial support previously established for the county library or library district; except that the municipality and the county library or library district may, by mutual written agreement, permit a financing method for a municipal library that does affect the financial support previously established for the county library or library district. If establishment of the municipal library is to be funded by any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors of the municipality, the electors must approve that levy before the municipality can establish the library.

24-90-107. Method of establishment. (1) A municipal or county library may be established for a governmental unit either by the legislative body of said governmental unit on its own initiative, by adoption of a resolution or ordinance to that effect, or upon petition of one hundred registered electors residing in the proposed library's legal service area. A joint library may be established by the legislative bodies of two or more governmental units, and a library district by the legislative bodies of one or more governmental units, each proceeding to adopt a resolution or an ordinance to that effect. A library district may also be formed by petition of one hundred registered electors residing within the proposed library district addressed to the boards of county commissioners in each county in the proposed library district.

(2) If establishment of a municipal, county, or joint library or a library district is to be by resolution or ordinance, the following procedures shall be followed:

(a) A public hearing following notice shall be held by any governmental unit forming the public library. Such notice shall set forth the matters to be included in the resolution or ordinance and shall fix a date for the hearing that shall be not less than thirty nor more than sixty days after the date of first publication of such notice.

(b) Such public hearings shall include discussion of the purposes of the library to

be formed and, where more than one governmental unit is involved, the powers, rights, obligations, and responsibilities, financial and otherwise, of each governmental unit.

(c) The resolution or ordinance shall describe the proposed library's legal service area, identifying any excluded areas, shall specify the mill levy and property tax dollars to be imposed or other type and amount of funding, and shall state that the electors of the governmental unit or library district must approve any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors before the library can be established.

(d) Upon the adoption of the resolution or ordinance, the legislative body or bodies shall establish the public library and provide for its financial support beginning on or before January 1 of the year following the adoption of the resolution or ordinance by all those legislative bodies effecting the establishment or, if any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors is to provide the financial support, following elector approval of that levy.

(e) Upon establishment of a joint library or library district, and after appointment of the library board of trustees, a written agreement between the legislative body of each participating governmental unit and the library board of trustees shall be effected within ninety days, which time frame may be extended by mutual agreement of the parties, and shall set forth fully the rights, obligations, and responsibilities, financial and otherwise, of all parties to the agreement, including provisions concerning:

(I) The transition from the library to a library district, such as ownership of the library's real and personal property, personnel, and the provision of administrative services during the transition;

(II) The method of trustee selection; and

(III) Such other necessary terms and conditions as may be determined by the parties.

(3) If establishment of a county or municipal library or a library district is by petition of registered electors, the following procedures shall be followed:

(a) The petition shall set forth:

(I) A request for the establishment of the library;

(II) The name or names of the governmental unit or units establishing the library;

(III) The name of the proposed library, and for a library district, the chosen name preceding the words "library district";

(IV) A general description of the legal service area of the proposed public library with such certainty as to enable a property owner to determine whether or not such property owner's property is within the proposed library's legal service area; and

(V) Specification of the mill levy to be imposed or other type and amount of funding and that the electors must approve any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors before the county or municipal library or library district can be established.

(b) Petitions shall be addressed to the legislative body of the county or municipality, or, in the case of a library district, to the boards of county commissioners of each county having territory within the legal service area of the proposed district.

(c) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (c), at the time of filing the petition for the establishment of a library district, a bond shall be filed with the county or counties sufficient to pay all expenses connected with the organization of the library district if such organization is not affected.

(II) Except as otherwise provided in subparagraph (III) of this paragraph (c), the board of county commissioners of each county having territory within the legal service area of the proposed library district may:

(A) Waive the bonding requirement; and

(B) With the consent of the board of trustees of an existing library, pay for the costs of the election for the proposed library district. If the legal service area of a proposed library district includes two or more counties, the costs of election for such library district to be paid by any county pursuant to this sub-subparagraph (B) shall not exceed a percentage of said costs equal to the percentage that the population of the county within the boundaries of the legal service area bears to the total population within the boundaries of such service area.

(III) (A) Subject to the provisions of sub-subparagraphs (B) and (C) of this subparagraph (III), the board of county commissioners of each county having territory within the legal service area of the proposed library district shall pay no less than fifty percent of the costs of the election for such library district if the petition submitted pursuant to subsection (1) of this section contains signatures by registered electors residing in the proposed library district in an amount equal to at least five percent of the total number of votes cast in every precinct in the proposed library district for all candidates for the office of secretary of state at the previous general election.

(B) Payment of election costs for any library district shall not be required of any county under this subparagraph (III) more than once every four years.

(C) In the case where the legal service area of a proposed library district includes two or more counties, the costs of the election for the library district shall be paid on a prorated basis with each county within the boundaries of the proposed library's legal service area paying a percentage of said costs equal to the percentage that the population of the county within the boundaries of the library's legal service area bears to the total population of such service area.

(c.5) Notwithstanding any other provision of this section, the costs of the election of a proposed library district may be assumed by an existing library where the assumption of the costs has been approved by the board of trustees of said library.

(d) Upon receipt of such petition, the legislative body or bodies shall either establish the library by resolution or ordinance, in accordance with subsection (2) of this section, or shall submit the question of the establishment of a public library to a vote of

the registered electors residing in the proposed library's legal service area in accordance with the following provisions:

(I) In the case of a municipal library, such election shall be held in accordance with article 10 of title 31, C.R.S., and section 20 of article X of the state constitution, and shall be held on the date of the state biennial general election, the first Tuesday in November in odd-numbered years, or the municipal regular election, whichever is earliest; except that such petition shall be filed at least ninety days before such election.

(II) In the case of a library district or county library, such election shall be held in accordance with articles 1 to 13 of title 1, C.R.S., and section 20 of article X of the state constitution, and shall be held on the date of the state biennial general election or the first Tuesday in November in odd-numbered years, whichever is earliest; except that such petition shall be filed at least ninety days before such election.

(III) Public hearings shall be conducted by such legislative body or bodies prior to an election and shall include a discussion of the purposes of the library to be formed and, where more than one governmental unit is involved, the powers, rights, obligations, and responsibilities, financial and otherwise, of each governmental unit.

(e) and (f) (Deleted by amendment, L. 97, p. 411, § 1, effective April 24, 1997.)

(g) If a majority of the electors voting on the question vote in favor of the establishment of a library, the legislative body of each establishing governmental unit shall forthwith establish such library and provide for its financial support beginning on or before January 1 of the year following the election.

(h) Upon establishment of a library district, and after appointment of the library board of trustees, a written agreement between the legislative body of each participating governmental unit and the library board of trustees shall be effected within ninety days, which time frame may be extended by mutual agreement of the parties, and shall set forth fully the rights, obligations, and responsibilities, financial and otherwise, of all parties to the agreement, including provisions concerning:

(I) The transition from the library to a library district, such as ownership of the library's real and personal property, personnel, and the provision of administrative services during the transition;

(II) The method of trustee selection; and

(III) Such other necessary terms and conditions as may be determined by the parties.

(i) If organization of a library district is effected, the district shall reimburse the legislative bodies holding the election for expenses incurred in holding the election.

24-90-108. Board of trustees of public libraries. (1) The management and control of any library established, operated, or maintained under the provisions of this part 1 shall be vested in a board of not fewer than five nor more than seven trustees.

Appointees to the library board of trustees shall be chosen from the residents within the legal service area of the library.

(2) (a) In cities and towns the trustees shall be appointed by the mayor with the consent of the legislative body.

(b) In counties the trustees shall be appointed by the board of county commissioners.

(c) In a library district established by only one governmental unit, the legislative body of the governmental unit shall decide the number of its members to be appointed to the committee formed to appoint the initial board of trustees in accordance with the requirements of this paragraph (c). In a library district established by more than one governmental unit, the legislative body of each participating governmental unit shall appoint two of its members to a committee that shall appoint the initial board of trustees. Thereafter, any such legislative body or bodies may either continue such a committee or delegate to the board of trustees of the library district the authority to recommend new trustees. Trustee appointments shall be ratified by a two-thirds majority of the legislative body; except that the failure of a legislative body to act within sixty days upon a recommendation shall be considered a ratification of such appointment.

(d) In school districts the trustees shall be appointed by the school board.

(e) For joint libraries, the trustees shall be appointed by the legislative bodies of the participating governmental units unless otherwise specified in the contract.

(3) (a) The first appointments of such boards of trustees shall be for terms of one, two, three, four, and five years respectively if there are five trustees, one for each of such terms except the five-year term for which two shall be appointed if there are six trustees, and one for each of such terms except the four-year and five-year terms for each of which two shall be appointed if there are seven trustees. Thereafter, a trustee shall be appointed for the length of term specified by the legislative body or, in the case of a library district, by the bylaws adopted by its board of trustees. The number of terms a trustee may serve shall be specified by the legislative body or, in the case of a library district, by the bylaws adopted by its board of trustees.

(b) Vacancies shall be filled for the remainder of the unexpired term as soon as possible in the manner in which trustees are regularly chosen.

(4) A trustee shall not receive a salary nor other compensation for services as a trustee, but necessary traveling and subsistence expenses actually incurred may be paid from the public library fund.

(5) A library trustee may be removed only by a majority vote of the appointing legislative body or bodies, but only upon a showing of good cause as defined in, but not limited to, the bylaws adopted by the board.

(6) The board of trustees, immediately after their appointment, shall meet and organize by the election of a president and a secretary and such other officers as deemed necessary.

24-90-109. Powers and duties of board of trustees. (1) The board of trustees shall:

(a) Adopt such bylaws, rules, and regulations for its own guidance and policies for the governance of the library as it deems expedient. The bylaws shall include, but not be limited to, provisions for the definition of good cause to be applied in the removal of a trustee pursuant to section 24-90-108 (5); designation of those officers to be appointed or elected and the manner of such appointment or election; rules and regulations for the conducting of meetings; rules for public participation in meetings; and procedures for amending the bylaws. The bylaws of a library district shall further provide for the length and number of terms of board members. A copy of the bylaws shall be filed with the legislative body of each participating governmental unit and the state library in accordance with section 24-90-105 (1) (m).

(b) Have custody of all property of the library, including rooms or buildings constructed, leased, or set apart therefor;

(c) Employ a director and, upon the director's recommendation, employ such other employees as may be necessary. The duties of the director shall include, but not be limited to:

(I) Implementing the policies adopted by the board of trustees pursuant to paragraph (a) of subsection (1) of this section;

(II) Recommending individuals for employment by the board of trustees; and

(III) Performing all other acts necessary for the orderly and efficient management and control of the library.

(d) Submit annually a budget as required by law and certify to the legislative body of the governmental unit or units that the library serves the amount of the mill levy necessary to maintain and operate the library during the ensuing year;

(e) (I) In county and municipal libraries, have exclusive control and spending authority over the disbursement of the library funds as appropriated by its legislative body, including all assets of the public library fund, as set forth in section 24-90-112 (2) (a);

(II) In library districts, adopt a budget and make appropriations for the ensuing fiscal year as set forth in part 1 of article 1 of title 29, C.R.S., and have exclusive control and spending authority over the disbursement of library funds as set forth in section 24-90-112 (2) (a);

(f) Accept such gifts of money or property for library purposes as it deems expedient;

(g) Hold and acquire land by gift, lease, or purchase for library purposes;

(h) Lease, purchase, or erect any appropriate building for library purposes and acquire such other property as may be needed therefor;

(i) Sell, assign, transfer, or convey any property of the library, whether real or

personal, which may not be needed within the foreseeable future for any purpose authorized by law, upon such terms and conditions as it may approve, and lease any such property, pending sale thereof, under an agreement of lease, with or without an option to purchase the same. The board, prior to the conveyance of such property, shall make a finding that the property may not be needed within the foreseeable future for library purposes, but no such finding shall be necessary if the property is sold or conveyed to a state agency or political subdivision of this state.

(j) Borrow funds for library purposes by means of a contractual short-term loan when moneys are not currently available but will be in the future. Such loan shall not exceed the amount of immediately anticipated revenues, and such loan shall be liquidated within six months.

(k) Authorize the bonding of persons entrusted with library funds;

(l) (I) In the case of a county or municipal library, submit financial records for audit as required by the legislative body of the appropriate governmental unit; or

(II) In the case of any library district, conduct an annual audit of the financial statements of the district.

(m) Adopt a policy for the purchase of library materials and equipment on the recommendation of the director;

(n) Hold title to property given to or for the use or benefit of the library, to be used according to the terms of the gift;

(o) (Deleted by amendment, L. 2009, (HB 09-1072), ch. 74, p. 265, § 6, effective August 5, 2009.)

(p) Have the authority to enter into contracts;

(p.5) Maintain a current, accurate map of the legal service area and provide for such map to be on file with the state library;

(q) Receive the true and correct copies of all school district collective bargaining agreements submitted pursuant to the "Colorado School Collective Bargaining Agreement Sunshine Act", section 22-32-109.4, C.R.S., and create an electronic or physical repository for all of said current collective bargaining agreements at the library that is available to the public for inspection during regular business hours in a convenient and identified location.

(2) At the close of each calendar year, the board of trustees of every public library shall make a report to the legislative body of the town or city, in the case of a municipal library or library district formed by a municipality, or the board of county commissioners of each county having territory within the legal service area, in the case of a county library or library district, showing the condition of its trust during the year, the sums of money expended, and the purposes of the expenditures and such other statistics and information as the board of trustees deems to be of public interest.

(2.5) At the close of each calendar year, the board of trustees of every public library shall make a report to the state library in the form of a response to a survey to be

designed and administered by the state library. The report shall contain such other statistics and information as may be required by the state library.

(3) The board of trustees of a public library or the governing board of any other publicly-supported library, under such rules and regulations as it may deem necessary and upon such terms and conditions as may be agreed upon may allow nonresidents of the governmental unit which the library serves to use such library's materials and equipment and may make exchanges of books and other materials with any other library, either permanently or temporarily.

(4) In addition to the powers and duties of a board of trustees specified in subsection (1) of this section, the board of trustees of a school district supported public library, municipal library, county library, or a library district shall have the authority to request of the board of education in the case of a school district supported public library, the legislative body of the city or town in the case of a municipal library, or the board of county commissioners in the case of a county library or library district that an election be held to alter the maximum tax levied to support the school district supported public library, municipal library, county library, or library district pursuant to section 24-90-112 (1) (b) (III), in which case such board of education, legislative body, or board of county commissioners shall cause the vote to be held. For purposes of this subsection (4), "school district supported public library" means any library solely established and maintained by a school district for which such school district began levying a tax before the enactment of the "Colorado Library Law" on July 1, 1979. For all other purposes under this article, a school district supported public library shall be deemed a public library.

24-90-110. Establishment of public library districts - merger of public library - board of trustees. (Repealed)

24-90-110.5. Metropolitan library districts - formation. (Repealed)

24-90-110.7. Regional library authorities. (1) (a) In order to support and provide for public library service on a regional basis, particularly in any region of the state lacking sufficient public library resources to adequately serve the needs of the public, any combination of two or more governmental units acting through their governing bodies, regardless of whether such unit currently maintains a public library, may, by contracting with or among each other, establish a separate governmental entity to be known as a regional library authority, referred to in this section as an "authority". Such authority may be used by such contracting member governmental units to effect the

acquisition, construction, financing, operation, or maintenance of publicly-supported library services on a regional basis within the jurisdiction of the authority. For purposes of this section, a governmental unit may include a library district within the meaning of section 24-90-103 (6).

(b) No such authority shall be formed pursuant to this section unless each of the contracting member governmental units forming such authority has passed a resolution or ordinance in accordance with the requirements of paragraph (d) of this subsection (1) and has entered into a contract pursuant to section 29-1-203, C.R.S., for the creation, operation, and administration of such authority.

(c) (I) In connection with the establishment of an authority, at least one public hearing shall be conducted by each of the contracting member governmental units that intend to enter into a contract for the purpose of forming the authority. Any such hearing shall be preceded by adequate and timely notice of the time and place of the hearing. The notice shall specify the matters to be included in the resolution or ordinance and shall fix a date for the hearing that shall be held not less than thirty nor more than sixty days after the date of first publication of such notice.

(II) Any public hearing conducted in accordance with the requirement of subparagraph (I) of this paragraph (c) shall address, without limitation, the purposes of the authority, and, where more than one governmental unit is involved in the formation of the authority, the powers, rights, obligations, and responsibilities, financial and otherwise, of each governmental unit that is forming the authority.

(d) The resolution or ordinance to be adopted by each of the contracting member governmental units forming the authority in accordance with the requirements of paragraph (b) of this subsection (1) shall:

(I) Describe the legal service area of the authority;

(II) Describe the proposed governance of the authority; and

(III) State that the registered electors residing within the territorial boundaries of such contracting member governmental units shall approve any amount of sales or use tax, or both, in accordance with the requirements of paragraph (f) of subsection (3) of this section or an ad valorem tax in accordance with the requirements of paragraph (h) of subsection (3) of this section not previously approved by the electors before the authority shall levy such taxes.

(2) Upon establishment of an authority satisfying the requirements of this section, a contract between the legislative bodies of the contracting member governmental units, shall be effected within ninety days. Any contract establishing such authority shall, without limitation, specify:

(a) The name and purpose of such authority and the functions or services to be provided by such authority;

(b) The boundaries of the authority, which boundaries may include less than the entire area of any separate county, but shall not be less than the entire area of any

municipality and any other governmental unit forming the authority, and may be modified after the establishment of the authority as provided in the contract;

(c) The establishment and organization of a governing body of the authority, which shall be a board of directors, referred to in this section as the "board of the authority", in which all legislative power of the authority is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board of the authority;

(II) The officers of the authority, the manner of their selection, and their duties;

(III) The voting requirements for action by the board of the authority; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board of the authority; and

(IV) The duties of the board of the authority, which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of article 1 of title 29, C.R.S.;

(d) Provisions for the disposition, division, or distribution of any property or assets of the authority;

(e) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations; and

(f) The expected sources of revenue of the authority and any requirements that contracting member governmental units consent to the levying of any taxes within the jurisdiction of such member. If the authority levies any taxes, the contract shall further include requirements that:

(I) Prior to and as a condition of levying any such taxes or fees, the board of the authority shall adopt a resolution determining that the levying of the taxes or fees will fairly distribute the costs of the authority's activities among the persons or communities benefited thereby and will not impose an undue burden on any particular group of persons or communities;

(II) Each such tax shall conform with any requirements specified in subsection (3) of this section; and

(III) The authority shall designate a financial officer who shall coordinate with the department of revenue regarding the collection of a sales and use tax authorized pursuant to paragraph (f) of subsection (3) of this section. This coordination shall include but not be limited to the financial officer identifying those businesses eligible to collect the sales and use tax and any other administrative details identified by the department.

(3) The general powers of such authority shall include the following powers:

(a) To acquire, construct, finance, operate, or maintain public library services located within the territorial boundaries of the authority;

(b) To make and enter into contracts with any person, including, without limitation, contracts with state or federal agencies, private enterprises, and nonprofit organizations also involved in providing such public library services or the financing for the services, irrespective of whether the agencies are parties to the contract establishing the authority;

(c) To employ agents and employees;

(d) To cooperate with state and federal governments in all respects concerning the financing of such library services;

(e) To acquire, hold, lease, as lessor or lessee, sell, or otherwise dispose of any real or personal property, commodity, or service;

(f) (I) Subject to the provisions of subsection (9) of this section, to levy, in all of the area described in subparagraph (II) of this paragraph (f) within the boundaries of the authority, a sales or use tax, or both, at a rate not to exceed one percent, upon every transaction or other incident with respect to which a sales or use tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S. The tax imposed pursuant to this paragraph (f) is in addition to any other sales or use tax imposed pursuant to law. The executive director of the department of revenue shall collect, administer, and enforce the sales or use tax, to the extent feasible, in the manner provided in section 29-2-106, C.R.S. However, the executive director shall not begin the collection, administration, and enforcement of a sales and use tax until such time as the financial officer of the authority and the executive director have agreed on all necessary matters pursuant to subparagraph (III) of paragraph (f) of subsection (2) of this section. The executive director shall begin the collection, administration, and enforcement of a sales and use tax on a date mutually agreeable to the department of revenue and the authority.

(II) The area in which the sales or use tax authorized by this paragraph (f) is levied shall not include less than the entire area of any municipality located within the area in which the tax will be levied. The area may also include portions of unincorporated areas located within a county.

(III) The executive director of the department of revenue shall make monthly distributions of the tax collections to the authority, which shall apply the proceeds solely to the acquisition, construction, financing, operation, or maintenance of public library services within the jurisdiction of the authority.

(IV) The department of revenue shall retain an amount not to exceed the cost of the collection, administration, and enforcement and shall transmit the amount retained to the state treasurer, who shall credit the same amount to the regional library authority sales tax fund, which fund is hereby created in the state treasury. The amounts so retained are hereby appropriated annually from the fund to the department to the extent necessary for the department's collection, administration, and enforcement of the provisions of this

section. Any moneys remaining in the fund attributable to taxes collected in the prior fiscal year shall be transmitted to the authority; except that prior to the transmission to the authority of such moneys, any moneys appropriated from the general fund to the department for the collection, administration, and enforcement of the tax for the prior fiscal year shall be repaid.

(g) Notwithstanding any other provision of law, any sales tax authorized pursuant to subparagraph (I) of paragraph (f) of this subsection (3) shall not be levied on:

(I) The sale of tangible personal property delivered by a retailer or a retailer's agent or delivered to a common carrier for delivery to a destination outside the boundaries of the authority; and

(II) The sale of tangible personal property on which a specific ownership tax has been paid or is payable when such sale meets the following conditions:

(A) The purchaser does not reside within the boundaries of the authority or the purchaser's principal place of business is outside the boundaries of the authority; and

(B) The personal property is registered or required to be registered outside the boundaries of the authority under the laws of this state.

(h) Subject to the provisions of subsection (9) of this section, to levy, in all of the area within the boundaries of the authority, an ad valorem tax in accordance with the requirements of this section. The tax imposed pursuant to this paragraph (h) shall be in addition to any other ad valorem tax imposed pursuant to law. In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board of the authority shall certify to the board of county commissioners of each county within the authority, or having a portion of its territory within the district, the levy of ad valorem property taxes in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the designated portion of the area within the boundaries of the authority. It is the duty of the body having authority to levy taxes within each county to levy the taxes provided by this subsection (3). It is the duty of all officials charged with the duty of collecting taxes to collect the taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the authority ordering the levy and collection. The payment of such collections shall be made monthly to the authority or paid into the depository thereof to the credit of the authority. All taxes levied under this paragraph (h), together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and the lien shall be on a parity with the tax lien of other general taxes.

(i) To incur debts, liabilities, or obligations;

(j) To sue and be sued in its own name;

(k) To have and use a corporate seal;

(l) To fix, maintain, and revise fees, rents, security deposits, and charges for

functions, services, or facilities provided by the authority;

(m) To adopt, by resolution, rules respecting the exercise of its powers and the carrying out of its purposes;

(n) To exercise any other powers that are essential to the provision of functions, services, or facilities by the authority and that are specified in the contract; and

(o) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation.

(4) The authority established by such contracting member governmental units shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting member governmental unit withdraws, whether voluntarily, by operation of law, or otherwise, from the authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such authority pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The authority may deposit and invest its moneys in the manner provided in section 43-4-616, C.R.S.

(5) The bonds, notes, and other obligations of such authority shall not be the debts, liabilities, or obligations of the contracting member governmental units.

(6) The contracting member governmental units may provide in the contract for payment to the authority of funds from proprietary revenues for services rendered or facilities provided by the authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the authority.

(7) The authority may issue revenue or general obligation bonds, as the term "bond" is defined in section 43-4-602 (3), C.R.S., and may pledge its revenues and revenue-raising powers for the payment of the bonds. The bonds shall be issued on the terms and subject to the conditions set forth in section 43-4-609, C.R.S.

(8) The income or other revenues of the authority, all properties at any time owned by an authority, any bonds issued by an authority, and the transfer of and the income from any bonds issued by the authority are exempt from all taxation and assessments in the state.

(9) (a) No action by an authority to establish or increase any tax authorized by this section shall take effect unless first submitted to a vote of the registered electors residing within the boundaries of the authority in which the tax is proposed to be collected.

(b) No action by an authority creating a multiple-fiscal year debt or other financial obligation that is subject to section 20 (4) (b) of article X of the state constitution shall take effect unless first submitted to a vote of the registered electors residing within the boundaries of the authority.

(c) The questions proposed to the registered electors under paragraphs (a) and (b) of this subsection (9) shall be submitted at a general election or any election to be held on the first Tuesday in November of an odd-numbered year. The action shall not take effect unless a majority of the registered electors voting thereon at the election vote in favor thereof. The election shall be conducted in substantially the same manner as county elections and the county clerk and recorder of each county in which the election is conducted shall assist the authority in conducting the election. The cost of the election shall be incurred by the contracting member governmental units that have formed the authority in proportion to the percentage of the population of the governmental units within the territorial boundaries of the authority. No moneys of the authority may be used to urge or oppose passage of an election required under this section.

(10) (a) For the purpose of determining any authority's fiscal year spending limit under section 20 (7) (b) of article X of the state constitution, the initial spending base of the authority shall be the amount of revenues collected by the authority from sources not excluded from fiscal year spending pursuant to section 20 (2) (e) of article X of the state constitution during the first full fiscal year for which the authority collected revenues.

(b) For purposes of this subsection (10), "fiscal year" means any year-long period used by an authority for fiscal accounting purposes.

(11) An authority established by contracting member governmental units shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting member governmental units to provide the same function, service, or facility, and the authority shall be entitled to all the rights and privileges and shall assume all the obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

(12) (a) The authority granted pursuant to this section shall in no manner limit the powers of any governmental unit to cooperate on an intergovernmental basis, to enter into any contract with another governmental entity, or to establish a separate legal entity pursuant to the provisions of section 29-1-203, C.R.S., or any other applicable law, or otherwise to carry out their individual powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns pursuant to the state constitution.

(b) Notwithstanding any other provision of law, any governmental unit that has entered into a contract for the purpose of forming an authority may form such authority in accordance with the requirements of this section without any effect on the ability of the unit to own its own property, maintain a separate governing body or board of trustees, levy its own taxes for library purposes, or retain its own identity.

(c) Notwithstanding any other provision of law, nothing in this section shall be construed to authorize any one or more library districts to:

(I) Form an authority without entering into a contract with one or more governmental units to form such authority in accordance with the requirements of this

section; or

(II) Exercise any of the powers of said authority, including, without limitation, the power to levy a sales or use tax, in the absence of entering into a contract with one or more governmental units for the purpose of forming such authority in accordance with the requirements of this section.

24-90-111. Participation by established library. (Repealed)

24-90-112. Tax support - elections. (1) (a) (I) If the electors of the governmental unit approve a tax levy, the legislative body of any incorporated city or town is hereby authorized to levy the tax for municipal libraries upon real and personal property for the establishment, operation, and maintenance of a public library.

(II) If the electors of the governmental units approve a tax levy, the board of county commissioners of any of the several counties is hereby authorized to levy the tax for county libraries or library districts upon real and personal property for the establishment, operation, and maintenance of county libraries or library districts.

(III) (Deleted by amendment, L. 2003, p. 2458, § 12, effective August 15, 2003.)

(IV) The tax authorized by section 24-90-110.7 (3) (f) and (3) (h) may be levied in addition to any other tax the participating governmental entities levy for the support of their own public libraries.

(V) The board of education of a school district that began levying a tax for the operation and maintenance of a school district supported public library before the enactment of the "Colorado Library Law" on July 1, 1979, is authorized to continue to levy such tax for said purposes, subject to the limitations set forth in paragraph (b) of this subsection (1).

(b) (I) (A) Except as otherwise provided under sub-subparagraph (B) of this subparagraph (I), the legislative body for the specified governmental unit shall submit, after notice, the question of any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors for the establishment, operation, and maintenance of public libraries to a vote of the registered electors residing in the unit or that portion of a library district within the unit, as the case may be, at the next general election, or on the election held on the first Tuesday in November of odd-numbered years.

(B) The board of education of a school district shall submit, after notice, the question of any amount of tax levy not previously established by resolution for the operation and maintenance of school district supported public libraries to a vote of the registered electors residing in the school district at the next general election on the first Tuesday in November of odd-numbered years. For purposes of this subsection (1),

"school district supported public library" means any library solely established and maintained by a school district for which such school district began levying a tax before the enactment of the "Colorado Library Law" on July 1, 1979.

(II) (Deleted by amendment, L. 2003, p. 2458, § 12, effective August 15, 2003.)

(III) Notwithstanding the authorization contained in paragraph (a) of this subsection (1) and in addition to the provisions of subparagraph (I) of this paragraph (b), upon request of the board of trustees of the municipal or county library or the library district, or upon resolution of the legislative body of the city or town by its own initiative in the case of a municipal library, of the board of education of the school district by its own initiative in the case of a school district supported public library, or of the board of county commissioners by its own initiative in the case of a county library or library district, the legislative body of the city or town, the board of education of the school district, or the board of county commissioners shall cause to be submitted to a vote of the registered electors residing within the library's legal service area a proposition containing the desired maximum tax levy specified in the request or resolution.

(IV) Following a vote by the people in which a maximum mill levy has been set for the support of a municipal or county library or a library district, such levy shall remain in effect, subject to the requirements of section 29-1-301, C.R.S., until the people have established by subsequent vote pursuant to the provisions of this section a change in the levy. For a school district that began levying a tax for the operation and maintenance of a school district supported public library before the enactment of the "Colorado Library Law" on July 1, 1979, such mill levy shall remain in effect until the people have established, by subsequent vote pursuant to the provisions of this section, a change in the levy.

(2) (a) The treasurer of the governmental unit in which such library is located or, if a library district has been established embracing parts or all of more than one county, the treasurer of the county containing the largest valuation for assessment of property for tax purposes of the said district shall be the custodian of all moneys for the library, whether derived from taxation, gift, sale of library property, or otherwise. All moneys generated for library purposes shall be credited to a special fund in the office of said treasurer to be known as the public library fund. The fund, together with all interest income that accrues thereon on and after July 1, 1991, shall be used only for library purposes.

(b) (Deleted by amendment, L. 2003, p. 2458, § 12, effective August 15, 2003.)

(c) If requested by the board of trustees, the treasurer designated as custodian of the library's money pursuant to paragraph (a) of this subsection (2) may transfer moneys into the custody of the board, but the board shall carry insurance for such purpose, make monthly accountings to said treasurer, and cause an annual audit to be performed and submitted to said treasurer with respect to the board's management of said moneys.

(3) Approval of any tax levy not previously established by resolution or ordinance

nor previously approved by the electors shall conform to the requirements of section 20 of article X of the state constitution.

24-90-112.5. Issuance of bonds. (1) (a) Whenever the board of trustees of a library district determines that the interest of the library district and the public interest or necessity requires the creation of a general obligation indebtedness of the county on behalf of and in the name of the library district to finance the acquisition, construction, expansion, or remodeling of any real or personal property for library purposes of such district, including, without limitation, acquisition of books and equipment for such purposes, the board of trustees shall adopt a resolution requesting the board of county commissioners of the county in which the library district is located to submit the question of creating such indebtedness at the next general election or on the election held on the first Tuesday in November of odd-numbered years. The resolution of the board of trustees, in addition to the declaration of public interest or necessity, shall recite:

(I) The objects and purposes for which the indebtedness is proposed to be incurred;

(II) The amount of indebtedness to be incurred therefor;

(III) The maximum net effective interest rate to be paid on such indebtedness; and

(IV) The question to be submitted by the county to the registered electors.

(b) In the event that territory within a library district is located within more than one county, the resolution shall also specify the principal amount of indebtedness proposed to be incurred by each county in which territory within the district is located. Such principal amount of indebtedness for each county shall bear approximately the same ratio to the total principal amount of indebtedness proposed to be incurred as the valuation for assessment of that portion of the property within the library district which is located within such county bears to the valuation for assessment of all property located within the library district. The board of trustees shall deliver such resolution to the board of county commissioners of each county in which territory within the library district is located.

(2) Within twenty days after receipt of a resolution adopted pursuant to paragraph (a) of subsection (1) of this section, the board of county commissioners shall either adopt the resolution subject to mutually agreed upon changes in the resolution or reject the resolution. Where the board adopts the resolution, it shall order the question of incurring such indebtedness to be submitted, on the date specified in the resolution of the board of trustees, to the registered electors residing in territory within the county which is included in the library district. Such order shall be adopted and the election shall be held and conducted in accordance with section 30-26-301, C.R.S. In its order the board shall specify polling places and precincts for such election, which may be the same as or different than the polling places and precincts established pursuant to the provisions of

section 1-5-101, C.R.S. If, upon canvassing the vote, it appears that a majority of the registered electors voting at such election vote in favor of the proposition to contract said indebtedness, the board on behalf of and in the name of the library district is authorized to and shall contract for said indebtedness.

(2.5) (a) Whenever the board of trustees of a library district determines that the interest of such district and the public interest or necessity requires the creation of a general obligation indebtedness of such district to finance the acquisition, construction, expansion, or remodeling of any real or personal property for library purposes of such district, including, without limitation, acquisition of books and equipment for such purposes, the board of trustees shall adopt a resolution to submit the question of creating such indebtedness on their own authority at the next general election or on the election held on the first Tuesday in November of odd-numbered years. In addition, at such election the board of trustees may also submit such question to the electors in the event the board of county commissioners of a county rejects the resolution of the board of trustees under subsection (2) of this section. In addition to reciting the declaration of public interest or necessity, the resolution of the board of trustees shall also recite:

(I) The objects and purposes for which the indebtedness is proposed to be incurred;

(II) The amount of indebtedness to be incurred therefor;

(III) The maximum net effective interest rate to be paid on such indebtedness; and

(IV) The question to be submitted by the board to the electors.

(b) The board of trustees of the district shall deliver a copy of the resolution to the board of county commissioners of each county within which the district is located.

(c) Within twenty days after adoption of the resolution, the board of trustees shall order the question of whether the library district shall incur such indebtedness to be submitted, on the date specified in the resolution, to the registered electors residing in such district. The order shall be adopted, and the election shall be held and conducted as provided in articles 1 to 13 of title 1, C.R.S. In its resolution, the board of trustees shall specify polling places and precincts for such election, which may be the same as or different than polling places and precincts established pursuant to the provisions of section 1-5-101, C.R.S. If, upon canvassing the vote, it appears that a majority of the registered electors voting at such election vote in favor of the question, the library district is authorized to and shall contract for said indebtedness.

(3) (a) When authorized pursuant to subsection (2) of this section and upon the request of the board of trustees of the library district, the board of county commissioners shall issue bonds of the county in the manner provided in section 30-26-302, C.R.S., but such bonds may be redeemable prior to maturity at such time, in such manner, and upon payment of such premium as the board of county commissioners may determine. Such bonds shall not be subject to the limitation on county indebtedness set forth in section 30-26-301 (3) or 30-35-201 (6) (b), C.R.S. In the event that territory within a library district

is located within more than one county, each board of county commissioners may issue its bonds for the authorized purposes of the library district regardless of whether any or all of the other counties in which the library district is located issue bonds for such purposes, but the bonds of a county issued pursuant to this section shall be payable from ad valorem taxes levied only on that property within such county that is located in the library district.

(b) When authorized pursuant to subsection (2.5) of this section, the library district shall issue its bonds in the manner provided in section 32-1-1101, C.R.S., but the bonds may be redeemable prior to maturity at such time, in such manner, and upon payment of such premium as the board of trustees may determine.

(4) The board of county commissioners acting pursuant to subsection (1) of this section, and the board of trustees of a library district acting pursuant to subsection (2.5) of this section, are authorized to levy an ad valorem tax on all taxable property either within such county that is located in the library district, or within such district where the boundaries of said district cover more than one county, as applicable, to pay the principal of, redemption premium, if any, and interest on county or district indebtedness incurred pursuant to this section. The board of county commissioners and board of trustees, in certifying annual levies, shall take into account the maturing indebtedness of such county or such district incurred pursuant to this section for the ensuing year and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. If the moneys produced from such levies, together with other revenues of the county or district available therefor, are not sufficient to pay punctually the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board of county commissioners or board of trustees, as applicable, shall make such additional levies of taxes as may be necessary for such purposes, and such taxes shall be made and continue to be levied until the indebtedness is fully paid.

(5) Moneys resulting from such indebtedness shall be deposited with and disbursed by the custodian of library district funds pursuant to section 24-90-112 (2). The real or personal property to be acquired, constructed, expanded, or remodeled with the proceeds of such indebtedness shall be held, operated, and maintained by the library district.

24-90-113. Contract to receive library service. (Repealed)

24-90-113.3. Contract to receive library service. In lieu of establishment of a public library, the legislative body of a governmental unit may contract to receive library service from an existing library, the board of trustees or governing body of which has the reciprocal power to render the service. Any school district may contract for library service from any existing public library, such service to be paid from funds available to the

school district for library purposes. Any contract entered into pursuant to this section shall specify, without limitation, the geographic area covered by the contract, the amount of compensation to be paid to the library delivering the service, the term of the contract, and any other information deemed necessary by the contracting parties.

24-90-114. Abolishment of libraries. (1) A public library, other than a joint library, established, operated, or maintained pursuant to this part 1 may be abolished only by vote of the registered electors in that library's legal service area, taken in the manner prescribed in section 24-90-107 (3) for a vote to establish a library. If a library is abolished, the materials and equipment belonging to it shall be disposed of as the legislative body of the governmental unit, or in the case of a library district, as the library board of trustees, directs.

(2) Following notice of public hearings, the abolishment of a joint library shall be by resolution of the legislative bodies of the governmental units which established, operated, or maintained the joint library. The resolution shall specify that all indebtedness, including obligations arising from lease-purchase agreements, of the joint library must be fully protected until retired, that all trusts of the library will be continued as specified under current terms, and that all properties of the joint library will be divided as provided in the agreements entered into by the legislative bodies of the governmental units.

(3) Disposition of school district libraries that have been abolished shall be accomplished as provided by law.

24-90-115. Regional library service system - governing board. (1) (a) The board of trustees of any public library, library district, or the governing board of any publicly-supported library may participate in a regional library service system that provides cooperative services such as resource sharing, consulting, and continuing education under a plan submitted to the state librarian for the approval of said librarian. The bylaws of each regional library service system shall provide for a governing board consisting solely of representatives from publicly-supported libraries that are members of the system. The bylaws of a regional library service system may provide for membership in the system by libraries that are not publicly supported. In such case, the bylaws shall specify which such libraries are members of the system and any benefits of membership in the system that shall accrue to such libraries.

(b) The state board of education shall adopt rules and regulations, in accordance with article 4 of this title, relating to the establishment, governance, and dissolution of regional library service systems.

(2) (a) The governing board of a regional library service system shall consist of at

least one representative from any three of the following four types of publicly-supported libraries participating in the system:

(I) Schools;

(II) Public;

(III) Academic; and

(IV) Special.

(b) The governing board of the regional library service system shall be elected by a system membership council comprised of one representative of each system member representing a publicly-supported library.

(3) (a) The governing board of each regional library service system has the right to exercise all powers vested in a board of trustees pursuant to section 24-90-109. Nothing pertaining to the organization or operation of a regional library service system shall be construed to infringe upon the autonomy of the board of trustees of a public library or the governing board of any publicly-supported library.

(b) The governing board of each regional library service system shall submit annual plans and budgets under regulations established by the state librarian as provided in section 24-90-105 (1) (a).

(4) Before withdrawing from a regional library service system, any participating library shall be required to fulfill all outstanding obligations for that fiscal year. Withdrawal shall be accomplished pursuant to rules and regulations established by the state board of education.

(5) If the need for a regional library service system ceases to exist, the membership council, in its sole discretion, shall by a two-thirds vote of its members, declare its intent to dissolve the organization and file with the state library a plan for effecting such dissolution, which shall be carried out upon approval by the state board of education.

24-90-116. Existing libraries to comply. Any public library established on or after July 1, 1979, shall be established as provided in this part 1. Every public library which has been established prior to said date under provisions of state law shall be considered as established under this part 1, and the board of trustees and the legislative body of the governmental unit in which the library is located shall proceed forthwith to make such changes as may be necessary to effect a compliance with the terms of this part 1. Every contract existing prior to July 1, 1979, for library service shall continue in force and be subject to this part 1 until the contract is terminated or a public library is established by the governmental unit for which the service was engaged.

24-90-117. Theft or mutilation of library property. Any person who takes,

without complying with the appropriate check-out procedures, or who willfully retains any property belonging to any publicly-supported library for thirty days after receiving notice in writing to return the same, given after the expiration of the time that by the rules of such institution such property may be kept, or who mutilates such property commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

24-90-118. Colorado libraries automated catalog project. (1) The general assembly declares that there shall be developed and established by the Colorado state library, in cooperation with the research libraries within Colorado, an automated catalog system, which shall be available for use by all publicly or privately supported libraries in Colorado. The system shall be compatible with the library of congress automated cataloging system, including federal standards for machine-readable cataloging, which will become effective on January 1, 1981.

(2) and (3) Repealed.

24-90-119. Privacy of user records. (1) Except as set forth in subsection (2) of this section, a publicly-supported library shall not disclose any record or other information that identifies a person as having requested or obtained specific materials or service or as otherwise having used the library.

(2) Records may be disclosed in the following instances:

(a) When necessary for the reasonable operation of the library;

(b) Upon written consent of the user;

(c) Pursuant to subpoena, upon court order, or where otherwise required by law;

(d) To a custodial parent or legal guardian who has access to a minor's library card or its authorization number for the purpose of accessing by electronic means library records of the minor.

(3) Any library official, employee, or volunteer who discloses information in violation of this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

PART 2

STATE PUBLICATIONS DEPOSITORY AND DISTRIBUTION CENTER

24-90-201. Establishment of a state publications depository and distribution center. In consideration of the fundamental importance attached in our constitutional republic to a well-educated citizenry participating in our democratic processes that understands the activities of its state government, and to allow the people of the state to

draw benefits from information developed at public expense, and to enjoy access to the information services of state agencies, there is hereby established a state publications depository and distribution center. Such center shall be a section of the state library. The center shall ensure that all state publications are available to residents of Colorado through a system of depository libraries. Operation of the center is declared to be an essential administrative function of the state government.

24-90-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Center" means that section of the state library responsible for the state publications depository and distribution functions.

(2) "Depository library" means a library designated to collect, maintain, and make available to the general public state agency publications.

(3) "State agency" means every state office, whether legislative, executive, or judicial, and all of its respective officers, departments, divisions, bureaus, boards, commissions, and committees, all state-supported colleges and universities which are defined as state institutions of higher education, and other agencies which expend state-appropriated funds.

(4) "State publication" means any information for public distribution, regardless of format, method of reproduction, source, or copyright that is produced, purchased for distribution, or authorized, with the imprint of, or at the total or partial expense of the agency, with the exception of correspondence, interoffice memoranda, or those items detailed by section 24-72-204. "State publication" includes, without limitation, information available electronically by means of computer diskettes, compact discs, computer tapes, other electronic storage media, or a public telecommunications network.

24-90-203. Purposes - direction - rules. (1) The purposes of the center are to identify, collect, catalog, distribute, preserve, and make state publications, regardless of format, available to the public. Public access to such publications may be accomplished by use of depository library facilities throughout the state, and, for electronic documents, by means of a public telecommunications network.

(2) The center shall be under the direction of the state librarian.

(3) The state board of education shall adopt such rules as are necessary or appropriate to accomplish the provisions of this part 2. No rule shall deny public access to the state publications enumerated in this part 2.

24-90-204. Deposits of state publications. (1) Every state agency shall, upon

publication, deposit at least four copies of each of its state publications with the center. The center may require additional copies of certain state publications to be deposited when designated by the state librarian as being required to fulfill the purposes of this part 2. Publications shall be provided within ten working days of such publication in the following manner:

(a) In the case of any publications produced in print, four copies of said publication shall be deposited with the center.

(b) In the case of any publication produced in electronic form, including those made available through a public telecommunications network, an electronic copy or notification of the publication of such electronic copy shall be deposited with the center in a form specified by the center.

24-90-205. Permanent public access to state publications. The center shall coordinate with state agencies, depository libraries, or other entities permanent public access to state publications, regardless of format.

24-90-206. Depository library agreements - requirements. (1) The center may enter into depository agreements with any state agency or public library or with out-of-state research libraries and other state libraries. The number of depository libraries shall not exceed thirty. The requirements for eligibility to become and continue as a depository shall be established by the state library. The standards shall include and take into consideration population, the type of library or agency, ability to preserve such publications and to make them available for public use, and such geographic locations as will make the publications conveniently accessible to residents in all areas of the state.

(2) In addition to any other material distributed to state publications depository libraries, the state librarian shall distribute any materials to be incorporated by reference in state rules that are provided to the state publications depository and distribution center pursuant to section 24-4-103 (12.5) (c) (I). The state librarian and any state publications depository library shall make materials distributed pursuant to this subsection (2) available to the public as soon as possible.

24-90-207. On-line catalog of state publications. The center shall maintain an on-line catalog providing free public access to records of state publications, regardless of format, by author, title, subject, and key word through a public telecommunications network.

24-90-208. State publications distribution. The center shall distribute state publications, in paper, electronic, or other format where appropriate, to depository libraries. The state librarian may make additional distributions in accordance with agreements with appropriate state agencies.

PART 3

COLORADO COMPUTER INFORMATION NETWORK

24-90-301. Legislative declaration. The general assembly hereby declares that access to information is of utmost importance to the people of the state of Colorado; that people with better access to information have enhanced opportunities to improve the quality of their own lives, their children's lives, and the contributions they make to their communities and the state; and that access to on-line information accessed through libraries should be equal throughout the state, regardless of place of residence or economic status.

24-90-302. Colorado virtual library - creation - components - access. (1) There is hereby created the Colorado virtual library, formerly known as the access Colorado library and information network (ACLIN), which shall be a part of the state library system under the charge of the state librarian pursuant to section 24-90-105 (2) (f). For purposes of this section, "library" shall mean the Colorado virtual library created in this subsection (1).

(2) The library shall provide electronic resources through libraries to all Colorado residents, to the students, faculty, and staff of institutions of higher education, and to the students and faculty of elementary and secondary schools wherever such persons obtain access to the internet, regardless of place of residence within Colorado or economic status.

(3) The library shall have the following components:

(a) A connection to the on-line catalogs of the holdings of Colorado libraries;

(b) A connection to locally produced databases;

(c) Digitized collections of Colorado resources;

(d) Indexes and full text database products selected in accordance with subsection (3.5) of this section to serve the needs of the people of the state;

(e) An interlibrary loan system facilitating resource sharing throughout Colorado; and

(f) Other services associated with providing computer-based library services.

(3.5) Subject to available appropriations, the state librarian shall procure through a competitive bid process on-line databases necessary to provide on behalf of all publicly-

supported libraries the indexes and database products specified in paragraph (d) of subsection (3) of this section.

(4) Access to the Colorado virtual library by any person within the state shall be through the world wide web or successive technology.

(5) (a) The component parts of the Colorado virtual library described in subsection (3) of this section are affected with a public interest.

(b) Accordingly, in the administration of this part 3, the state librarian shall be guided by the principle that information generally provided by libraries, such as library catalogues and on-line resources, should be provided free to library users; however, said users may be subject to appropriate charges and fees for specialized services.

(c) Further, the state librarian shall be guided by the principle that direct competition between publicly funded agencies and private firms is to be avoided. Publicly funded agencies that are part of the library established under this part 3 are discouraged from selling at a profit information contributed to them by private firms.

24-90-303. Computer information network fund - creation. (Repealed)

PART 4

LIBRARY GRANTS

24-90-401. Short title. This part 4 shall be known and may be cited as the "State Grants for Libraries Act".

24-90-402. Legislative declaration. The general assembly hereby finds and declares that the purpose of this part 4 is to promote means whereby the state will make grant moneys available to publicly-supported libraries, including public libraries, school libraries, and academic libraries, to enable these institutions to obtain educational resources they would otherwise be unable to afford, to the end that the state will receive the corresponding benefits of a better educated and informed population.

24-90-403. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Academic library" has the same meaning as set forth in section 24-90-103 (1).

(2) "County library" has the same meaning as set forth in section 24-90-103 (2).

(3) "Educational resources" means any one or all of the following: Books,

periodicals, or any other form of print media; audiovisual materials; and electronic information resources.

(4) "Electronic information resources" means material of an educational or informational nature that may only be accessed by computer or electronic terminal.

(5) "Eligible participant" means a publicly-supported library that otherwise satisfies the requirements for grant eligibility pursuant to this part 4.

(6) "Fund" means the state grants to publicly-supported libraries fund created pursuant to this part 4.

(7) "Joint library" has the same meaning as set forth in section 24-90-103 (4).

(8) "Library district" has the same meaning as set forth in section 24-90-103 (6).

(9) "Minor" means any person under the age of eighteen.

(10) "Municipal library" has the same meaning as set forth in section 24-90-103 (11).

(11) "Public access computer" means a computer that is:

(a) Located in a school library or a public library; and

(b) Connected to any computer communication system.

(12) "Public library" has the same meaning as set forth in section 24-90-103 (13).

(13) "Publicly-supported library" has the same meaning as set forth in section 24-90-103 (14).

(14) "Regional library service system" has the same meaning as set forth in section 24-90-103 (16).

(15) "School library" has the same meaning as set forth in section 24-90-103 (18). For purposes of this part 4, a "school library" shall be the equivalent of the library system established and maintained by a particular school district and shall not mean each separate or individual library facility established and maintained by such school district.

(16) "State librarian" means the commissioner of education, as ex officio state librarian pursuant to section 24-90-104 (2), or any person designated by him or her to perform any of the duties and responsibilities charged to the state librarian pursuant to this part 4.

24-90-404. Qualifications. (1) Subject to the requirements of this section, the governing body of any eligible participant may submit an application to the state librarian requesting a grant pursuant to this part 4. Any grant approved by the state librarian pursuant to the requirements of this part 4 shall be awarded to the governing body that submitted said application.

(2) In order to obtain grant moneys under this part 4, and as a condition of the receipt of moneys under said part, each eligible participant shall agree to:

(a) Use any grant moneys only for the purchase or use of educational resources to support the educational and informational needs and activities of its residents, students, or

faculty, as the case may be;

(b) Participate as the state librarian deems appropriate in various programs established to promote and enhance interlibrary sharing of resources and information including, without limitation, the Colorado library card reciprocal program and the Colorado library computer network;

(c) In the case of a school library that provides one or more public access computers:

(I) Equip each such computer with software that will limit the ability of minors to gain computer access to material that is obscene or illegal;

(II) Purchase internet connectivity from an internet service provider that provides filter services to limit the computer access of minors to material that is obscene or illegal; or

(III) Develop and implement a policy, publicly adopted by the board of education of the school district that maintains such library, that establishes and enforces measures to restrict minors from obtaining computer information that is obscene or illegal.

(d) In the case of any publicly-supported library other than a school or academic library that provides one or more public access computers:

(I) Equip each such computer with software that will limit the ability of minors to gain computer access to material that is obscene or illegal;

(II) Purchase internet connectivity from an internet service provider that provides filter services to limit the computer access of minors to material that is obscene or illegal; or

(III) Develop and implement a policy, publicly adopted by the governing body of such library, that establishes and enforces measures to restrict minors from obtaining computer information that is obscene or illegal.

(e) In the case of any eligible participant other than an academic library, maintain its current efforts to obtain funding from existing local revenue sources to the end that moneys received under this part 4 do not replace or displace existing local revenue sources;

(f) In the case of an eligible participant that is an academic library, maintain its current efforts to obtain funding from other federal or state revenue sources to the end that moneys received under this part 4 do not replace or displace existing federal or state revenue sources;

(g) Perform other such requirements as the state librarian deems appropriate in the exercise of his or her discretion to further the purposes of this part 4.

(3) Eligible participants shall apply for grants made available pursuant to this part 4 on official application forms provided by the state librarian. Eligible participants shall provide such information on said forms as the state librarian may require in furtherance of the purposes of this part 4.

(4) A school library or public library that complies with paragraph (c) or (d) of

subsection (2) of this section, as the case may be, shall be immune from any criminal or civil liability resulting from access by a minor to obscene or illegal material through the use of a public access computer owned or controlled by such school or public library.

24-90-405. Administration of the grants program - powers and duties of the state librarian. (1) The state librarian shall have the following powers and duties in administering this part 4:

(a) To adopt and publicize criteria regarding grants made available pursuant to this part 4;

(b) To review and monitor the expenditure of grant moneys by grant recipients;

(c) To approve requests for grants under this part 4 and to determine the amount of money to be awarded under each grant. Grants may be awarded subject to the limitations of this part 4 and in the following amounts:

(I) Each public library that satisfies the requirements of this part 4 may be awarded grant moneys in an aggregate amount that shall not be less than three thousand dollars. Notwithstanding the fact that a public library as defined for purposes of this part 4 may maintain more than one branch or other separate facility, a public library shall be considered the equivalent of one eligible participant for purposes of this part 4.

(II) Each school library that satisfies the requirements of this part 4 may be awarded grant moneys in an aggregate amount that shall not be less than three thousand dollars. Notwithstanding the fact that a school library as defined for purposes of this part 4 may maintain more than one separate or individual library facility under its control, a school library shall be considered the equivalent of one eligible participant for purposes of this part 4.

(III) Each academic library that satisfies the requirements of this part 4 may be awarded grant moneys in an aggregate amount that shall not be less than three thousand dollars. Notwithstanding the fact that an institution of higher education may maintain more than one library at the same or additional campuses, each such institution shall be considered the equivalent of one eligible participant for purposes of this part 4.

(d) To promulgate reasonable rules necessary for the administration of this part 4 pursuant to section 24-90-105 (1) (a) (I) and article 4 of this title;

(e) To exercise any other powers or perform any other duties that are consistent with the purposes of this part 4 and that are reasonably necessary for the fulfillment of the state librarian's responsibilities.

24-90-406. Reporting. All eligible participants receiving funds under this part 4 shall submit to the state librarian by January 1 of each calendar year following the year in which a grant award was made a report containing a statement of all moneys received

under this part 4, the purposes for which the moneys were used, the participant's compliance with this article, and such other information that the state librarian may require. Any eligible participant may submit the information required to be submitted to the state librarian pursuant to this section as part of the reporting of any other information required to be submitted to the state librarian under any other applicable law by the date specified in this section.

24-90-407. State grants to publicly-supported libraries fund - creation - source of funds - administrative costs. (1) There is hereby created in the state treasury the state grants to publicly-supported libraries fund, which fund shall be administered by the state librarian, and which shall consist of all moneys appropriated to said fund by the general assembly and all moneys collected by the state librarian for purposes of this part 4 from federal grants and other contributions, grants, gifts, bequests, and donations received from individuals, private organizations, or foundations. Such moneys shall be transmitted to the state treasurer to be credited to the fund.

(2) All moneys in said fund shall be subject to annual appropriation by the general assembly. For any given fiscal year, no more than two and one-half percent of the moneys appropriated from said fund for this part 4 shall be expended for the administrative costs of the state librarian in administering this part 4. For any given fiscal year, if said administrative costs amount to less than two and one-half percent of the appropriation made, the state librarian may distribute the difference between an amount equal to two and one-half percent of the amount of the appropriation made and the amount of administrative costs actually incurred to the regional library service system to assist publicly-supported libraries in meeting the eligibility criteria under this part 4.

(3) Notwithstanding any provision of this section to the contrary, on March 5, 2003, the state treasurer shall transfer the balance of moneys in the state grants to publicly-supported libraries fund to the general fund.

24-90-408. Additional sources of funding. Any eligible participant may pursue additional sources of funding for the financing of the purchase or use of educational resources, including, without limitation, grants, donations, or contributions from any other public or private source.

PART 5

LIBRARY CAPITAL FACILITIES DISTRICTS

24-90-501. Short title. This part 5 shall be known and may be cited as the "Library Capital Facilities Districts Act".

24-90-502. Legislative declaration. The general assembly finds and declares that the organization of library capital facilities districts within library districts of the state, having the purposes and powers provided in this part 5, will serve a public purpose, will promote the health, safety, prosperity, security, and general welfare of the residents of said library districts and facilities districts, property owners within said library districts and facilities districts, and the people of the state generally, will promote the continued vitality of library services within library districts, and will be of special benefit to property located within the boundaries of any such facilities district created pursuant to this part 5.

24-90-503. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Board" means the board of trustees of a facilities district created pursuant to this part 5.

(2) "Facilities district" means a library capital facilities district organized by a library district pursuant to this part 5 to provide library capital facilities within a library capital facilities area.

(3) "Governing body" for the purposes of this part 5, means the board of trustees of a library district forming an area pursuant to this part 5.

(4) "Library capital facilities" means any real or personal property, improvement, or facility, including, without limitation, land, buildings, site improvements, equipment, furnishings, or collections, that are directly related to any service that a library district is authorized to provide, together with any necessary costs related to the acquisition, construction, installation, operation, or maintenance of such property, improvement, or facility.

(5) "Library capital facilities area" means the geographical division within a library district that is described in the resolution establishing a facilities district pursuant to this part 5. Notwithstanding any provision in this subsection (5) to the contrary, the library capital facility area may include a location designated by the library district, after public notice and hearing, as a location for the siting of new library capital facilities.

(6) "Library district" has the same meaning as set forth in section 24-90-103 (6).

(7) "Net effective interest rate" means the net interest cost of securities divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(8) "Net interest cost" means the total amount of interest to accrue on securities from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said bonds are being or have been sold. In all cases, the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

24-90-504. Authority of governing body. The board of trustees of the library district as the governing body of said district is hereby vested with jurisdiction, power, and authority to establish one or more facilities districts within the boundaries of the library district in which the library capital facilities are to be acquired, constructed, installed, operated, or maintained in accordance with the requirements of this part 5.

24-90-505. Organization - preliminary resolution. (1) The organization of a facilities district shall commence with a preliminary resolution of the board.

(2) The preliminary resolution required by subsection (1) of this section shall specify:

(a) The name of the proposed facilities district, which shall include a descriptive name of such district along with the words library capital facility district;

(b) A general description of the boundaries of the proposed library capital facilities area; and

(c) A general description of the library capital facilities to be acquired, constructed, installed, operated, or maintained in the proposed library capital facilities area by the proposed facilities district.

24-90-506. Notice of hearing - disqualification of member of governing body. (1) The governing body, as soon as possible after the adoption of the preliminary resolution, shall fix by order the place and time for a public hearing on the resolution, which hearing shall be held not less than twenty days or more than forty days after the adoption of the preliminary resolution. Thereupon, the governing body shall cause notice by publication to be made of the resolution and of the time and place of the hearing on the resolution. A copy of the notice shall be mailed to each property owner within the boundaries of the proposed library capital facilities area at the owner's last-known address as disclosed by the tax records of any county in which the library district is located.

(2) No member of the governing body shall be disqualified from performing any duty imposed by this part 5 by reason of direct or indirect ownership of property within the boundaries of any proposed library capital facilities area, by reason of relationship to any person who owns property within the proposed library capital facilities area, or by

reason of ownership of, or employment with, any entity that owns property within the boundaries of the proposed library capital facilities area.

24-90-507. Hearing - resolution - when action barred. (1) On the date fixed for the hearing described in section 24-90-506 or at any adjournment of the hearing, the governing body shall ascertain, from the tax rolls of any county in which the library district is located, the total valuation for assessment of the taxable property located within the proposed library capital facilities area.

(2) Upon the conclusion of the hearing required by section 24-90-506, if it appears that the library capital facilities specified in the preliminary resolution pursuant to section 24-90-505 (2) (c) are of the type and kind of library capital facilities that satisfy the purposes of this part 5, the governing body:

(a) Shall by adoption of a resolution:

(I) Adjudicate all questions of jurisdiction;

(II) Designate the boundaries of the facilities district pursuant to section 24-90-505 (2) (b);

(III) Affix a name to the facilities district that shall be the name as is specified in the preliminary resolution pursuant to section 24-90-505 (2) (a) and by which, in all subsequent proceedings, the facilities district shall thereafter be known; and

(IV) Specify that the facilities district shall have the power to levy ad valorem taxes in accordance with the requirements of section 24-90-511.

(b) May order that the question of the organization of the facilities district and other matters as the governing body deems appropriate, including, without limitation, the issuance of bonds or other matters for which voter approval is required under section 20 of article X of the state constitution, be submitted to the registered electors residing within the boundaries of the proposed facilities district at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S. Unless otherwise provided in section 20 of article X of the state constitution, such election may be held in conjunction with a general election or on the election held on the first Tuesday in November of odd-numbered years.

(3) At an election held under paragraph (b) of subsection (2) of this section, the registered electors residing within the boundaries of the proposed facilities district shall vote for or against the organization of such district and such other matters as the governing body may deem appropriate, including, without limitation, the issuance of bonds of the library district or facilities district or other matters for which voter approval is required under section 20 of article X of the state constitution. If, upon canvassing the vote, it appears that a majority of the registered electors voting at such election vote in favor of the organization of the facilities district, the governing body shall adopt a resolution declaring the facilities district organized.

(4) If a resolution is adopted establishing the facilities district in accordance with the requirements of subsection (3) of this section, the resolution shall finally and conclusively establish the regular organization of the facilities district against all persons unless an action, including an action for certiorari review, attacking the validity of the facilities district is commenced in a court of competent jurisdiction within thirty days after the adoption of the resolution. Thereafter, any such action shall be perpetually barred. The organization of the facilities district shall not be directly or collaterally questioned in any suit, action, or proceeding.

24-90-508. Recording of resolution establishing area. Within thirty days after the facilities district has been declared duly organized, the secretary of the governing body shall transmit for recording to the county clerk and recorder in each county in which the facilities district or a part of the facilities district extends a copy of the resolution of the governing body establishing the facilities district pursuant to section 24-90-507 (4).

24-90-509. Governing body - meetings. (1) The board of trustees of the library district that creates the facilities district, as the governing body of said district, shall constitute ex officio the board of the facilities district. The presiding officer of the board of trustees of the library district shall be ex officio the presiding officer of the board of the facilities district, the secretary of the board of trustees of the library district shall be ex officio the secretary of the board of the facilities district, and the treasurer of the board of trustees of the library district shall be ex officio the treasurer of the board of the facilities district. The secretary and the treasurer may be one person. The board of the facilities district shall adopt a seal. The secretary shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates, contracts, and all corporate acts, which shall be open to inspection of all owners of property in the facilities district as well as to all other interested parties. The treasurer shall keep permanent records containing accurate accounts of all money received by and disbursed for and on behalf of the area.

(2) The board shall hold meetings, on notice to each member of the board, which shall be open to the public in a place to be designated by the board as often as the needs of the facilities district require. A quorum of the governing body shall constitute a quorum at any meeting.

24-90-510. General powers of facilities district. (1) The facilities district has the following limited powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and be a party to suits, actions, and proceedings;

(d) To enter into contracts and agreements, except as otherwise provided in this part 5, affecting the affairs of the facilities district, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a facilities district receives aid from an agency of the federal government, a notice shall be published for bids on all construction contracts for work or material or both involving an expense of one thousand dollars or more. The facilities district may reject any and all bids, and, if it appears that the facilities district can perform the work or secure material for less than the lowest bid, it may proceed to do so.

(e) To borrow money and incur general obligation indebtedness and evidence the same by bonds, certificates, warrants, notes, and debentures in accordance with the provisions of this part 5;

(f) To acquire, finance, construct, install, operate, and maintain the library capital facilities contemplated by this part 5, including all property, rights, or interests incidental or appurtenant thereto, and to dispose of real and personal property and any interest therein, including leases and easements in connection therewith;

(g) To refund any general obligation indebtedness of the facilities district without an election; otherwise, the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds of the facilities district;

(h) To have the management, control, and supervision of all the business and affairs of the facilities district and of the acquisition, construction, installation, operation, and maintenance of the facilities district's library capital facilities;

(i) To adopt and amend bylaws not in conflict with the constitution and laws of the state or with the ordinances of the county or municipality affected for carrying on the business, objects, and affairs of the governing body and of the facilities district;

(j) To exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this part 5. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this part 5.

(k) To conduct an election in accordance with articles 1 to 13 of title 1, C.R.S., for any purpose the board deems necessary or required.

24-90-511. Power to levy taxes. Subject to the requirements of section 20 (4) of article X of the state constitution, in addition to any other means of providing revenue for a facilities district, the board has the power to levy and collect ad valorem taxes on and against all taxable property located within the boundaries of the facilities district. The rate of levy to be submitted to the registered electors for their approval in accordance with the requirements of this section, or, if such rate is unlimited, shall be specified in the

resolution creating the facilities district pursuant to section 24-90-507.

24-90-512. Determining and fixing rate of levy. The governing body shall determine the amount of moneys necessary to be raised by a levy on the taxable property located within the facilities district, taking into consideration other sources of revenue of the library district and the facilities district, and shall fix a rate of levy that, when levied upon every dollar of the valuation for assessment of taxable property within the facilities district together with other revenues, shall raise the amount required by the library district and the facilities district during the ensuing fiscal year to supply funds for paying expenses of organization and the costs of acquiring, financing, constructing, installing, operating, or maintaining the library capital facilities and promptly to pay in full when due all interest on and principal of general obligation bonds, indebtedness, and other obligations issued by the library district or the facilities district for the library capital facilities located within the facilities district. In the event of accruing defaults or deficiencies, additional levies may be made as provided in section 24-90-513. In accordance with the time schedule provided in section 39-5-128, C.R.S., the governing body shall certify to the board of county commissioners of each county in which the facilities district or a portion of the facilities district lies the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the facilities district.

24-90-513. Levies to cover deficiencies. The governing body, in certifying annual levies, shall take into account the maturing indebtedness for the current and ensuing year as provided in its contracts, maturing bonds, and interest on bonds and the deficiencies and defaults of prior years and shall make ample provisions for the payment thereof. In case the moneys produced from such levies, together with other revenues of the library district or facilities district, are not sufficient to pay punctually the annual installments on its contracts or bonds and interest thereon and to pay defaults and deficiencies, the governing body, from year to year, shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitations, such taxes shall be levied and shall continue to be levied until the indebtedness of the library district or facilities district is fully paid.

24-90-514. County officers to levy and collect taxes - lien. It is the duty of the body having authority to levy taxes within such county to levy the taxes certified to it as provided in this part 5. It is the duty of all officials charged with the duty of collecting

taxes to collect and enforce such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and, when collected, to pay the same to the library district or facilities district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the library district and paid into the depository thereof to the credit of the facilities district. All taxes levied under this part 5, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute a lien, until paid, on and against the property taxed, and such lien shall be a lien as for all other general taxes.

24-90-515. Property sold for taxes. The taxes provided for in this part 5 shall be included as a part of general ad valorem taxes and shall be paid and collected accordingly. The sale of properties for delinquencies shall be conducted in the manner provided by the statutes of this state for selling property for nonpayment of other ad valorem taxes.

24-90-516. Governing body can issue bonds - form. To carry out the purposes of this part 5, the governing body is hereby authorized to issue bonds of the library district or facilities district for the purpose of financing the acquisition, construction, installation, operation, or maintenance of library capital facilities within the facilities district. The bonds shall bear interest at a rate such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable at such times as determined by the governing body, and shall be due and payable in installments at such times as determined by the governing body extending not more than thirty years from the date of issuance. The form and terms of the bonds, including provisions for their sale, payment, and redemption, shall be determined by the governing body. If the bonds are payable from the general ad valorem taxes levied on property located within the facilities district, the bonds shall not be issued unless first approved at an election held for that purpose pursuant to section 24-90-507 (3). If the governing body so determines, bonds issued pursuant to this section may be redeemable prior to maturity, with or without payment of a premium, but no premium shall exceed three percent of the principal thereof. The bonds shall be executed in the name of the library district or the facilities district and signed by the presiding officer of the governing body with the seal of the library district or facilities district affixed thereto and attested by the secretary of the governing body. The bonds shall be in such denominations as the governing body shall determine. Under no circumstances shall any of the bonds be held to be an indebtedness, obligation, or liability of the municipalities or counties in which the area is located, and bonds issued pursuant to the provisions of this part 5 shall contain a statement to that effect.

24-90-517. Dissolution procedures. Any facilities district organized pursuant to this part 5 may be dissolved after notice is given, publication is made, and a hearing is held in the manner prescribed by sections 24-90-506 and 24-90-507. The dissolution shall be commenced with a filing by the governing body with the clerk or secretary of the governing body of a resolution of the governing body approving the dissolution. After hearing any protest against or objection to the dissolution, and if the governing body determines that it is for the best interests of all concerned to dissolve the facilities district, the governing body shall so provide by an effective resolution, a certified copy of which shall be filed in the office of the county clerk and recorder in each county in which the facilities district or any part of the facilities district is located. Upon the filing, the dissolution shall be complete. However, no facilities district shall be dissolved until it has satisfied or paid in full all outstanding indebtedness, obligations, and liabilities issued to provide library capital facilities or until funds are on deposit and available therefor.

24-90-518. Exemption from taxation - securities laws. The income or other revenues of the library district or facilities district, any property owned by the library district or facilities district, any bonds issued by the library district or facilities district, and the transfer of and any income from any bonds issued by the library district or facilities district shall be exempt from all taxation and assessments by the state.

24-90-519. Limitation of actions. Any legal or equitable action brought with respect to any acts or proceedings of the library district or facilities district, the creation of a facilities district, the authorization or issuance of any bonds, or any other action taken under this part 5 shall be commenced within thirty days after the performance of such action or else shall be thereafter perpetually barred.

PART 6

INTERNET PROTECTION IN PUBLIC LIBRARIES

24-90-601. Legislative declaration. The general assembly hereby finds and declares that use of the internet in the public libraries of the state provides an extraordinary, unique, and unparalleled educational resource and source of knowledge and information. The general assembly further finds and declares that reasonable measures must be adopted and implemented to protect the children who use such internet services in public libraries from access to material that is harmful to their beneficial development as responsible adults and citizens. It is the intent of the general assembly by

enacting this part 6 that public libraries be required to adopt and enforce reasonable policies of internet safety that are consistent with the federal "Children's Internet Protection Act", as amended, (Pub.L. 106-554), and that will protect children from access to harmful material without compromising responsible adult use of internet services in such libraries.

24-90-602. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Access to the internet" means, with reference to a particular computer, that the computer is equipped with a modem or is connected to a computer network that provides access to the internet.

(2) "Computer" includes any hardware, software, or other technology attached or connected to, installed in, or otherwise used in connection with a computer.

(3) "Harmful to minors" means any picture, image, graphic image file, or other visual depiction that:

(a) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(b) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(4) "Minor" means any person who has not attained the age of seventeen years.

(5) "Public library" shall have the same meaning as set forth in section 24-90-103 (13). For purposes of this part 6, a "public library" shall be the equivalent of the library system established and maintained by the governing body of a particular library district or otherwise connected group of libraries and shall not mean each separate or individual library facility established and maintained by such library district or connected group of libraries.

(6) "Sexual act" or "sexual contact" shall have the same meaning as set forth in 18 U.S.C. sec. 2246 (2) and (3).

(7) "Technology protection measure" means a specific technology, including without limitation computer software, that blocks or filters internet access to visual depictions that are:

(a) Obscene, as defined in section 18-7-101 (2), C.R.S.;

(b) Child pornography, as defined in 18 U.S.C. sec. 2256 (8); or

(c) Harmful to minors; except that no technology protection measure may block scientific or medically accurate information regarding sexual assault, sexual abuse, incest, sexually transmitted diseases, or reproductive health.

24-90-603. Adoption and enforcement of policy of internet safety for minors including technology protection measures - public libraries. (1) No later than December 31, 2004, the governing body of each public library shall adopt and implement a policy of internet safety for minors that includes the operation of a technology protection measure for each computer operated by the public library that allows for access to the internet by a minor.

(2) After the adoption and implementation of the policy of internet safety required by subsection (1) of this section, the governing body of each public library shall continue to enforce the policy and the operation of the technology protection measure for each computer operated by the public library that allows for access to the internet by a minor.

24-90-604. Temporary disabling of technology protection measure. (1) (a) (I) Subject to the requirements of paragraph (b) of this subsection (1), an administrator, supervisor, or any other person authorized by the public library to enforce the operation of the technology protection measure adopted and implemented in accordance with the requirements of section 24-90-603 shall temporarily disable the technology protection measure entirely to enable access to the internet on a particular computer able to be accessed by a minor by an adult upon request without significant delay by the public library in responding to the request.

(II) Subject to the requirements of paragraph (b) of this subsection (1), an administrator, supervisor, or any other person authorized by the public library to enforce the operation of the technology protection measure adopted and implemented in accordance with the requirements of section 24-90-603 may temporarily disable the technology protection measure entirely to enable access to the internet on a particular computer able to be accessed by a minor for bona fide research or other lawful purposes where the internet use in connection with the research or other lawful purpose is supervised by an administrator, supervisor, parent, guardian, or other person authorized by the public library to perform such function.

(b) Where the public library has installed a technology protection measure that requires electronic verification of the age of the computer user, or where the parent or guardian of a minor has provided explicit prior approval for use of the computer by the minor, before the technology protection measure required by section 24-90-603 is disabled, no additional involvement by the staff of the public library shall be required.

(2) Notwithstanding any other provision of this section, the temporary disabling of the technology protection measure authorized by this section shall not be allowed in connection with a computer located in an area in a public library facility used primarily by minors.

24-90-605. No restrictions on blocking access to the internet of other material. Nothing in this part 6 shall be construed to prohibit a public library from limiting internet access to or otherwise protecting against materials other than those that are obscene, child pornography, or harmful to minors.

24-90-606. No requirement of additional action for public libraries already in compliance - no additional action in special circumstances. (1) Nothing in this part 6 shall be construed to require any additional action on the part of any public library that is already in compliance with the requirements of this part 6 as of July 1, 2004.

(2) Nothing in this part 6 shall be construed to require any additional action on the part of any public library in circumstances where:

(a) No moneys exist in the budget for such library for the purchase of a technology protection measure that satisfies the requirements of this part 6; and

(b) After a good faith effort, the library is unable to acquire a technology protection measure free of charge that satisfies the requirements of this part 6.

CONSTRUCTION

ARTICLE 91

Construction Contracts with Public Entities

24-91-101. Legislative declaration. (1) The general assembly hereby declares that retentions in and delays in the completion of construction contracts with public entities are a matter of statewide concern and are affected with the public interest and that the provisions of this article are enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and welfare of the people of this state.

(2) The general assembly hereby further finds and declares that the construction industry is a significant component of the state's economy; that there is a substantial statewide interest in fostering the growth and stability of the construction industry and ensuring that it remains economically viable; that the ability of construction and design enterprises to obtain and satisfactorily perform projects at all levels of government affects the construction industry as a whole; that clauses in public construction contracts which provide that public entities shall not be required to compensate contractors for delays in the completion of the work caused by the public entity are adhesive in nature and, if enforced, can have ruinous financial consequences on affected contractors due to risks

over which the contractor may have no control; that public construction projects are subject to public appropriation laws which may be in direct conflict with commonly used construction contract clauses such as clauses which authorize additional payment to the contractor based on changed conditions; and that there is a substantial statewide interest in ensuring that the policy underlying the efficient expenditure of public moneys is balanced with the policy of fostering a healthy and viable construction industry.

24-91-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acceptable securities" means:

(a) United States bonds, United States treasury notes, or United States treasury bills;

(b) General obligation or revenue bonds of this state;

(c) General obligation or revenue bonds of any political subdivision of this state;

(d) Certificates of deposit from a state or national bank or a savings and loan association insured by the federal deposit insurance corporation or its successor and having its principal office in this state.

(2) "Contractor" means any person, company, firm, or corporation which is a party to a contract with a public entity to construct, erect, alter, install, or repair any highway, public building, public work, or public improvement, structure, or system.

(3) "Public entity" means this state or a county, city, city and county, town, or district, including any political subdivision thereof.

(4) "Subcontractor" means and includes any person, company, firm, or corporation which is a party to a contract with a contractor to construct, erect, alter, install, or repair any highway, public building, public work, or public improvement, structure, or system and which, in connection therewith, furnishes and performs on-site labor with or without furnishing materials.

(5) "Substantial completion" means the date when the construction is sufficiently complete, in accordance with the contract documents, as modified by any change orders agreed to by the parties, so that the work or designated portion thereof is available for use by the owner.

24-91-103. Public entity - contracts - partial payments. (1) (a) A public entity awarding a contract exceeding one hundred fifty thousand dollars for the construction, alteration, or repair of any highway, public building, public work, or public improvement, structure, or system shall authorize partial payments of the amount due under such contract at the end of each calendar month, or as soon thereafter as practicable, to the contractor, if the contractor is satisfactorily performing the contract. The public entity

shall pay at least ninety-five percent of the calculated value of completed work. The withheld percentage of the contract price of any contracted work, improvement, or construction may be retained until the contract is completed satisfactorily and finally accepted by the public entity.

(b) The public entity shall make a final settlement in accordance with section 38-26-107, C.R.S., within sixty days after the contract is completed satisfactorily and finally accepted by the public entity.

(c) If the public entity finds that satisfactory progress is being made in any phase of the contract, it may, upon written request by the contractor, authorize final payment from the withheld percentage to the contractor or subcontractors who have completed their work in a manner finally acceptable to the public entity. Before the payment is made, the public entity shall determine that satisfactory and substantial reasons exist for the payment and shall require written approval from any surety furnishing bonds for the contract work.

(2) Whenever a contractor receives payment pursuant to this section, the contractor shall make payments to each of his subcontractors of any amounts actually received which were included in the contractor's request for payment to the public entity for such subcontracts. The contractor shall make such payments within seven calendar days of receipt of payment from the public entity in the same manner as the public entity is required to pay the contractor under this section if the subcontractor is satisfactorily performing under his contract with the contractor. The subcontractor shall pay all suppliers, sub-subcontractors, laborers, and any other persons who provide goods, materials, labor, or equipment to the subcontractor any amounts actually received which were included in the subcontractor's request for payment to the contractor for such persons, in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor. If the subcontractor fails to make such payments in the required manner, the subcontractor shall pay said suppliers, sub-subcontractors, and laborers interest in the same manner set forth in this subsection (2) regarding payments by the contractor to the subcontractor. At the time the subcontractor submits a request for payment to the contractor, the subcontractor shall also submit to the contractor a list of the subcontractor's suppliers, sub-subcontractors, and laborers. The contractor shall be relieved of the requirements of this subsection (2) regarding payment in seven days and interest payment until the subcontractor submits such list. If the contractor fails to make timely payments to the subcontractor as required by this section, the contractor shall pay the subcontractor interest as specified by contract or at the rate of fifteen percent per annum whichever is higher, on the amount of the payment which was not made in a timely manner. The interest shall accrue for the period from the required payment date to the date on which payment is made. Nothing in this subsection (2) shall be construed to affect the retention provisions of any contract.

(3) (Deleted by amendment, L. 2011, (HB 11-1115), ch. 211, p. 912, § 2, effective

August 10, 2011.)

24-91-103.5. Public entity - contracts - delay clauses. (1) (a) Any clause in a public works contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages, or obtain an equitable adjustment, for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions within the control of the contracting public entity or persons acting on behalf thereof, is against public policy and is void and unenforceable.

(b) As used in this subsection (1), "public works contract" means a contract of the state, county, city and county, city, town, school district, special district, or any other political subdivision of the state for the construction, alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other work dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work.

(2) Subsection (1) of this section is not intended to render void any contract provision of a public works contract that:

(a) Precludes a contractor from recovering that portion of delay costs caused by the acts or omissions of the contractor or its agents;

(b) Requires notice of any delay by the party responsible for such delay;

(c) Provides for reasonable liquidated damages;

(d) Provides for arbitration or any other procedure designed to settle contract disputes.

24-91-103.6. Public entity - contracts - appropriations - change orders - severability. (1) No public entity shall contract with a designer, a contractor, or a designer and contractor for the construction, the design, or both the construction and design of a public works project unless a full and lawful appropriation when required by statute, charter, ordinance, resolution, or rule or regulation has been made for such project.

(2) Every public works contract, as defined in section 24-91-103.5 (1) (b), shall contain the following:

(a) A statement that the amount of money appropriated is equal to or in excess of the contract amount;

(b) A clause that prohibits the issuance of any change order, as defined in section 24-101-301 (2), or other form of order or directive by the public entity requiring additional compensable work to be performed, which work causes the aggregate amount payable under the contract to exceed the amount appropriated for the original contract, unless the contractor is given written assurance by the public entity that lawful

appropriations to cover the costs of the additional work have been made and the appropriations are available prior to performance of the additional work or unless such work is covered under a remedy-granting provision in the contract; and

(c) For any form of order or directive by the public entity requiring additional compensable work to be performed, a clause that requires the public entity to reimburse the contractor for the contractor's costs on a periodic basis, as those terms are defined in the contract, for all additional directed work performed until a change order is finalized. In no instance shall the periodic reimbursement be required before the contractor has submitted an estimate of cost to the public entity for the additional compensable work to be performed. Notwithstanding the provisions of this paragraph (c), state public works contracts shall be subject to the provisions of section 24-30-202.

(3) If the requirements of subsection (1) or (2) of this section are not met, a civil action may be maintained against the public entity which has contracted for the public works project to recover sums due under the contract notwithstanding any appropriation statute, ordinance, resolution, or law to the contrary.

(4) In the event that a good faith dispute arises between a public entity and a contractor concerning the contractor's right to receive additional compensation under a remedy-granting provision of the public works contract, it shall not be a defense to a civil action for payment for such claim that no moneys have been appropriated for such claimed amounts, so long as the contractor has complied with all provisions of the contract applicable to the dispute, including but not limited to change order and additional work clauses, and has submitted to the public entity a statement sworn to under penalty of perjury which sets forth: The amount of additional compensation to which the contractor contends that it is entitled; that claim-supporting data which is accurate and complete to the best of the contractor's knowledge and belief have been submitted; and that the amount requested accurately reflects what is owed by the public entity. As used in this subsection (4), "remedy-granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but shall not be limited to, change clauses, differing site conditions clauses, variation in quantities clauses, and termination for convenience clauses.

(5) If a final judgment is entered pursuant to a civil action brought by a contractor for which adequate appropriations have not been made, the judgment debtor public entity shall promptly make payment pursuant to section 13-60-101, 24-10-113, 24-10-113.5, or 30-25-104, C.R.S., and any other statutory requirement on payment of judgments.

(6) Any provision of this section which is in conflict with the terms of any federal grant shall be inapplicable to a contract between a contractor and a public entity which is funded in whole or in part by that grant.

(7) Nothing in this section shall prohibit:

(a) The use of phased construction over a period of years where, if applicable, the public entity has informed the contractor of initial annual appropriations at the time the

contract is signed, and subsequent annual appropriations as they occur, in statements issued pursuant to subsection (2) of this section; or

(b) The use of bond-financed construction where appropriations to service bond debt may occur subsequent to the commencement of construction, where this fact is clearly stated in disclosure statements made pursuant to subsection (2) of this section.

(8) The provisions of this section shall apply to any contract executed on or after July 1, 1992.

(9) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

24-91-104. Contract - completion by public entity - partial payments. If it becomes necessary for a public entity to take over the completion of any contract, all of the amounts owing the contractor, including the withheld percentage, shall be applied: First, toward the cost of completion of the contract; second, toward performance of the public entity's withholding requirement set forth in section 38-26-107, C.R.S.; third, to the surety furnishing bonds for the contract work, to the extent such surety has incurred liability or expense in completing the contract work or made payments pursuant to section 38-26-106, C.R.S.; then, to the contractor. Such retained percentage as may be due any contractor shall be due and payable at the expiration of thirty days from the date of final acceptance by the public entity of the contract work.

24-91-105. Withdrawal by contractor of sums withheld - security deposit required. The contractor under any contract exceeding one hundred fifty thousand dollars made or awarded by any public entity, pursuant to which sums are withheld to assure satisfactory performance of the contract, may withdraw the whole or any portion of the said sums withheld if the contractor deposits acceptable securities with the public entity. The contractor shall take such actions as the public entity may require to transfer the securities or a limited interest in the securities, including a security interest, and to authorize the public entity to negotiate the acceptable securities and to receive the payments due the public entity pursuant to law or the terms of the contract, and, to the extent there are excess funds resulting from said negotiation, the balance shall be returned to the contractor. Such acceptable securities so deposited at all times shall have a market value at least equal in value to the amount so withdrawn. If at any time a public entity determines that the market value of the acceptable securities theretofore deposited has fallen below the amount so withdrawn, the public entity shall give notice thereof to the contractor, who forthwith shall deposit additional acceptable securities in an amount

sufficient to reestablish a total deposit of securities equal in value to the amount so withdrawn.

24-91-106. Escrow agreement - authority to enter into - effect on acceptable securities. (1) A public entity and the contractor may enter into an escrow contract or escrow contract and security agreement with any national bank, state bank, trust company, or savings and loan association located in this state and designated by mutual agreement of the public entity and the contractor, after notice to the surety, to provide as escrow agent for the custodial care and servicing of any acceptable securities deposited with him pursuant to this section. Such services shall include the safekeeping of the acceptable securities and the rendering of all services required to effectuate the purposes of this section and section 38-26-107, C.R.S.

(2) Any acceptable securities deposited with an escrow agent pursuant to this section shall be deemed to be in the possession of the public entity, and the public entity shall be deemed to have a perfected security interest in the acceptable securities for purposes of article 8 or 9 of title 4, C.R.S.

(3) The deposit of acceptable securities with a state or national bank, or a state or federal savings and loan association, shall not be deemed a holding of public deposits for purposes of article 10.5 or 47 of title 11, C.R.S.

24-91-107. Custodian for acceptable securities - collection of interest income - payable to contractor. The public entity or any national bank, state bank, trust company, or savings and loan association located in this state and designated by mutual agreement of the public entity and the contractor to serve as custodian for the acceptable securities pursuant to section 24-91-106 shall collect all interest and income when due on the acceptable securities so deposited and shall pay them, when and as collected, to the contractor who deposited the acceptable securities. If the deposit is in the form of coupon bonds, the escrow agent shall deliver each coupon, as it matures, to the contractor. Any expense incurred for this service shall not be charged to the public entity.

24-91-108. Retained payments - amount deducted by a public entity. Any amount deducted by a public entity, pursuant to law or the terms of a contract, from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no acceptable securities have been substituted and then from the proceeds of any deposited acceptable securities, in which case, the contractor shall be entitled to receive the interest, coupons, or income only from those acceptable securities which remain on deposit after such amount has been deducted.

24-91-109. Retained payments - disbursement. All retained payments and interest thereon disbursed to any contractor under any contract with a public entity covered under this article shall be disbursed to each subcontractor by the contractor. The disbursement of such retained payments and interest shall be in proportion to the respective amounts of retained payments, if any, which the contractor theretofore has withheld from his subcontractors if the subcontractor has performed under his contract with the contractor.

24-91-110. Contracts excepted from article. The provisions of this article shall not apply in the case of a contract made or awarded by any public entity if a part of the contract price is to be paid with funds from the federal government or from some other source and if the federal government or such other source has requirements concerning retention or payment of funds which are applicable to the contract and which are inconsistent with this article.

ARTICLE 92

Construction Bidding for Public Projects

24-92-101. Short title. This article shall be known and may be cited as the "Construction Bidding for Public Projects Act".

24-92-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agency of government" means any agency, department, division, board, bureau, commission, institution, or section of this state which is a budgetary unit exercising construction contracting authority or discretion.

(2) "Construction contract" or "contract" means any agreement for building, altering, repairing, improving, or demolishing any public project of any kind. For the purposes of this article, the terms include capital construction and controlled maintenance, as defined in section 24-30-1301.

(3) "Cost" means the total cost of labor, materials, provisions, supplies, equipment rentals, equipment purchases, insurance, supervision, engineering, clerical, and accounting services, the value of the use of equipment, including its replacement value, owned by a state agency, and reasonable estimates of other administrative costs not

otherwise directly attributable to the public project which may be reasonably apportioned to such project in accordance with generally accepted cost accounting principles and standards.

(4) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this article.

(5) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(6) "Low responsible bidder" means any contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a public project, who is the low bidder, and who has furnished bonds or their equivalent as required by law.

(7) "Project description" means the words used in a solicitation to describe the construction to be performed, and includes specifications attached to, or made a part of, the solicitation.

(8) (a) "Public project" means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects.

(b) Except as provided in paragraph (c) of this subsection (8), "public project" does not include any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed five hundred thousand dollars in the aggregate for any fiscal year. Nothing in this paragraph (b) shall affect the requirements for the delivery of bonds or security pursuant to sections 24-105-202, 38-26-105, and 38-26-106, C.R.S.

(c) "Public project" does not include any project under the supervision of the department of transportation for which appropriation or expenditure of funds may be reasonably expected not to exceed one hundred fifty thousand dollars in the aggregate of any fiscal year.

(9) "Responsible officer" means the person having overall contract administration responsibility for an agency of government.

24-92-103. Construction of public projects - competitive sealed bidding. (1) All construction contracts for public projects that do not receive federal moneys may be awarded by competitive sealed bidding pursuant to this section.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public project.

(3) Adequate public notice of the invitation for bids shall be given at least fourteen days prior to the date set forth therein for the opening of bids, pursuant to rules. Such notice may include publication by electronic on-line access pursuant to section 24-

92-104.5 or in a newspaper of general circulation at least fourteen days prior to bid opening or in an electronic medium approved by the executive director of the department of personnel.

(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record, and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 24-72-203 and 24-72-204.

(5) Bids shall be unconditionally accepted, except as authorized by subsection (7) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs.

(6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the responsible officer.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the responsible officer is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

24-92-103.5. Construction of public projects - competitive sealed best value bidding. (1) All construction contracts for public projects that do not receive federal moneys may be awarded through competitive sealed best value bidding pursuant to this section.

(2) An invitation for bids under competitive sealed best value bidding shall be made in the same manner as provided in section 24-92-103 (2), (3), and (4); except that adequate public notice of the invitation for bids shall be given at least thirty days prior to the date set forth therein for the opening of bids.

(3) The invitation for competitive sealed best value bids must identify the evaluation factors upon which the award will be made. When making the award determination, the responsible officer shall evaluate the factors specified in the invitation for bids and shall not evaluate any other factors other than those specified in the invitation for bids. The factors that must be included in the invitation for bids and that the responsible officer shall consider include, but need not be limited to:

(a) The project price stated in the bid;

(b) The bidder's design and technical approach to the public project;

(c) The experience, past performance, and expertise of the bidder and the bidder's primary subcontractors in connection with prior construction contracts, including its performance in the areas of cost, quality, schedule, safety, compliance with plans and specifications, and adherence to applicable laws and regulations;

(d) The bidder's project management plan for the construction contract that identifies the key management personnel that will be used for the project, the proposed project schedule, the bidder's quality control program and project safety program, financial resources, equipment, and any other information that demonstrates the bidder's competency to perform the contract, including technical qualifications and resources;

(e) The bidder's staffing plan;

(f) The bidder's safety plan and safety record;

(g) The bidder's job standards, including the bidder's method of personnel procurement, employment of Colorado workers, workforce development and long-term career opportunities of workers, the availability of training programs, including apprenticeships approved by the United States department of labor, the benefits provided to workers, including health care and defined benefit or defined contribution retirement benefits, and whether the bidder pays industry-standard wages; and

(h) The availability and use of domestically produced iron, steel, and related manufactured goods to execute the contract.

(4) The contract shall be awarded with reasonable promptness by written notice to the bidder whose bid is determined in writing to be the most advantageous to the state and that represents the best overall value to the state, taking into consideration the price and other evaluation factors set forth in the invitation for bids in accordance with subsection (3) of this section. The contract file maintained by the state must contain the basis on which the award determination was made.

(5) A request for competitive sealed best value bids issued pursuant to this section must otherwise comply with the requirements of section 24-103-203 concerning competitive sealed proposals for nonconstruction contracts to the extent that such requirements do not conflict with this section. In the case of a conflict, the provisions of this section supersede.

(6) To ensure that the best value bidding process pursuant to this section is open and transparent to the greatest possible degree:

(a) After selection of most qualified participants, all statements of qualification shall be made available to the public; and

(b) After the contract has been awarded, all requests for proposals shall be made public with the score sheets used to make the bid selection, omitting any confidential corporate information.

24-92-103.7. Disclosure - competitive sealed bidding - competitive sealed best value bidding. The executive director of an agency of government or president of an institution of higher education that enters into a construction contract for a public project pursuant to this article that is not funded in any part with federal moneys shall disclose to the public the agency of government's rationale or the institution's rationale for selecting the competitive sealed bidding process pursuant to section 24-92-103 or the competitive sealed best value bidding process pursuant to section 24-92-103.5 for the public project. The agency or institution shall post the disclosure on its web site.

24-92-104. Exemptions - applicability. (1) The provisions of section 24-92-103 shall not apply to:

(a) A public project for which the agency of government receives no bids or for which all bids have been rejected; or

(b) A situation for which the responsible officer determines it is necessary to make emergency procurements or contracts because there exists a threat to public health, welfare, or safety under emergency conditions, but such emergency procurements or contracts shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(c) Contracts for architectural, engineering, land surveying, and landscape architectural services as provided for in part 14 of article 30 of this title.

(2) Nothing in this article shall be construed to affect or limit any additional requirements imposed upon an agency of government for awarding contracts for public projects.

(3) This article shall not apply to any county, municipality, school district, special district, or political subdivision of the state and shall not be construed to affect any requirements which may otherwise apply to such entities for awarding contracts for public projects, except as provided in section 24-92-109.

24-92-104.5. Solicitation of bids by electronic on-line access - department of transportation. The executive director of the department of transportation may invite

bids using electronic on-line access, including the internet, for purposes of acquiring construction contracts for public projects on behalf of the department of transportation.

24-92-105. Cancellation of invitations for bids. An invitation for bids or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation when it is in the best interests of the agency of government. The reasons for any cancellation or rejection shall be made part of the contract file.

24-92-106. Responsibility of bidders and offerors. (1) A written determination of nonresponsibility of a bidder or offeror shall be made pursuant to rules. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed without prior written consent by the bidder or offeror.

24-92-107. Prequalification of contractors. Prospective contractors may be prequalified for particular types of construction, and the method of compiling a list of and soliciting from such potential contractors shall be pursuant to rules.

24-92-108. Types of contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the agency of government may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the agency of government than any other type of contract or that it is impracticable to obtain the construction required unless the cost-reimbursement contract is used.

24-92-109. Agency of government to submit cost estimate. (1) Whenever an agency of government proposes to undertake the construction of a public project reasonably expected to cost in excess of fifty thousand dollars by any means or method other than by a contract awarded by competitive bid, it shall prepare and submit a cost estimate in the same manner as other bidders; except that, for projects under the supervision of the department of transportation undertaken by such means or method, the department shall prepare and submit a cost estimate if the project is reasonably expected

to exceed one hundred fifty thousand dollars. Cost estimates in excess of fifty thousand dollars but less than or equal to one hundred fifty thousand dollars shall be submitted to the transportation commission on at least a quarterly basis for its review and approval. Such agency of government itself may not undertake the proposed project unless it shows the lowest cost estimate.

(2) In preparing such cost estimate, the agency of government shall preserve a full, true, and accurate record of the cost of such project. Such records shall be kept and maintained by the responsible officer on behalf of the agency of government. To the extent the agency of government contracts with any other state or local government agency in connection with a public project, such other agency shall provide all necessary data or information to enable the agency of government to document a full, true, and accurate record of the cost of such project, which data or information shall be kept in an orderly manner by the agency of government for a period of at least six years after completion of the project. All such records shall be considered public records and shall be made available for public inspection.

(3) State agencies shall not be required to be bonded when performing the work on a public project.

24-92-110. Rules and regulations. The executive director of the department of personnel shall promulgate rules and regulations which are designed to implement the provisions of this article; except that the executive director of the department of transportation shall promulgate rules and regulations relating to bridge and highway construction bidding practices including, notwithstanding any other provisions of this article, rules governing debarment of contractors. The rules must include provisions requiring agencies of government to keep certain public project records, even if duplicative, in accordance with generally accepted cost accounting principles and standards. In addition, the rules must include criteria to be used by a responsible officer in evaluating a competitive sealed best value bid pursuant to section 24-92-103.5 (3).

24-92-111. Audit. If any agency of government is alleged to be in violation of or in material noncompliance with this article or the rules and regulations promulgated thereunder, the legislative audit committee shall be advised, in writing, of the activities alleged to be in violation or noncompliance. The legislative audit committee shall give notice to the agency, which shall have ten days to respond to such allegation. If the said committee thereafter determines that there is a reasonable probability of a violation or material noncompliance, the committee shall take appropriate action and may direct the state auditor to conduct an audit and review of the records being kept by such agency. If the state auditor determines that the agency has violated or has not complied or is not

complying with this article or the rules and regulations promulgated thereunder, a written report shall be issued to the agency detailing the areas of violation or noncompliance and curative recommendations. The agency shall implement the recommendations of the state auditor within a time period set by him not to exceed six months.

24-92-112. Finality of determinations. The determinations required by sections 24-92-103 (6), 24-92-104, 24-92-106 (1), and 24-92-108 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

24-92-113. Reporting of anticompetitive practices. When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

24-92-114. Prohibition of dividing work of public project. It is unlawful for any person to divide a work of a public project into two or more separate projects for the sole purpose of evading or attempting to evade the requirements of this article.

ARTICLE 93

Construction Contracts

24-93-101. Short title. This article shall be known and may be cited as the "Integrated Delivery Method for Public Projects Act".

24-93-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but also in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects may be achieved through a

variety of methods when procuring goods and services for public projects.

(d) In enacting this article, the general assembly intends to establish for any agency of state government an optional alternative public project delivery method.

24-93-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Agency" means any agency, department, division, board, bureau, commission, institution, or other agency of the executive, legislative, or judicial branch of state government that is a budgetary unit exercising construction contracting authority or discretion.

(2) "Contract" means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project. For purposes of this article, "contract" includes capital construction as defined in section 24-30-1301 (1).

(3) "Cost-reimbursement contract" means a contract under which a participating entity is reimbursed for costs that are allowable and that is allocable in accordance with the contract terms and provisions of this article.

(4) "Integrated project delivery" or "IPD" means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) "IPD contract" means a contract using an integrated project delivery method.

(6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "Public project" means any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any operation or maintenance programs for the operation and upkeep of such projects.

24-93-104. Integrated project delivery contracts - authorization - effect of other laws. (1) Notwithstanding any other provision of law, any agency may award an IPD contract for a public project in accordance with the provisions of this article upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this article is intended to affect or limit the applicability of article

91 or 92 of this title to the extent the provisions of said articles are not inconsistent with the provisions of this article. To the extent there is a conflict between the provisions of article 91 or 92 of this title and this article, the provisions of this article shall control.

(3) Nothing in this article shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, rules, resolutions, or ordinances governing labor relations, professional licensing, public contracting, or other related laws, except to the extent that an exemption is granted under such legal authority or created by necessary implication from such legal authority.

24-93-105. Integrated project delivery contracting process - prequalification of participating entities - apprentice training. (1) An agency may prequalify participating entities for IPD contracts by public notice of its request for qualifications prior to the date set forth in the notice. Any such request for qualifications may contain the following elements and such additional information as may be requested by the agency:

(a) A general description of the proposed public project;

(b) Relevant budget considerations;

(c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of the submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential;

(d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice training program certified by the office of apprenticeship located in the employment and training administration in the United States department of

labor exists in the state, or a comparable program for the training of apprentices is available in the state:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

(b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

24-93-106. Requests for proposals - evaluation and award of integrated project delivery contracts. (1) An agency shall prepare and publish a request for proposals for each IPD contract that complies with the requirements of this section. Requests for proposals for IPD contracts shall, at a minimum, include the following evaluation factors and subfactors that shall be used to evaluate the proposals and capabilities of participating entities:

(a) Price;

(b) Design and technical approach to the project;

(c) Past performance and experience;

(d) Project management capabilities, including financial resources, equipment, management personnel, project schedule, and management plan; and

(e) Craft labor capabilities, including adequacy of craft labor supply and access to federal or state-approved apprenticeship programs, if available.

(2) The agency responsible for the IPD contract shall select, on the basis of these factors, and any other factors and subfactors included in the request for solicitation as authorized by this section, the participating entity whose proposal is most advantageous and represents the best overall value to the state.

(3) Requests for proposals may contain additional relevant factors and subfactors as determined by the agency, which may include:

(a) The procedures to be followed for submitting proposals;

(b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;

(c) The procedures for making awards;

(d) Required performance standards as defined by the participating entity;

(e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

(g) The proposed scheduling for the project; and

(h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 24-93-105 (2) but whose proposals are not selected for award of the IPD contract.

(4) After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals in accordance with the requirements specified in subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(5) With respect to performance under each IPD contract, the agency and participating entity shall comply with all laws applicable to public projects.

(6) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract shall not be required to be licensed or registered to provide professional services, as defined in section 24-30-1402 (6), if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

24-93-107. Supplemental provisions. The executive director of the department of personnel may establish supplemental provisions that are designed to implement the provisions of this article; except that the executive director of the department of transportation may establish supplemental provisions relating to bridge and highway construction contract procurement practices, including, notwithstanding any other provision of this article, provisions governing debarment of participating entities.

24-93-108. Types of contracts. Subject to the requirements of this section, any agency making use of the provisions of this article may award any type of contract that will promote the best interests of the agency; except that the use of a cost-plus-a-percentage-of-cost contract under this article is prohibited. An agency may award a cost-reimbursement contract only when a determination is made in writing that such contract is either likely to be less costly to the agency than any other type of contract or that it is impracticable to obtain the required construction or other services authorized under this article unless the cost-reimbursement contract is used. Operation and maintenance elements may be procured on a cost-reimbursement basis under or in connection with an IPD contract.

24-93-109. Disclosure. The executive director of an agency or president of an institution of higher education that enters into a construction contract for a public project

pursuant to this article shall disclose to the public the agency's rationale or the institution's rationale for selecting the integrated project delivery contracting process pursuant to this article for the public project. The agency or institution shall post the disclosure on its web site.

PROCUREMENT CODE

ARTICLE 101

Procurement Code - General Provisions

PART 1

PURPOSES, CONSTRUCTION, AND APPLICATION

24-101-101. Short title. Articles 101 to 112 of this title shall be known and may be cited as the "Procurement Code", referred to in said articles as the "code".

24-101-102. Purposes - rules of construction. (1) This code shall be construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) To simplify, clarify, and modernize the law governing procurement by the state of Colorado;

(b) To provide for increased public confidence in the procedures followed in public procurement;

(c) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the state of Colorado;

(d) To provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the state of Colorado;

(e) To foster effective broad-based competition within the free enterprise system; and

(f) To provide safeguards for the maintenance of a procurement system of quality and integrity.

24-101-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity,

including the "Uniform Commercial Code", the law merchant, and any law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this code.

24-101-104. Requirement of good faith. This code requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

24-101-105. Application of this code - repeal. (1) (a) This code shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except that this code shall not apply to:

(I) The procurement of bridge and highway construction or to contracts for unsolicited or comparable proposals for public-private initiatives under section 43-1-1203, C.R.S.;

(II) The awarding of grants to or the awarding of contracts between the state and its political subdivisions or other governments, except as provided in article 110 of this title;

(III) The procurement of public printing, as defined in section 24-70-201, except for the provisions of article 109 of this title;

(IV) The procurement of professional services, as defined in section 24-30-1402;

(V) The Colorado state fair authority created pursuant to section 35-65-401 (1), C.R.S.;

(VI) The state board of land commissioners in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153 (1), C.R.S., or the commercial real property operating fund created in section 36-1-153.7, C.R.S.;

(VII) (A) Beginning on April 15, 2010, through June 30, 2014, the amendment of contracts made at the direction of the office of information technology in accordance with section 24-37.5-105 (10).

(B) This subparagraph (VII) is repealed, effective July 1, 2014.

(b) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be exempt from the provisions of this code and may enter into contracts independent of the terms specified in this code.

(c) Repealed.

(d) Except as provided in section 24-111-103, this code shall also apply to contracts funded in whole or in part with federal assistance moneys. This code shall apply to the transfer or disposal of state supplies.

(e) Upon the request of a governmental body purchasing items for resale to the public, the head of a purchasing agency may, by written determination, provide that this code shall not apply to items acquired for such resale.

(f) Nothing in this code or in rules promulgated under this code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) All political subdivisions and local public agencies of this state are authorized to adopt all or any part of this code and its accompanying rules.

(3) The provisions of sections 8-18-101 and 8-18-103, C.R.S., which require a preference for resident bidders and resident agricultural products under certain circumstances, apply to the award of contracts under this code.

(4) The executive director of the department of human services may procure the necessary services and support required to develop, implement, and operate state and federal child support enforcement welfare reform mandates which shall not be subject to this code. This procurement shall be limited to funds specifically appropriated for child support enforcement in fiscal year 1997-98 subject to available appropriations for information technology hardware, software, and related services.

PART 2

DETERMINATIONS

24-101-201. Determinations. Written determinations required by this code shall be retained in the appropriate official contract file of the department of personnel or the purchasing agency administering the procurement.

PART 3

DEFINITIONS

24-101-301. Definitions. The terms defined in this section shall have the following meanings whenever they appear in this code, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular article or portion thereof:

(1) "Award" means the acceptance of a bid or proposal and may include the presentation of a proposed written agreement for performance of the contract.

(1.5) "Business" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by a procurement officer,

directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(3) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or any other public improvements of any kind to any public real property. For the purposes of this code, "construction" includes capital construction and controlled maintenance, as defined in section 24-30-1301.

(4) "Contract" means any type of state agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction.

(5) "Contract modification" means any written alteration of specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of a contract accomplished by mutual action of the parties to the contract.

(6) "Contractor" means any person having a contract with a governmental body.

(7) Repealed.

(8) "Department" means the department of personnel.

(9) "Executive director" means the executive director of the department of personnel.

(10) "Governmental body" means any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official, other than an elected official, of the executive branch of state government in this state; except that:

(a) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, C.R.S., by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be excluded from the meaning of "governmental body".

(b) (Deleted by amendment, L. 2010, (SB 10-111), ch. 170, p. 603, § 12, effective August 11, 2010.)

(10.5) (a) "Grant" means the furnishing of assistance, including financial or other means of assistance, by the purchasing agency to any person to support a program authorized by law.

(b) The term "grant" does not include:

(I) A loan;

(II) An award required by the terms of a grant to be awarded in accordance with the purchasing agency's procurement statutes and regulations; or

(III) An award whose primary purpose is to procure an end product to satisfy a requirement of the purchasing agency, either in the form of supplies, services, or construction.

(11) "Head of a purchasing agency" means the director of a purchasing agency created pursuant to section 24-102-204 or 24-102-302 (2) and the principal representative authorized to enter into contracts for capital construction or controlled maintenance pursuant to part 13 of article 30 of this title.

(12) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. "Procurement" includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(15) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. "Procurement officer" includes an authorized representative acting within the limits of his authority.

(16) "Public employee" means an individual drawing a salary from a governmental body or a noncompensated individual performing personal services for a governmental body.

(17) "Purchasing agency" means any governmental body other than the department of personnel which is authorized to enter into contracts by section 24-102-302 (1) by way of delegation from the executive director pursuant to section 24-102-302 (2) or by the way of delegation from the executive director pursuant to section 24-102-204.

(18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(19) "Rules" means state procurement rules and has the same meaning as provided in section 24-4-102 (15).

(20) "Services" means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include professional services as defined in section 24-30-1402.

(21) (Deleted by amendment, L. 96, p. 1533, § 98, effective June 1, 1996.)

(22) "Supplies" means all property, including but not limited to equipment, materials, and insurance. The term does not include land, the purchase of an interest in land, water or mineral rights, workers' compensation insurance, benefit insurance for state employees, or property furnished in connection with public printing, as defined in section 24-70-201.

(23) "Using agency" means any governmental body of the state which utilizes any supplies, services, or construction procured under this code.

PART 4

PROCUREMENT RECORDS AND INFORMATION

24-101-401. Public access to procurement information - repeal. (1) Except as provided in section 24-103-203 (4), procurement information is a public record and is available to the public as provided in sections 24-72-203 and 24-72-204.

(2) (a) To the extent not prohibited by federal law, each contract entered into by a governmental body pursuant to this code shall specify that the contract and performance measures and standards under article 103.5 of this title are open to inspection by the public as provided in sections 24-72-203 and 24-72-204.

(b) (I) Each agreement entered into by a governmental body with a certified employee organization for state employees under executive order D 028 07, or any similar successor executive order with respect to the existence of a certified employee organization for state employees, shall specify that the agreement is open to public inspection as provided in sections 24-72-203 and 24-72-204.

(II) If executive order D 028 07, or any similar successor executive order with respect to the existence of a certified employee organization for state employees, is rescinded or altered by the governor in any way to create a situation where a certified employee organization for state employees no longer represents state employees, the governor shall provide written notice of this fact to the revisor of statutes.

(III) This paragraph (b) is repealed, effective upon the receipt by the revisor of statutes of the written notice under subparagraph (II) of this paragraph (b).

24-101-402. Retention of procurement records. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules, as provided in section 24-80-103.

ARTICLE 102

Procurement Organization

PART 1

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL

24-102-101. Authority and duties of the executive director. Subject to the provisions of part 4 of this article, the executive director of the department of personnel has the authority and responsibility to promulgate rules, consistent with this code, governing the procurement and disposal of any and all supplies, services, and construction to be procured by the state, except for surplus state property as provided in section 17-24-106.6, C.R.S., and except as provided in part 4 of article 82 of this title.

The executive director shall consider and decide matters of policy within the provisions of this code.

PART 2

DIVISION OF PURCHASING

24-102-201. Purchasing.

(1) (Deleted by amendment, L. 96, p. 1510, § 32, effective June 1, 1996.)

(2) The powers, duties, and functions concerning purchasing shall be administered as if transferred to the department of personnel by a **type 2** transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title.

24-102-202. Authority of the executive director. (1) Consistent with the provisions of this code, the executive director may adopt operational procedures governing the internal functions of the department.

(2) Except as otherwise specifically provided in this code, the executive director shall, pursuant to rules:

(a) Procure or supervise the procurement of all supplies and services needed by the state;

(b) Repealed.

(c) Establish and maintain programs for the inspection, testing, and acceptance of supplies and services;

(d) Examine each requisition submitted by a using agency and approve, disapprove, or revise it as to quantity or quality;

(e) Develop and maintain programs and procedures to delegate purchasing authority in order to conserve resources for management of the statewide purchasing system; and

(f) Develop programs to evaluate and reduce the administrative costs of the statewide procurement function.

24-102-202.5. Supplier database - fees - cash fund - program account. (1) The executive director shall develop a centralized database that includes a listing of all businesses which are interested in providing goods and services to the state. The businesses in the database shall be identified by a registration number, and the executive director shall develop a procedure for notifying the appropriate businesses whenever the state issues requests for proposals or invitations for bids for goods or services which a particular business provides. The database shall be accessible through the department of

personnel to all purchasing agencies designated pursuant to section 24-102-302 (2).

(2) (a) Each business that wishes to be included in the database created pursuant to subsection (1) of this section shall pay a registration fee as determined by the executive director. The executive director shall set and collect such fees as are necessary to cover the direct and indirect costs that are incurred in implementing the provisions of this section. The revenue from such fees shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund, which fund is hereby created. The general assembly shall make appropriations from such fund as necessary to implement the provisions of this section. All moneys not expended or encumbered and all interest earned on the investment or deposit of the moneys in the fund shall remain in the fund and shall not revert to the general fund or any other fund at the end of any fiscal year.

(b) (Deleted by amendment, L. 2009, (SB 09-099), ch. 420, p. 2336, § 1, effective June 4, 2009.)

(2.5) (a) The executive director shall develop and implement a statewide centralized electronic procurement system to allow the utilization of technology to create a more efficient delivery of state procurement services. The executive director shall set and collect fees from vendors with cooperative purchasing agreements and from local public procurement units, as defined in section 24-110-101 (3), and that are participating in the electronic procurement system, as necessary to cover the direct and indirect costs of implementing and maintaining the electronic procurement system. In addition, the executive director may collect moneys from cooperative purchasing organizations for procurement support.

(b) Prior to July 1, 2013, the revenue from the fees and any moneys received from cooperative purchasing organizations pursuant to paragraph (a) of this subsection (2.5) shall be transmitted to the state treasurer, who shall credit the same to the electronic procurement program account, which is hereby created within the supplier database cash fund created in paragraph (a) of subsection (2) of this section. The moneys in the account shall be annually appropriated by the general assembly for the purposes of implementing and maintaining the electronic procurement system. All moneys not expended or encumbered and all interest earned on the investment or deposit of the moneys in the account shall remain in the account and shall not revert to the general fund or any other fund at the end of any fiscal year; except that any unexpended moneys remaining in the account on June 30, 2013, shall be transferred to the supplier database cash fund.

(c) Beginning July 1, 2013, the revenue from the fees and any moneys collected from cooperative purchasing organizations pursuant to paragraph (a) of this subsection (2.5) shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund created in paragraph (a) of subsection (2) of this section.

(3) The provisions of this section shall not apply to contractors required to be approved pursuant to the provisions of section 24-30-1303 (1) (q).

24-102-203. Special duties regarding state-owned motor vehicles. (Repealed)

24-102-204. Delegation of purchasing authority by the executive director of the department of personnel. Subject to rules, the executive director may delegate purchasing authority to designees or to any department, agency, or official.

24-102-205. Centralized contract management system - personal services contracts - legislative declaration - definitions. (1) (a) The general assembly hereby finds and declares that by enacting this section the general assembly intends to:

(I) Establish a policy of open competition for personal services contracts unless the competition is specifically exempted under this section;

(II) Provide for legislative and executive review of all personal services contracts entered into by any governmental body;

(III) Centralize the location of information about personal services contracts for the purpose of facilitating public review of such contracts; and

(IV) Ensure the proper accounting of expenditures for personal services.

(b) For purposes of this section, "governmental body" shall have the same meaning as set forth in section 24-101-301 (10); except that, for purposes of this section, "governmental body" shall also include elected officials.

(c) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1852, § 31, effective June 9, 2010.)

(2) This section shall apply to any personal services contract to which the state is a party the value of which exceeds one hundred thousand dollars with the exception of any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.

(3) (a) On or before June 30, 2009, the department shall implement and maintain a centralized contract management system for the purpose of monitoring all personal services contracts entered into by a governmental body that are subject to the requirements of this section. With respect to each contract entered into by a governmental body, information contained in the system shall include, without limitation, the following:

(I) The governmental body that entered into the personal services contract;

(II) The persons or entities with which the governmental body is contracting;

(III) The duration and number of positions on the state payroll created directly or indirectly as a result of any personal services contract;

(IV) The purpose of the personal services contract;

(V) The effective dates, periods of performance, and any renewal terms of the

personal services contract;

(VI) The vendor selection method upon which the personal services contract was awarded, whether competitively procured, awarded on a sole-source basis, or otherwise. Where the contract has been awarded on a sole-source basis, the governmental body shall certify that the governmental body has followed the requirements of subsection (5) of this section.

(VII) The total value of the personal services contract and any amendments to the contract;

(VIII) In accordance with the requirements of subsection (6) of this section, an evaluation following completion of the personal services contract that measures the vendor's performance in meeting contractual requirements relating to quality, cost, and deadlines;

(IX) Whether any services under the personal services contract, or any subcontracts to the contract that directly relate to the services provided under the contract, are anticipated to be performed outside the United States or the state as disclosed in the statement of work pursuant to section 24-102-206 and the vendor's justification for obtaining services outside the United States or the state in accordance with the requirements of section 24-102-206; and

(X) Upon completion of the personal services contract, the extent as disclosed by the vendor to which any services under the contract, or any subcontracts to the contract that directly relate to the services provided under the contract, were performed outside the United States or the state.

(b) Each governmental body shall be responsible for gathering relevant information to be submitted to the department for inclusion in the centralized contract management system in accordance with the requirements of paragraph (a) of this subsection (3).

(c) The centralized contract management system required to be maintained by the department pursuant to paragraph (a) of this subsection (3) shall be a publicly available database of all personal services contracts entered into by any governmental body, accessible from the web site maintained by the state. Information concerning contracts contained in the database and accessible on the web site shall be searchable by criteria enumerated in subparagraphs (I) to (X) of paragraph (a) of this subsection (3). Information in the database shall be either presented in plain and nontechnical language or by means of key terms that are clearly and easily defined.

(d) The centralized contract management system required to be maintained by the department pursuant to paragraph (a) of this subsection (3) shall identify the number of employment positions to be filled under any personal services contract that was previously performed by classified civil service employees, in addition to the total number of positions, if any, eliminated by the contract. In the case of any contract that is more than one year in duration, the system shall identify the cost savings, if any, and quality

improvements, if any, realized by the state as a result of the contract.

(e) Any new personal services contracts subject to the requirements of this section shall be added to the centralized contract management system maintained by the department pursuant to paragraph (a) of this subsection (3) not more than thirty days after the execution of the contract.

(4) The centralized contract management system required to be maintained by the department pursuant to paragraph (a) of subsection (3) of this section shall include information concerning personal services expenditures by the governmental body and types of services. The types of services that may be designated shall include, without limitation, professional technical, nonprofessional support, purchased services, architectural, engineering and construction trades, and professional equipment repair.

(5) (a) Subject to the provisions of paragraph (b) of this subsection (5), prior to entering into a sole-source personal services contract, the governmental body shall attempt to identify competing vendors by placing a notice on the state's bid notification web site for not less than three business days. If the governmental body receives not less than two responses to the notice from qualified and responsible vendors that are able to meet the specifications identified in the notice and that are not otherwise prohibited from bidding on the contract, the sole-source selection method shall not be used.

(b) Notwithstanding the requirements of paragraph (a) of this subsection (5), the director of a governmental body or his or her designee may enter into or authorize others to enter into an emergency sole-source personal services contract on behalf of the governmental body where an emergency condition is present and a sole-source personal services contract is necessary to ensure that the required services are obtained in sufficient time to address the emergency. Where the governmental body enters into an emergency sole-source personal services contract pursuant to this paragraph (b), the centralized contract management system required by paragraph (a) of subsection (3) of this section, and any contract file maintained thereunder, shall include a written determination that specifies the basis for the determination that an emergency condition is present and the basis for the selection of the vendor retained to perform the sole-source contract. A sole-source personal services contract authorized pursuant to this paragraph (b) shall be limited to the quantity of personal services and duration necessary to address the emergency.

(c) For purposes of paragraph (b) of this subsection (5), "emergency condition" means a situation that creates an imminent threat to the public health, welfare, or safety as may arise by reason of, without limitation, a flood, epidemic, riot, catastrophic equipment failure or similar threat to the public health, welfare, or safety as determined by the director of the governmental body or his or her designee.

(6) Upon the completion of each personal services contract, the governmental body that was a party to the contract shall evaluate the vendor that performed the contract. The evaluation performed by the governmental body shall be submitted to the vendor to

allow the vendor to review the evaluation and to submit any comments in response to the evaluation, after which point the evaluation, including any response submitted by the vendor, shall be added to the centralized contract management system maintained by the department pursuant to paragraph (a) of subsection (3) of this section. The evaluation shall become publicly available thirty days after completion of the contract. The evaluation shall measure, without limitation, the performance of the vendor in meeting contractual requirements relating to quality, cost, and deadlines. If the vendor disputes any information contained in the evaluation, the vendor may exercise the contract dispute rights specified in section 24-109-106, 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal filed with the executive director or the Denver district court, as applicable, the vendor is not satisfied with the resolution of the appeal, the vendor may file a rebuttal statement that shall be maintained as part of the vendor evaluation record. The vendor's sole remedy in contesting any evaluation shall be removal of the evaluation, correction of the evaluation, or submission of the rebuttal statement in accordance with the requirements of this subsection (6).

(7) (a) Commencing on September 30, 2007, until such time as the development of the system created in paragraph (a) of subsection (3) of this section is complete, the department shall provide reports on a quarterly basis to the joint budget committee of the general assembly concerning the status of the development of the system.

(b) The department shall annually report information on personal services contracts contained in the centralized contract management system created in paragraph (a) of subsection (3) of this section to the standing legislative committees of reference in each house of the general assembly with oversight responsibilities over the department's affairs.

(c) With respect to any sole-source personal services contract identified in the system required to be maintained by the department pursuant to paragraph (a) of subsection (3) of this section, the department shall submit an annual report to the legislative council of the general assembly created in section 2-3-301 (1), C.R.S., concerning any new contract entered into by the state during the prior calendar year. Each report shall describe, without limitation, the following:

(I) The number and aggregate value of the sole-source personal services contracts for each category of services specified in subsection (4) of this section; and

(II) The justification provided by the governmental body for the use of the sole-source contracting provisions in section 24-103-205 and the steps taken to determine if a vendor is the only available source for the required supply, service, or construction item.

(8) The implementation of the database required to be maintained by the department pursuant to paragraph (a) of subsection (3) of this section shall be funded in two phases, with a portion of the funding provided in the 2007-08 state fiscal year, and a portion of the funding provided in the 2008-09 state fiscal year.

(9) To accomplish the legislative intent underlying subparagraph (III) of

paragraph (a) of subsection (1) of this section, the office of contract administration is hereby created in the department, which office shall be funded within existing appropriations.

24-102-206. Contract performance outside the United States or Colorado - notice - penalty. (1) (a) Prior to contracting or as a requirement for the solicitation of any contract from the state for services, as appropriate, any prospective vendor shall disclose in a written statement of work whether it anticipates subcontracting any services under the contract, where such subcontracted services will be performed under the contract, including any subcontracts, and whether any subcontracted services under the contract or any subcontracts are anticipated to be performed outside the United States or the state. If the prospective vendor anticipates services under the contract or any subcontracts will be performed outside the United States or the state, the vendor shall provide in its written statement of work a provision setting forth why it is necessary or advantageous to go outside the United States or the state to perform the contract or any subcontracts.

(b) Each contract entered into or renewed by a governmental body pursuant to this code must contain a clause that requires the vendor to provide written notice to the governmental body if the vendor decides, after the contract is awarded, to perform services under the contract outside the United States or the state or to subcontract services under the contract to a subcontractor that will perform such services outside the United States or the state. The contract must specify that the vendor is required to provide such written notice no later than twenty days from the time the vendor decides to perform services under the contract outside the United States or the state or subcontracts services under the contract to a subcontractor that will perform such services in a location outside the United States or the state.

(2) The written notification required by paragraphs (a) and (b) of subsection (1) of this section must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or the state and the reason why it is necessary or advantageous to go outside the United States or the state to perform such services.

(3) A governmental body shall provide written notice to the department of personnel if it awards a contract to a vendor that has provided written notice pursuant to paragraph (a) or (b) of subsection (1) of this section that the vendor or the vendor's subcontractor will perform services under the contract outside the United States or the state.

(4) If a vendor knowingly fails to notify the governmental body of any outsourced services as specified in this section, the governmental body may, in the governmental body's discretion, terminate the contract.

(5) The executive director shall post any notice that a vendor provides to a governmental body pursuant to this section on the official web site of the department.

(6) Nothing in this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.

(7) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirements would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

24-102-206.5. Contract performance outside the United States or Colorado - annual report. (1) On January 1, 2014, and on each January 1 thereafter, a governmental body shall submit an annual report to the general assembly if the governmental body entered into one or more contracts with a vendor during the previous state fiscal year and received written notice from one or more vendors pursuant to section 24-102-206 (1) (b) that the vendor or the vendor's subcontractor would perform services under the contract outside the United States or the state.

(2) (a) The purpose of the report required in subsection (1) of this section is to notify taxpayers and the general assembly regarding the use of United States and state tax dollars on state contracts in which services under the contract are performed outside the United States or the state. The governmental body shall provide information required in the report based on the information that vendors submitted to the governmental body pursuant to section 24-102-206 during the previous state fiscal year.

(b) The report must separate data by state contract type and provide information regarding the type and the percentage of the total services that were performed outside the United States or the state by each vendor or a vendor's subcontractor under each state contract.

(c) The report required by subsection (1) of this section must also include a description of any initiatives that the governmental body has taken to actively reduce the number of contracts in which a vendor or vendor's subcontractor perform services under the contract outside the United States or the state.

(d) A governmental body that is required to submit a report pursuant to subsection (1) of this section may include the report in its annual report to the general assembly required by the "State Measurement for Accountable, Responsive, and Transparent

(SMART) Government Act".

24-102-207. Statewide procurement card agreement. (1) The department shall establish a statewide procurement card program. All governmental bodies that utilize a procurement card shall participate in the statewide program. For purposes of this section, "governmental body" shall have the same meaning as set forth in section 24-101-301 (10); except that, for purposes of this section, "governmental body" shall also include elected officials.

(2) Governmental bodies that are not subject to the "Procurement Code", articles 101 to 112 of this title, or the fiscal rules are subject to this section; except that, on and after December 1, 2010, this section shall not apply to an institution of higher education that has elected to be excluded from the meaning of "governmental body" pursuant to section 24-101-301 (10) (a).

(3) The statewide procurement card shall be considered an alternate method of payment and shall not be considered a commitment voucher required by section 24-30-202 (1). Any revenues resulting from the procurement card program shall be deposited as cash revenue in the general fund and shall be subject to annual appropriation by the general assembly. Unless otherwise directed by the general assembly, the state controller shall make adjustments equivalent to such revenues in the form of a reduction of administrative costs allocated to governmental bodies on a basis proportional to each governmental body's contribution to statewide procurement card expenditures, as determined by the state controller, to ensure that the federal government receives its share of procurement card revenues as required by federal regulations and to ensure that the indirect obligations are funded. Institutions of higher education that elect to be excluded from the meaning of "governmental body" pursuant to section 24-101-301 (10) (a) shall transfer moneys to the department of higher education or the Colorado commission on higher education to the extent required to pay indirect cost assessments, as defined in section 24-75-112 (1) (f). For purposes of this subsection (3) the term "allocated" does not mean an appropriation or cash transfer to any governmental body, but refers to an internal process within the office of the state controller.

PART 3

ORGANIZATION OF PUBLIC PROCUREMENT

24-102-301. Centralization of procurement authority. Except as otherwise provided in this part 3, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction and the sale and disposal of supplies, services, and construction are vested in the department of personnel except for the disposal of surplus

state property as provided in section 17-24-106.6, C.R.S., and except as provided in part 4 of article 82 of this title.

24-102-302. Purchasing agencies - establishment - authority. (1) Capital construction and controlled maintenance, as defined and delegated to principal representatives by part 13 of article 30 of this title, shall be procured by such principal representatives as the appropriate purchasing agency.

(2) If the executive director is of the opinion and so certifies in writing that the needs of any governmental body are of such specialized nature and sufficient volume to warrant a purchasing agency for such governmental body, he shall authorize the creation of the same. All such purchasing agencies shall operate under the provisions of this code and the rules promulgated pursuant thereto and shall be subject to the supervision and control of the executive director. All such purchasing agencies shall operate under the provisions of section 17-24-111, C.R.S., requiring the purchase of goods and services from the division of correctional industries, and failure of any such purchasing agency to comply with such requirement shall be cause for the executive director to suspend for a period of up to one year at the discretion of the executive director the authority of a purchasing agency created pursuant to this subsection (2) to purchase goods and services. The authority of a purchasing agency to purchase goods and services may also be suspended at the discretion of the executive director. The financial and staff resources dedicated to the purchasing function in the affected agency shall be under the authority of the department of personnel during the period of suspension, and purchases made for the affected agency shall be in accordance with the requirements of section 17-24-111 (1), C.R.S.

(3) The heads of purchasing agencies responsible for procuring the supplies, services, or construction delegated to them by subsections (1) and (2) of this section shall conduct procurements in accordance with the provisions of this code and its implementing rules. The executive director shall establish a standard supplier's form and a standard set of procedures that each purchasing agency shall use in accepting the form and evaluating the supplier. Each purchasing agency created pursuant to this section shall submit a quarterly report to the executive director regarding the quantity and type of goods and services procured during the prior quarter. Such report shall include a description of any instance where a contractor failed to deliver a good or service in accordance with the provisions of the contract. The reporting requirements established in this subsection (3) shall be in addition to and not in lieu of any other reporting requirements established in this code.

PART 4

STATE PROCUREMENT RULES

24-102-401. State procurement rules. (1) Rules shall be promulgated in accordance with the applicable provisions of section 24-4-103.

(2) The executive director may delegate his power to promulgate rules.

(3) No rule shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

PART 5

COORDINATION

24-102-501. Collection of data concerning public procurement. All using agencies shall furnish such reports as the executive director may require concerning usage, needs, and stocks on hand, and the executive director shall have authority to prescribe forms to be used by the using agencies in the requisitioning, ordering, and reporting of supplies, services, and construction.

24-102-502. Procurement advisory council - sunset review. (Repealed)

ARTICLE 103

Source Selection and Contract Formation

PART 1

DEFINITIONS

24-103-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code and a fee, if any.

(2) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) Is regularly maintained by a manufacturer or contractor; and

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant

number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Low responsible bidder" means any person who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a public contract who is the low bidder and who has furnished bonds or their equivalent if required by law.

(3.5) "Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids pursuant to this code.

(4) "Professional services" means services of accountants, clergy, physicians, lawyers, and dentists and such other services as may be procured through agents of those services, excluding those professional services as defined in section 24-30-1402, as the executive director may by rule designate as professional services.

(5) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

(6) "Resident bidder" means:

(a) A person or business that is authorized to transact business in Colorado and that maintains its principal place of business in Colorado; or

(b) A person or business that is authorized to transact business in Colorado, that maintains a place of business in Colorado, and that has filed Colorado unemployment compensation reports in at least seventy-five percent of the eight quarters immediately before bidding on a contract.

PART 2

METHODS OF SOURCE SELECTION

24-103-201. Methods of source selection. (1) Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding pursuant to section 24-103-202, except as provided in:

(a) Section 24-103-203, concerning awards by competitive sealed proposals;

(a.5) Section 24-103-202.3, concerning competitive sealed best value bidding;

(b) Section 24-103-204, concerning small purchases;

(c) Section 24-103-205, concerning sole source procurements;

(d) Section 24-103-206, concerning emergency procurements;

(e) Part 14 of article 30 of this title, concerning architect, engineer, landscape architect, and land surveying services;

(f) Section 24-103-208, concerning other procurement methods;

(g) Part 2 of article 38 of this title, concerning public-private initiatives.

24-103-202. Competitive sealed bidding. (1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 24-103-201.

(2) (a) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(b) An invitation for bids for a contract for the purchase of supplies shall also state the required procedures and criteria for awarding the contract as provided in section 24-103-202.5 if low tie bids are received.

(3) Adequate public notice of the invitation for bids shall be given a reasonable time, but in the case of construction at least fourteen days, prior to the date set forth therein for the opening of bids, pursuant to rules. Such notice may include publication in a newspaper of general circulation.

(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record, and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to public inspection in accordance with the provisions of sections 24-72-203 and 24-72-204.

(5) Bids shall be unconditionally accepted, except as authorized by subsection (7) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. No criteria may be used in the bid evaluation that are not set forth in the invitation for bids.

(6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the executive director or the head of a purchasing agency.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except as otherwise provided for certain low tie bids under section 24-103-202.5. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional

specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(9) The provisions of subsections (4), (5), and (6) of this section shall also apply to construction and shall be in addition to any other requirements for competitive sealed bidding for construction as provided for in this title.

24-103-202.3. Competitive sealed best value bidding. (1) When, pursuant to rules, the state purchasing director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that the use of competitive sealed best value bidding is advantageous to the state, a contract may be entered into by competitive sealed best value bidding.

(2) An invitation for bids under competitive sealed best value bidding shall be made in the same manner as provided in section 24-103-202 (2), (3), and (4).

(3) (a) The state purchasing director or the head of a purchasing agency may allow a bidder to submit prices for enhancements, options, or alternatives to the base bid for a commodity or service that will result in a product or service to the state having the best value at the lowest cost. The invitation for bids for competitive sealed best value bidding must clearly state the purchase description of the commodity or service being solicited and the types of enhancements, options, or alternatives that may be bid; except that the functional specifications integral to the commodity or service may not be reduced.

(b) Prices for enhancements, options, or alternatives to the bid may be evaluated by the state purchasing director or the head of a purchasing agency to determine whether the total of the bid price and the prices for enhancements, options, or alternatives provide a contract with the best value at the lowest cost to the state. This evaluation shall be made utilizing the rules of the executive director of the department of personnel promulgated pursuant to paragraph (d) of this subsection (3).

(c) A contract may be awarded to a bidder where the total amount of a bid price and the prices for enhancements, options, or alternatives of the bidder exceed the total amount of the bid price and the prices for enhancements, options, or alternatives of another bidder if it is determined pursuant to paragraph (b) of this subsection (3) that the higher total amount provides a contract with the best value at the lowest cost to the state.

(d) The executive director of the department of personnel shall promulgate rules to be utilized by the state purchasing director or the head of a purchasing agency in

making the evaluation pursuant to paragraph (b) of this subsection (3). The rules shall provide:

(I) Criteria for objectively measuring prices for enhancements, options, or alternatives to a bid, including relevant formulas or guidelines;

(II) Criteria for objectively determining whether the prices for enhancements, options, or alternatives provide the best value at the lowest cost to the state.

(4) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids except as otherwise provided for certain low tie bids under section 24-103-202.5.

24-103-202.5. Low tie bids - award procedure and determination - bid preference. (1) If low tie bids are received in response to an invitation for bids for a supply contract, the following procedures are required:

(a) If the low tie bids are from a resident bidder and a nonresident bidder, the resident bidder shall be given preference over the nonresident bidder;

(b) If the low tie bids are from resident bidders, the procurement officer shall:

(I) Use a fair and reasonable procedure for determining which bidder receives the contract award that at a minimum provides for the presence, at the time and place the determination is made, of the bidders or the bidders' representatives and an impartial witness designated by the procurement officer who is not an employee of that procurement officer's agency; and

(II) Give the bidders at least five business days' written notice by certified mail of the date the determination will be made, of the procedure for making the determination, and that the bidders or the bidders' representatives may be present when the determination is made;

(c) If the low tie bids are only from nonresident bidders, the procurement officer shall follow the procedures in subparagraphs (I) and (II) of paragraph (b) of this subsection (1);

(d) All other applicable provisions of the code that are not inconsistent with this section shall be followed.

(2) If the procurement officer determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law.

24-103-203. Competitive sealed proposals. (1) When, pursuant to rules, the

executive director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals may be used for the procurement of professional services whether or not the determination described by this subsection (1) has been made. The executive director may provide by rule that it is neither practicable nor advantageous to the state to procure specified types of supplies, services, or construction by competitive sealed bidding.

(2) Proposals shall be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided in section 24-103-202 (3).

(4) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules and shall be open for public inspection after the contract award subject to the provisions of sections 24-72-203 and 24-72-204.

(5) The request for proposals shall state evaluation factors.

(6) As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. A contract resulting from a competitive sealed proposal is not awarded until any protest made in connection with the proposal has been resolved pursuant to 24-109-102. No property interest of any nature shall accrue until the contract is awarded and signed by both parties.

(8) The procurement officer shall negotiate, in the case of procurement of professional services, with the highest qualified offerors and in that negotiation shall take into account, in the following order of importance, the professional competence of the offerors, the technical merits of the offers, and the price for which the services are to be rendered.

24-103-204. Small purchases. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by rules, but procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

24-103-205. Sole source procurement. A contract may be awarded for a supply, service, or construction item without competition when, under rules, the executive director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer determines in writing that there is only one source for the required supply, service, or construction item. Sole source procurement provisions shall not be used when the goods or services needed are available through the division of correctional industries unless the purchasing agency specifies the division of correctional industries as the sole source provider.

24-103-206. Emergency procurements. Notwithstanding any other provision of this code, the executive director, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, as defined in rules, but such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

24-103-206.5. Procurements funded with federal "American Recovery and Reinvestment Act of 2009" moneys - waiver of "Procurement Code" requirements - repeal. (Repealed)

24-103-207. State purchases of recycled paper and recycled products. (1) When purchasing paper and paper products, the executive director or any purchasing agent shall, whenever the price is competitive and the quality adequate for the purpose intended, purchase recycled paper, as defined in section 13-1-133 (4) (d), C.R.S.

(2) For the fiscal year 1990-91, the executive director shall establish as a goal that at least ten percent of the total volume of paper and paper products purchased by the state shall contain recycled paper. The goal shall increase to twenty percent for the fiscal year 1991-92, to thirty percent for the fiscal year 1992-93, to forty percent for the fiscal year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each fiscal year

thereafter.

(3) Each agency using recycled paper may print the notation "printed on recycled stock" on any paper or paper product which has been certified by the division as recycled paper.

(4) For purposes of this section, "paper and paper products" means paper items, including but not limited to paper napkins, towels, corrugated and other cardboard, toilet tissue, high-grade office paper, newsprint, offset paper, bond paper, xerographic bond paper, mimeo paper, and duplicator paper.

(5) When purchasing any product with public funds, the executive director or any purchasing agent shall be authorized to purchase products or materials with recycled content, that have been source-reduced, that are reusable, or that have been composted, unless one or more of the following conditions exist:

(a) The product is not available within a reasonable period of time;

(b) The product fails to meet existing purchasing rules, including specifications; or

(c) The product fails to meet federal or state health or safety standards, as set forth in the code of federal regulations or the Colorado code of regulations.

(6) In addition to the requirements set forth in subsections (1), (2), and (5) of this section, the purchasing agent shall be authorized to purchase, when cost-efficient and economically feasible, equipment that results in the reduction of paper usage.

24-103-207.5. Purchasing preference for environmentally preferable products - definitions. (1) As used in this section, unless the context otherwise requires, "environmentally preferable products" means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose. The product comparison may consider such factors as the availability of any raw materials used in the product being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product being purchased.

(2) All invitations for bids for products shall include language that describes the availability of the purchasing preference for environmental products. In connection with the purchase of products, a governmental body shall award the contract to a bidder who offers environmentally preferable products subject to the conditions specified in subsection (3) of this section unless the specifications used in the solicitation contain environmentally preferable product criteria. This preference does not apply to the purchase of services, including construction services.

(3) The preference specified in subsection (2) of this section shall apply only if all of the following conditions are met and selecting an environmentally preferable product would not otherwise be disadvantageous to the state upon consideration of these

conditions, singly or in combination:

(a) The quality of the environmentally preferable products meets the specification of the bid.

(b) The environmentally preferable products are suitable for the use required by the purchasing entity.

(c) Any bidder able to offer environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids.

(d) The bid price for environmentally preferable products does not exceed the lowest bid price for products that are not environmentally preferable by more than five percent.

(e) The head of the governmental body or other official charged by law with the duty to purchase products has made a determination that the governmental body is able to purchase the environmentally preferable products out of the governmental body's existing budget without any further supplemental or additional appropriation.

(f) (Deleted by amendment, L. 2008, p. 575, § 1, effective August 5, 2008.)

(4) If the bid price for environmentally preferable products exceeds the bid price for products that are not environmentally preferable by more than five percent, a governmental body may award the contract to a bidder who offers environmentally preferable products where the governmental body demonstrates, on the basis of assessments such as the costs of ownership and a life-cycle analysis, that long-term savings to the state will result from environmentally preferable purchasing in accordance with the requirements of this section. Nothing in this section shall require that a governmental body perform an analysis of the costs of ownership or a life-cycle analysis in connection with the purchase of any products.

(5) (a) Any bidder that seeks to qualify for the preference created by subsection (2) of this section shall provide documentation to the governmental body inviting the bid that the products offered by the bidder are environmentally preferable. This requirement may be satisfied by submission of any of the following:

(I) A life-cycle analysis conducted on the applicable product that has been conducted in accordance with applicable standards as determined by the purchasing governmental body or by the international organization for standardization or any successor organization;

(II) A reference to an existing environmentally preferable product list maintained by a state or the federal government that contains the product; or

(III) A reference to a nationally recognized third-party certification entity that has certified the product as environmentally preferable on the basis of a valid life-cycle analysis. The governor's energy office or successor office shall maintain a list of certification entities.

(b) The governmental body may rely in good faith on any form of documentation that satisfies the requirement of paragraph (a) of this subsection (5).

(c) Notwithstanding any other provision of this section, if none of the forms of documentation specified in paragraph (a) of this subsection (5) apply to the product being purchased, the requirements of this section shall not apply to the purchase of the product.

(6) A governmental body shall report to the joint budget committee of the general assembly the results of any analysis of the costs of ownership and life-cycle analysis used to justify the purchase of any environmentally preferable products in accordance with the requirements of subsection (4) of this section during the previous fiscal year.

(7) In connection with any cost of ownership analysis or life-cycle analysis undertaken in connection with any purchase under this section of a product that involves the replacement of existing electrical, natural gas, or steam service, the cost analysis shall consider any stranded utility costs.

24-103-208. Other procurement methods. The executive director may establish, by rule, other competitive procurement methods that are deemed to be in the best interest of the state and that are consistent with the provisions of section 24-101-102, including, but not limited to, reverse auctions. For the 2004-05 fiscal year and every other fiscal year thereafter, the state auditor shall review the competitive procurement methods established pursuant to this section.

24-103-209. Purchase of compost by governmental bodies - definitions. (1) In addition to any other applicable requirement specified in the code, no compost may be purchased by a governmental body, as defined in section 24-101-301, unless the compost satisfies minimum standards specified by the department of agriculture.

(2) For purposes of this section, "compost" means a substance derived from a process of biologically degrading organic materials that contains one or more essential available plant nutrients and that complies with minimum standards for the identification of such substance specified by the commissioner of agriculture by rule.

24-103-210. Use of foreign-produced goods - iron, steel, and related manufactured products - disclosure - report - definitions. (1) The contractor for any public works project that is funded by a state agency as defined in section 24-30-1301 (12), that does not receive any federal moneys, and that costs more than five hundred thousand dollars shall, upon completion of the project, make a good faith effort to disclose to the department of personnel the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods; except that, for public projects under the supervision of the department of transportation, the contractor shall disclose such information to the department of transportation.

(2) (a) In the case of an iron or steel product, the product will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States.

(b) In the case of a manufactured good, a good will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States irrespective of the origin of the manufactured good's subcomponents.

(c) In order for a manufactured good to be considered subject to disclosure under this article, the product must be manufactured predominantly of steel or iron. The manufactured good is deemed a product manufactured predominantly of steel or iron if the product consists of more than fifty percent steel or iron content when it is delivered to the job site for installation.

(3) The disclosure must state the total cost and country of origin of the five most costly goods used on a project, including iron, steel, and related manufactured goods described pursuant to subsections (1) and (2) of this section. The contractor may rely on documents provided by third-party vendors when disclosing the country of origin of iron, steel, or related manufactured goods. In addition, the disclosure must state whether the public works project was subject to any existing domestic content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C. sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec. 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose the information in a manner to be determined by the department.

(4) The department shall issue an annual report detailing the information that contractors submitted to the department and to the department of transportation pursuant to subsections (1) to (3) of this section. The report must include aggregate data collected for the calendar year and analysis of the data broken down by product and public works project type. The report shall not publicly disclose any proprietary information provided by the contractor that is not subject to disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this title. The department shall make the report available to the public on the department's web site.

(5) As used in this section, unless the context otherwise requires:

(a) "Country of origin" shall have the meaning ascribed to it under 19 U.S.C. sec. 1304 and 19 CFR 134.

(b) "Public works" shall have the same meaning as "public project" as defined in section 24-92-102 (8) (a).

(c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

(6) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirements

would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

PART 3

CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

24-103-301. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation when it is in the best interests of the state pursuant to rules. The reasons therefor shall be made part of the contract file.

PART 4

QUALIFICATIONS AND DUTIES

24-103-401. Responsibility of bidders and offerors. (1) A written determination of nonresponsibility of a bidder or offeror shall be made pursuant to rules. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the department of personnel or the purchasing agency without prior written consent by the bidder or offeror.

24-103-402. Prequalification of suppliers. Prospective suppliers may be prequalified for particular types of supplies, services, and construction, and the method of compiling and soliciting from such mailing lists of potential contractors shall be pursuant to rules.

24-103-403. Cost or pricing data. (1) A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) The pricing of any contract awarded by competitive sealed proposals, section

24-103-203, or pursuant to the sole source procurement authority, section 24-103-205, where the total contract price is expected to exceed an amount established by rule; or

(b) The pricing of any change order or contract modification which is expected to exceed an amount established by rule.

(2) Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

(3) The requirements of this section need not be applied to any contract in which:

(a) The contract price is based on adequate price competition;

(b) The contract price is based on established catalogue prices or market prices;

(c) The contract price is set by law or rule; or

(d) It is determined in writing, pursuant to rules, that the requirements of this section may be waived and the reasons for such waiver are stated in writing.

24-103-404. Motor carriers. No contract, change order, or contract modification shall be made with a motor carrier who has a motor vehicle registration canceled or denied pursuant to section 42-3-120, C.R.S., during the period of cancellation or denial.

PART 5

TYPES OF CONTRACTS

24-103-501. Types of contracts. Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type of contract or that it is impracticable to obtain the supplies, services, or construction required unless the cost-reimbursement contract is used.

24-103-502. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the executive director, the head of a purchasing agency, or a designee of either officer who is in a higher ranking employment position than a procurement officer that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and the proposed

contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

24-103-503. Multiyear contracts. (1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the state if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and if funds are available for the first year at the time of contracting. The state shall initiate the renewal or extension of a contract for supplies or services. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor.

(2) Prior to the utilization of a multiyear contract, it shall be determined in writing:

(a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) That such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled, and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

PART 6

AUDIT OF RECORDS

24-103-601. Right to audit records.

(1) (Deleted by amendment, L. 2007, p. 1237, § 2, effective August 3, 2007.)

(2) The state shall be entitled to audit the books and records of any contractor or subcontractor under any negotiated contract or subcontract to the extent that the books and records relate to the performance of a state contract or subcontract, if the state is able, in conducting any such audit, to maintain the confidentiality of any information contained in the books and records that is deemed proprietary as determined by the state. Such books and records shall be maintained by the contractor for a period of three years after the date of final payment under the prime contract and by the subcontractor for a period of three years after the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

PART 7

DETERMINATIONS AND REPORTS

24-103-701. Finality of determinations. The determinations required by sections 24-103-202 (6), 24-103-203 (1) and (7), 24-103-205, 24-103-206, 24-103-401 (1), 24-103-403 (3), 24-103-501, 24-103-502, and 24-103-503 (2) are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

24-103-702. Reporting of anticompetitive practices. When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

PART 8

SET ASIDES IN STATE PROCUREMENT
FOR ALL PERSONS WITH SEVERE DISABILITIES

24-103-801. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) It is in the best interest of the state to enhance the dignity and capacity for self-support of all persons with severe disabilities and to minimize their dependence on government programs for their basic needs; and

(b) It benefits the state as well as all persons with severe disabilities to encourage and assist all persons with severe disabilities to achieve maximum personal independence through useful and productive gainful employment by identifying a market for the services that they can offer.

(2) The general assembly further finds and declares that the purpose of this part 8 is to create a set aside program for nonprofit agencies that employ any persons with severe disabilities and to allow nonprofit agencies to bid on certain types of services solicitations. In furtherance of this purpose, the general assembly recognizes that it is in the best interests of all persons with severe disabilities that the employment options created pursuant to this part 8 expand the opportunities for all persons with severe disabilities to work in integrated employment settings.

24-103-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Bundling" means a state agency consolidating two or more solicitations for

services previously provided or performed under separate smaller contracts into a single solicitation that is likely to be unsuitable for award to a nonprofit agency due to any of the following:

(a) The diversity, size, or specialized nature of the elements of the required services;

(b) The aggregate dollar value of the anticipated award; or

(c) The geographical dispersion of the contract performance sites.

(2) "Department" means the department of human services.

(3) "Nonprofit agency" means a private nonprofit organization established under the laws of the United States or this state that is operated in this state in the interest of persons with severe disabilities or that specializes in services for persons with severe disabilities, the net income of which does not benefit in whole or in part any shareholder or officer.

(4) "Self-certified vendor" means a nonprofit agency that has applied and been approved by the department to bid on certain services solicitations pursuant to this part 8.

(5) "Services solicitation" means a solicitation by a state agency for the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than products that are merely incidental to the required performance.

(6) "Severe disability" means one or more physical or mental disabilities that constitute a substantial impairment to employment and that are of such a nature as to require multiple vocational rehabilitation services over an extended period.

(7) "State agency" means any state office, department, commission, institution, or bureau, or any agency, division, or unit within a department or office. Notwithstanding the provisions of section 24-101-105, "state agency" shall include each institution of higher education and the Colorado commission on higher education. "State agency" shall not include any municipality, county, school district, special district, or any other local government in the state.

24-103-803. Nonprofit agencies - self-certified vendor list - creation. (1) Any nonprofit agency that is interested in performing state services and that would like to bid on solicitations for such services through the set aside program created in this part 8 shall first apply to the department, in a manner to be determined by the department, to become a self-certified vendor pursuant to this section.

(2) The department shall accept applications from any nonprofit agency that seeks to become a self-certified vendor to bid on certain services solicitations. In order for a nonprofit agency to become a self-certified vendor, the nonprofit agency shall certify that:

(a) The nonprofit agency is an independent tax-exempt charitable or social welfare organization operating under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and is operating in Colorado;

(b) The nonprofit agency is registered on the centralized supplier database of all businesses that are interested in providing goods and services to the state, which database is created by the executive director of the department of personnel pursuant to section 24-102-202.5;

(c) The nonprofit agency satisfies the statutory requirements to be eligible to bid on a state services solicitation pursuant to section 24-103-401 and any rules promulgated by the department of personnel in furtherance of said section;

(d) The nonprofit agency would be capable of hiring and would employ people to perform any service for which the nonprofit agency bids, and that of those people employed a total of seventy-five percent would be persons with severe disabilities and a minimum of twenty percent would be persons with severe disabilities who have developmental disabilities as defined in section 27-10.5-102, C.R.S.; and

Editor's note: This version of paragraph (d) is effective until March 1, 2014.

(d) The nonprofit agency would be capable of hiring and would employ people to perform any service for which the nonprofit agency bids, and that of those people employed a total of seventy-five percent would be persons with severe disabilities and a minimum of twenty percent would be persons with severe disabilities who have developmental disabilities as defined in section 25.5-10-202, C.R.S.; and

Editor's note: This version of paragraph (d) is effective March 1, 2014.

(e) Any other criteria consistent with the purposes of this part 8 that are deemed necessary by the department.

(3) The department shall create and maintain a list of all nonprofit agencies that have attained self-certified vendor status and shall make the list available to the department of personnel. The department of personnel shall distribute the list to each state agency.

(4) A nonprofit agency's self-certified vendor status is valid for one year after the date that the nonprofit agency's self-certification application was approved. After one year, a nonprofit agency is required to reapply to the department for self-certified vendor status to be eligible to respond to a set aside solicitation pursuant to this part 8.

(5) (a) Nothing in this part 8 shall be construed to require a nonprofit agency that seeks to respond to services solicitations to become a self-certified vendor; except that a nonprofit agency shall not be eligible to bid for a set aside solicitation pursuant to this part 8 unless the nonprofit agency is self-certified pursuant to this section.

(b) Nothing in this part 8 shall be construed to prevent a nonprofit agency from bidding on any state agency solicitation that is not a set aside solicitation pursuant to this part 8.

24-103-804. Services solicitations - categorical identification. (1) (a) The department of personnel shall publish a list of the services that state agencies seek through services solicitations and shall make the list available to nonprofit agencies on an annual basis. As part of a nonprofit agency's application to become a self-certified vendor pursuant to section 24-103-803, the nonprofit agency shall specify the tasks and activities that it is able to perform for state agencies based on the list created by the department of personnel.

(b) The department shall review each application submitted pursuant to paragraph (a) of this subsection (1) and create a list of the types of tasks and activities that it deems appropriate for a self-certified vendor to perform. The department shall create an initial tasks and activities list within ninety days after August 5, 2008, and shall review and update the list at least annually.

(2) After creating the tasks and activities list pursuant to subsection (1) of this section, the department shall meet with the state purchasing director or the director's designee to determine the types of services solicitations that would involve some or all of the tasks or activities specified on the list and that could be successfully performed by self-certified vendors. The department and the state purchasing director or the director's designee shall solicit input from the purchasing director of each state agency regarding the nature of services for which the state agency periodically issues solicitations for bids and the type of services that the state agency believes could be successfully performed by a self-certified vendor. Within ninety days after the establishment of the list of tasks and activities created pursuant to subsection (1) of this section, the department shall create a list of the types of services solicitations that it deems appropriate for a self-certified vendor to perform. The list shall be referred to as the "services set aside list". The department shall review and update the list at least annually.

(3) The department shall provide the services set aside list to the state purchasing director. The state purchasing director shall provide the services set aside list to the purchasing director of each state agency and shall make the list available to any nonprofit agency that is self-certified to bid on services solicitations pursuant to this part 8.

24-103-805. Contract set asides - bid process created by department of personnel - obligation of state agencies - rules. (1) Any state agency that intends to solicit bids for a service that is included on the services set aside list created pursuant to section 24-103-804 shall first solicit bids from self-certified vendors for such service and shall follow the procedures specified in this subsection (1):

(a) If two or more self-certified vendors bid on the solicitation for the services, the purchasing director of the state agency shall award a contract to one of the self-certified vendors based on a competitive price determination.

(b) If one self-certified vendor bids on the solicitation for the services, the purchasing director of the state agency shall award a contract to the self-certified vendor and shall ensure that the contract is awarded at a fair and reasonable price of up to fifteen percent above the fair market value of the services, subject to available appropriations.

(c) If the state agency does not receive a bid from any self-certified vendor for the services, the state agency is permitted to procure the services through other approved procurement methods and shall not be subject to the requirements of this part 8 for that specific solicitation.

(2) The department of personnel shall, within one hundred eighty days after August 5, 2008, establish a process whereby any state agency that intends to solicit bids for a service that is included on the services set aside list created pursuant to section 24-103-804 may solicit bids solely from self-certified vendors.

(3) Any state agency that has awarded a solicitation for services to a self-certified vendor pursuant to paragraph (a) or (b) of subsection (1) of this section shall, before the expiration of the term of the contract, renegotiate a fair and reasonable price for the services with the self-certified vendor that has performed the services for the state agency. The state agency is not permitted to solicit new bids for the services performed by the self-certified vendor unless one of the following occurs:

(a) The nonprofit agency that is the self-certified vendor no longer wishes to perform the services for the state agency;

(b) The state agency decides to perform the services internally and hires employees who will be employees of the state to perform the services;

(c) The state agency no longer needs the service that was provided by the self-certified vendor; or

(d) The self-certified vendor has not met the requirements for the services offered.

(4) Any state agency that is required to solicit bids for a service that is included on the services set aside list is prohibited from bundling the service with one or more other services not included on the services set aside list before soliciting bids from self-certified vendors pursuant to this section. If the state agency has not received a bid from any self-certified vendor and is therefore authorized to procure the services through other approved procurement methods, the bundling prohibition shall no longer apply to the state agency for that specific solicitation for services.

(5) The department of personnel shall promulgate rules to implement the requirements of this section pursuant to section 24-102-101. Such rules shall be promulgated in accordance with the provisions of article 4 of this title.

(6) Any state agency that has awarded a solicitation for services to a self-certified vendor pursuant to this part 8 shall report to the department of personnel regarding the progress of the solicitation in a manner and frequency to be determined by the department of personnel.

(7) Any state agency that awards a services solicitation to a self-certified vendor

pursuant to this part 8 shall include in the contract with such self-certified vendor the requirement that the vendor must maintain the requirements to be a self-certified vendor pursuant to section 24-103-803 (2) for the entire term of the contract.

24-103-806. Compliance with state and federal laws. Any self-certified vendor that is awarded a solicitation for services pursuant to this part 8 is required to comply with state and federal laws regarding employee compensation, employee protections, workers' compensation, and workplace safety.

24-103-807. Additional requirements. Any self-certified vendor that bids to perform a services solicitation shall include in the bid the percentage of the total contract price that it will spend on the salary or wages of the employees hired to perform the services solicitation, not including the salary or wages for administrative staff or employees.

ARTICLE 103.5

Contract Performance

24-103.5-101. Monitoring of vendor performance - definitions. (1) (a) For purposes of this section, "governmental body" shall have the same meaning as set forth in section 24-101-301 (10); except that, for purposes of this section, "governmental body" shall also include elected officials.

(b) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1853, § 32, effective June 9, 2010.)

(2) Each personal services contract entered into pursuant to this code with a value of one hundred thousand dollars or more shall contain:

(a) Performance measures and standards developed specifically for the contract by the governmental body administering the contract. The performance measures and standards shall be negotiated by the governmental body and the vendor prior to execution of the contract and shall be incorporated into the contract. The measures and standards shall be used by the governmental body to evaluate the performance of the governmental body and the vendor under the contract.

(b) An accountability section that requires the vendor to report regularly on achievement of the performance measures and standards specified in the contract and that allows the governmental body to withhold payment until successful completion of all or

part of the contract and the achievement of established performance standards. The accountability section shall include a requirement that payment by the governmental body to the vendor shall be made without delay upon successful completion of all or any part of the contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.

(c) Monitoring requirements that specify how the governmental body and the vendor will evaluate each others' performance, including progress reports, site visits, inspections, and reviews of performance data. The governmental body shall use one or more monitoring processes to ensure that the results, objectives, and obligations of the contract are met.

(d) Methods and mechanisms to resolve any situation in which the governmental body's monitoring assessment determines noncompliance, including termination of the contract.

(3) Each governmental body administering the personal services contract shall, within existing resources of the governmental body, designate at least one person within the governmental body responsible for monitoring whether the criteria described in subsection (2) of this section are met, whether and to what extent the contract was completed according to the performance schedule specified in the contract, satisfaction of the scope of the vendor's work as specified in the contract, and whether and to what extent the vendor met or exceeded budgetary requirements under the contract.

(4) Before the governmental body may enter into a personal services contract, the person selected in subsection (3) of this section shall certify that the proposed performance measures and standards, data sources, and data collection methods provide a valid basis for assessing the vendor's performance.

(5) In the case of a contract that has been renewed in a subsequent fiscal year, the governmental body shall certify annually whether the vendor on any contract is complying with the terms of the contract. If the governmental body determines that the vendor has not complied with the contract terms, including but not limited to performance standards and measurable outcomes, the state shall be entitled to any remedy available under law in the case of contract nonperformance, including but not limited to termination of the contract and the return of any and all payments made to the vendor by the state under the contract; except that the recovery of any moneys by the state shall be reduced by the value of any contractual benefits realized by the state from partial performance by the vendor under the contract. If a vendor is deemed to be in default under any one particular contract with the state, the state may, upon a showing of good cause, declare any or all other contracts it has entered into with the vendor to be in default.

(6) The centralized contract management system required by section 24-102-205 (3) (a) shall include such information as will allow the executive director and the governmental body to evaluate the prior record of a particular vendor in meeting performance measures and standards under paragraph (a) of subsection (2) of this section

in connection with a personal services contract to which it has been a party. If a particular vendor demonstrates a gross failure to meet such performance measures and standards in connection with one or more contracts to which it has been a party, the executive director, upon the request of and with a showing of good cause by a governmental body, may remove the name of the vendor from the database and prohibit the vendor from bidding on future contracts. Upon a showing of good cause by a vendor or governmental body, the executive director may reinstate the name of the vendor to the database. If a vendor disputes the removal of its name from the database or the prohibition of the vendor from bidding on future contracts, the vendor may exercise the debarment protest and appeal rights specified in section 24-109-105, 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal filed with the executive director or the Denver district court, as applicable, the vendor is not satisfied with the resolution of the appeal, the vendor may file a rebuttal statement that shall be maintained as part of the vendor evaluation record. The vendor's sole remedy in contesting such removal or prohibition shall be reversal of the debarment or submission of the rebuttal statement in accordance with the requirements of this subsection (6).

(7) Notwithstanding any other provision of this section:

(a) Nothing in this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.

(b) The provisions of this section shall not take effect until the centralized contract management system required by section 24-102-205 (3) (a) has been implemented.

ARTICLE 104

Specifications

PART 1

DEFINITIONS

24-104-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

PART 2

SPECIFICATIONS

24-104-201. Executive director - rules. The executive director shall promulgate rules governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the state.

24-104-202. Duties of the executive director - specifications. The executive director shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the state.

24-104-203. Exempted items. Specifications for supplies, services, or construction items to be procured by purchasing agencies exempted from centralized procurement pursuant to section 24-102-302 may be prepared by those purchasing agencies in accordance with the provisions of this article and rules promulgated pursuant to this article.

24-104-204. Relationship with using agencies. The executive director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate, in writing, to a using agency the authority to prepare and utilize its own specifications.

24-104-205. Maximum practicable competition. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and shall not be unduly restrictive.

24-104-206. Ownership considerations. When feasible, specifications shall incorporate the concepts of energy efficiency, value analysis, and life-cycle cost.

24-104-207. Specifications prepared by architects and engineers. The requirements of this article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications unless otherwise provided by law.

ARTICLE 105

Construction Contracts

PART 1

MANAGEMENT OF CONSTRUCTION CONTRACTING

24-105-101. Responsibility for selection of methods of construction contracting management. The executive director shall promulgate rules providing for as many alternative methods of construction contracting management as he may determine to be feasible. These rules shall set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project, grant to the head of a division within the department or the head of a purchasing agency which is responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project, and require the procurement officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

24-105-102. Performance evaluation reports - definitions. (1) (a) As used in this section, unless the context otherwise requires:

(I) "Governmental body" shall have the same meaning as set forth in section 24-101-301 (10); except that, for purposes of this section, "governmental body" shall also include elected officials.

(II) "Report" means a contractor performance evaluation report required by this section.

(b) (Deleted by amendment, L. 2010, (SB 10-003), ch. 391, p. 1853, § 33, effective June 9, 2010.)

(2) In the case of each construction contract with a value of five hundred thousand dollars or more, the governmental body shall prepare, prior to completion of the contract, a contractor performance evaluation report, which shall be completed on a form provided by the department. Notwithstanding any other provision of this section, the provisions of this section shall not take effect until the centralized contract management system required by section 24-102-205 (3) (a) has been implemented.

(3) Each report shall evaluate the contractor's performance on a particular project and shall include, at a minimum, the following information:

(a) The name of the governmental body, the name of the particular project and any

applicable contract number, the type of procurement method used for awarding the contract, and the name of the employee within the governmental body responsible for completing the report;

(b) The initial amount budgeted for completion of the contract and the final amount paid by the governmental body upon completion of the contract;

(c) The initial completion date as specified in the contract and the date on which the contract was actually completed;

(d) A numerical rating that assesses the contractor's overall qualitative performance in connection with the contract; and

(e) A numerical rating that assesses the contractor's overall safety performance in connection with the contract.

(4) Each report shall be kept on file by the governmental body and shall be forwarded, within thirty days of the date on which the report is completed, to a central database managed by the department. Each report shall be maintained in the database for at least five years after being forwarded to the database.

(5) Each governmental body shall establish appropriate procedures to ensure that each report relating to a prospective contractor is reviewed by the governmental body prior to the governmental body making any future contract awards, regardless of the procurement method used. The review required by this subsection (5) shall be undertaken to ensure that prospective contractors meet applicable contractor responsibility standards and to enable the governmental body to assess contractor qualifications and capabilities for purposes of competitive bid evaluations.

(6) If a vendor disputes any information contained in a report, the vendor may exercise the contract rights specified in section 24-109-106, 24-109-107, 24-109-201, or 24-109-202. If, upon completion of an appeal filed with the executive director or the Denver district court, as applicable, the vendor is not satisfied with the resolution of the appeal, the vendor may file, on a form prepared by the department, a rebuttal statement that shall be maintained as part of the vendor evaluation record. The vendor's sole remedy in contesting information contained in the report shall be removal of the evaluation, correction of the evaluation, or submission of the rebuttal statement in accordance with the requirements of this subsection (6).

(7) The requirements of this section shall be in addition to any requirements relating to the evaluation of contract performance specified in section 24-102-205 or article 103.5 of this title, or otherwise.

PART 2

BONDS

24-105-201. Bid security. (1) Bid security shall be required for all competitive

sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed fifty thousand dollars. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or otherwise supplied in a form satisfactory to the state. Nothing in this subsection (1) prevents the requirement of such bonds on construction contracts under fifty thousand dollars.

(2) Bid security shall be in an amount equal to at least five percent of the amount of the bid.

(3) When the invitation for bids requires security, noncompliance requires that the bid be rejected as nonresponsive.

(4) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in section 24-103-202 (6). If a bidder is permitted to withdraw his bid before award, no action shall be had against the bidder or the bid security.

24-105-202. Contract performance and payment bonds. (1) When a construction contract is awarded in excess of one hundred thousand dollars, the following bonds or security shall be delivered to the state and shall become binding on the parties upon the execution of the contract:

(a) A performance bond satisfactory to the state, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the state, in an amount equal to fifty percent of the price specified in the contract; and

(b) A payment bond satisfactory to the state, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the state, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to fifty percent of the price specified in the contract.

(2) Nothing in this section shall be construed to limit the authority of the state to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in subsection (1) of this section.

(3) Suits on payment bonds and labor and payment bonds shall be brought in accordance with sections 38-26-105 to 38-26-107, C.R.S.

24-105-203. Bond forms and copies. (1) The form of bonds required by this part 2 shall be as provided in sections 38-26-105 to 38-26-107, C.R.S.

(2) Any person may request and obtain from the state a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

PART 3

CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

24-105-301. Contract clauses and their administration. (1) The executive director shall promulgate rules requiring the inclusion in state construction contracts of clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions affected by and covering the following subjects:

(a) The unilateral right of the state to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work;

(b) Variations occurring between estimated quantities of work on a contract and actual quantities;

(c) Suspension of work ordered by the state; and

(d) Site conditions differing from those indicated in the contract or ordinarily encountered; except that differing site condition clauses required by the rules need not be included in a contract when the contract is negotiated or when the contractor provides the site or design.

(2) (a) Adjustments in price shall be computed in one or more of the following ways:

(I) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(II) By unit prices specified in the contract or subsequently agreed upon;

(III) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(IV) In such other manner as the contracting parties may mutually agree; or

(V) In the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state pursuant to the applicable sections of any rules issued under article 107 of this title and subject to the provisions of article 109 of this title.

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 24-103-403.

(3) The executive director shall promulgate rules requiring the inclusion in state construction contracts of clauses providing for appropriate remedies and covering the following subjects:

(a) Liquidated damages as appropriate;

(b) Specified excuses for delay or nonperformance;

(c) Termination of the contract for default; and

(d) Termination of the contract in whole or in part for the convenience of the state.

(4) The contract clauses promulgated under this section shall be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2). However, the head of a division within the department designated by the executive director or the head of a purchasing agency may vary the clauses for inclusion in any particular state construction contract so long as any variations are supported by a written determination that describes the circumstances justifying such variations and notice of any material variation is stated in the invitation for bids or request for proposals. No variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection (4).

24-105-302. Fiscal responsibility. Every contract modification, change order, or contract price adjustment under a construction contract with the state in excess of an amount specified in the contract shall be subject to prior written certification by the controller or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget as to the effect of the contract modification, change order, or adjustment in contract price on the total project or contract budget. In the event that the certification of the controller or other responsible official discloses a resulting increase in the total project or contract budget, the procurement officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project or contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; except that, with respect to the validity of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.

ARTICLE 106

Modification and Termination of Contracts

24-106-101. Contract clauses - price adjustments - additional clauses - modification. (1) The executive director may promulgate rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate clauses covering the following:

(a) The unilateral right of the state to order, in writing, changes in the work within

the scope of the contract and temporary stopping of work or delaying of performance; and

(b) Variations occurring between estimated quantities of work in a contract and actual quantities.

(2) (a) Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed in one or more of the following ways:

(I) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(II) By unit prices specified in the contract or subsequently agreed upon;

(III) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(IV) In such other manner as the contracting parties may mutually agree; or

(V) In the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules promulgated under article 107 of this title and subject to the provisions of article 109 of this title.

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 24-103-403.

(3) The executive director may promulgate rules including, but not limited to, rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and covering the following subjects:

(a) Liquidated damages as appropriate;

(b) Specified excuses for delay or nonperformance;

(c) Termination of the contract for default; and

(d) Termination of the contract in whole or in part for the convenience of the state.

(4) Any contract clauses promulgated under this section shall be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2). However, the executive director or the head of a purchasing agency may vary the clauses for inclusion in any particular state contract so long as any variations are supported by a written determination that describes the circumstances justifying such variations and notice of any material variation is stated in the invitation for bids or request for proposals. No variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection (4).

ARTICLE 107

Cost Principles

24-107-101. Administrative rules - cost reimbursement. The executive director may promulgate rules setting forth cost principles which may be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs; except that, if a written determination is approved by a person who is in a higher ranking employment position than a procurement officer, such cost principles may be modified by contract.

ARTICLE 108

Supply Management

24-108-101 to 24-108-401. (Repealed)

ARTICLE 109

Remedies

PART 1

PRELITIGATION RESOLUTION OF CONTROVERSIES

24-109-101. Resolution of controversies. (1) The head of a purchasing agency or a designee is authorized to settle and resolve any questions regarding:

(a) Any protest concerning the solicitation or award of a contract;

(b) Debarment or suspension from consideration for award of contracts; and

(c) Any controversy arising between the state and a contractor by virtue of a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(2) Any decision of the head of a purchasing agency or a designee is subject to appeal de novo to the executive director or to the district court of the city and county of Denver pursuant to the provisions of this article.

(3) The provisions of section 24-4-105 shall not apply to the administrative procedures established pursuant to this article.

24-109-102. Protested solicitations and awards. (1) Any actual or prospective

bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the head of a purchasing agency or a designee. The protest shall be submitted in writing within seven working days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) The head of a purchasing agency or a designee shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. The decision shall be based on and limited to a review of the issues raised by the aggrieved bidder, offeror, or contractor and shall set forth each factor taken into account in reaching the decision. This authority shall be exercised pursuant to rules promulgated to provide for the expeditious resolution of the protest.

24-109-103. Stay of procurements during protests. (Repealed)

24-109-104. Entitlement to costs. When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but, due to a defect in the solicitation, was not, the protestor shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs. No other costs shall be permitted, and reasonable costs shall not include attorney fees. These costs shall be paid from funds appropriated or otherwise made available to the agency which is determined to be responsible for the defect in the solicitation. Such determination shall be made by the executive director.

24-109-105. Debarment and suspension. (1) (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the head of a purchasing agency or a designee, after consultation with the using agency and the attorney general, shall have authority to debar a person for any of the reasons set forth in subsection (2) of this section from consideration for award of contracts. The debarment shall not be for a period of more than three years.

(b) The head of a purchasing agency or a designee, after consultation with the using agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that such person has engaged in activities that may lead to debarment. The suspension shall not be for a period exceeding three months. However, if a criminal charge has been issued for an offense that would be a cause for debarment under subsection (2) of this section, the

suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person. If a person is suspended because a criminal charge has been issued against an officer, director, partner, manager, key employee, or other principal of the suspended person, the suspension may remain in effect until after the trial of the officer, director, partner, manager, key employee, or other principal or until after the charges against such officer, director, partner, manager, key employee, or other principal have been dismissed.

(c) The authority to debar or suspend shall be exercised pursuant to rules which shall provide for an expeditious resolution of the issue of debarment or suspension.

(2) A person may be debarred for any of the following reasons:

(a) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Willful material failure to perform in accordance with the terms of one or more contracts, following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of, one or more contracts;

(e) The person is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state, or local governmental entity; or

(f) The department of labor and employment has imposed three fines on a contractor within five years pursuant to section 8-17-104, C.R.S., for failure to satisfy Colorado labor requirements.

24-109-106. Resolution of contract and breach of contract controversies - applicability - authority. (1) This section applies to controversies between the state and a contractor which arise under, or by virtue of, a contract between them, including, without limitation, controversies which are based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(2) The head of a purchasing agency or a designee is authorized to settle and resolve any controversy described in subsection (1) of this section. This authority shall be exercised pursuant to rules which shall provide for an expeditious resolution of the controversy.

24-109-107. Issuance and appeal of decision. (1) The head of a purchasing

agency or a designee shall promptly issue a written decision regarding any protest, debarment or suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and give notice to the protestor, prospective contractor, or contractor of his or her right to administrative and judicial reviews as provided for in this article.

(2) A decision shall be effective unless stayed or until reversed on appeal. A copy of the decision rendered under subsection (1) of this section shall be mailed or otherwise furnished immediately to the protestor, prospective contractor, or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor appeals the decision to the executive director or commences an action in court pursuant to this article. Any appeal from a decision under this section shall not be subject to the provisions of section 24-4-105.

(3) If the head of a purchasing agency or a designee does not issue a written decision regarding a contract controversy within twenty working days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if a decision against him or her had been rendered.

PART 2

APPEALS

24-109-201. Appeal to the executive director. Unless an action has been initiated previously in the district court of the city and county of Denver pursuant to this article, the executive director shall have the authority to review and determine de novo any appeal by an aggrieved person from a decision of the head of a purchasing agency or a designee rendered pursuant to section 24-109-107. The executive director is authorized to designate another person to exercise his or her powers pursuant to this part 2.

24-109-202. Rules of procedure. The executive director shall adopt rules of procedure which, to the fullest extent possible, provide for the expeditious resolution of appeals of controversies. The only parties to the appeals shall be the persons aggrieved by decisions of the head of a purchasing agency or a designee and the appropriate state agency. Section 24-4-105 shall not apply to reviews and determinations made by the executive director or his or her designee pursuant to this article.

24-109-203. Time limitation for appeals. (1) In the case of an appeal to the executive director from a decision regarding a protested solicitation or award, the

aggrieved person shall file an appeal within ten working days of the date that a decision is mailed pursuant to section 24-109-107 (2).

(2) In the case of an appeal to the executive director from a decision regarding a debarment, suspension, or contract controversy, the aggrieved person shall file an appeal within twenty working days of receipt of a decision rendered or deemed to be rendered pursuant to section 24-109-107.

24-109-204. Decisions of the executive director. (1) On each appeal submitted, the executive director or the executive director's designee shall promptly decide the contract controversy, debarment, or suspension or whether the solicitation or award was in accordance with the procedures provided in this code, regulations enacted pursuant to this code, and the terms and conditions of the solicitation. The decision shall be in writing. A copy of any decision shall be provided to all parties.

(2) A written decision pursuant to subsection (1) of this section shall be issued within the following time periods:

(a) In the case of any protest concerning the solicitation or award of a contract or of debarment or suspension from consideration for award of contract, within thirty working days after receipt of the appeal; and

(b) In the case of any controversy arising between the state and a contractor by virtue of a contract between them, within forty-five days after receipt of the appeal.

24-109-205. Appeals to district court. An appeal of a decision by the executive director or a designee rendered pursuant to section 24-109-201 or by the head of a purchasing agency or a designee rendered pursuant to section 24-109-107 shall be filed with the district court for the city and county of Denver, which shall have exclusive jurisdiction to hear such appeals. Any judicial action under this part 2 shall be de novo, and the provisions of section 24-4-106 shall not apply.

24-109-206. Time limitations on appeals to the district court. (1) A judicial review of a decision of the executive director or a designee or of the head of a purchasing agency or a designee shall be initiated within the following time periods:

(a) In the case of an action between the state and a bidder, offeror, or contractor, prospective or actual, who is aggrieved in connection with the solicitation or award of a contract, within ten working days after receipt of the decision;

(b) In the case of a suspension or debarment, within six months after receipt of the decision; or

(c) In the case of an action on a contract or for breach of a contract, within twenty

working days after the date of the decision.

PART 3

INTEREST

24-109-301. Interest. Interest on amounts determined to be due to a contractor or to the state shall be payable from the date the payment was due in accordance with the terms of the contract or the claim was filed, whichever is earlier, through the date of decision or judgment, whichever is later. Interest shall be calculated at eleven percent per annum.

PART 4

SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

24-109-401. Applicability. This part 4 shall apply in situations in which it is determined judicially or administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of the law.

24-109-402. Remedies prior to an award. If, prior to the awarding of a contract, it is determined that a solicitation or the proposed award is in violation of the law, then the solicitation or proposed award shall be cancelled or shall be revised in order to comply with the law.

24-109-403. Remedies after an award. (1) If, after the awarding of a contract, it is determined that the solicitation or the award of the contract is in violation of the law and if the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed, if it is determined that doing so is in the best interests of the state, or the contract may be terminated, and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to its termination, plus a reasonable profit.

(2) If, after the awarding of a contract, it is determined that the solicitation or the award of the contract is in violation of the law and if the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void, or the contract may be ratified and affirmed if such action is in the best interests of the state, but such ratification and affirmation shall be without prejudice to the state's right to such damages as may be appropriate.

24-109-404. Liability of public employees. If any governmental body purchases any supplies, services, or construction contrary to the provisions of this code or the rules promulgated pursuant thereto, the head of such governmental body and the public employee, which for the purposes of this section includes elected officials, actually making such purchase shall be personally liable for the costs thereof. If such supplies, services, or construction are unlawfully purchased and paid for with state moneys, the amount thereof may be recovered in the name of the state in an appropriate civil action.

ARTICLE 110

Intergovernmental Relations

PART 1

DEFINITIONS

24-110-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit or by a public procurement unit with an external procurement activity.

(2) "External procurement activity" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States is an external procurement activity.

(3) "Local public procurement unit" means any county, city, county and city, municipality, or other political subdivision of the state, any public agency of any such political subdivision, any public authority, any educational, health, or other institution, and, to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction.

(3.5) "Public benefit nonprofit entity" means an organization that:

(a) Is exempt from federal taxation under 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended;

(b) Does not possess 501 (c) (4) status under the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. sec. 501 (c) (4); and

(c) Receives funds from federal, state, or local governmental sources.

(4) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(5) "State public procurement unit" means the department of personnel or any

other purchasing agency of this state.

PART 2

COOPERATIVE PURCHASING

24-110-201. Cooperative purchasing authorized. (1) Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units, external procurement activities, or procurement consortiums that include as members tax-exempt organizations as defined by section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

(2) With prior written approval of the executive director and under procedures established by rule, a state public procurement unit may purchase goods or services under the terms of a contract between a vendor and an external procurement activity or a local public procurement unit without complying with the requirements of section 24-102-202.5 and article 103 of this title.

24-110-202. Sale, acquisition, or use of supplies by a public procurement unit. Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of article 103 of this title.

24-110-203. Cooperative use of supplies or services. Any public procurement unit may enter into an agreement, independent of the requirements of article 103 of this title, with any other public procurement unit or external procurement activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

24-110-204. Joint use of facilities. Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

24-110-205. Supply of personnel, information, and technical services. (1) Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel to the requesting public procurement unit or external procurement activity.

(2) Informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity if the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay any expenses incurred in providing such services, in accordance with the agreement between the parties.

(3) Upon request, the executive director through the division of local government, within the department of local affairs, may make available to local public procurement units and external procurement activities the following items, including, but not limited to:

(a) Standard forms;

(b) Printed manuals;

(c) Product specifications and standards;

(d) Quality assurance testing services and methods;

(e) Lists of qualified products;

(f) Source information;

(g) Lists of common use commodities;

(h) Supplier prequalification information;

(i) Supplier performance rating;

(j) Lists of debarred and suspended bidders;

(k) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and

(l) Contracts or published summaries of contracts, including price and time of delivery information.

(4) The state, through the division of local government within the department of local affairs, may provide to local public procurement units and external procurement activities technical services, including, but not limited to, the following:

(a) The development of products specifications;

(b) The development of quality assurance test methods including receiving, inspection, and acceptance procedures;

(c) The use of product testing and inspection facilities; and

(d) The use of personnel training programs.

24-110-206. Use of payments received by a supplying public procurement

unit. All payments from any public procurement unit or external procurement activity which are received by a public procurement unit for supplying personnel or services shall be available for use as authorized by law or pursuant to fiscal rules.

24-110-207. Public procurement units - compliance with code. Whenever the public procurement unit or external procurement activity which is administering a cooperative purchase agreement complies with the requirements of this code, the public procurement unit which is participating in such agreement shall also be deemed to have complied with this code. No public procurement unit may enter into a cooperative purchasing agreement for the purpose of circumventing this code.

24-110-207.5. Certification of certain entities as local public procurement units - rules - report. (1) The executive director may certify any of the following entities as a local public procurement unit:

(a) Any nonprofit community mental health center, as defined in section 27-66-101, C.R.S., any nonprofit community mental health clinic, as defined in section 27-66-101, C.R.S., any nonprofit community centered board, as defined in section 27-10.5-102, C.R.S., or any nonprofit service agency, as defined in section 27-10.5-102, C.R.S., if the entity uses the supplies, services, or construction procured for the public mental health system or the public developmentally disabled system;

Editor's note: This version of paragraph (a) is effective until March 1, 2014.

(a) Any nonprofit community mental health center, as defined in section 27-66-101, C.R.S., any nonprofit community mental health clinic, as defined in section 27-66-101, C.R.S., any nonprofit community-centered board, as defined in section 25.5-10-202, C.R.S., or any nonprofit service agency, as defined in section 25.5-10-202, C.R.S., if the entity uses the supplies, services, or construction procured for the public mental health system or the public developmental disability system;

Editor's note: This version of paragraph (a) is effective March 1, 2014.

(b) Any nonprofit entity eligible to receive funds pursuant to section 24-32-705 or 24-32-717, if the entity uses the supplies, services, or construction procured for the rehabilitation, construction, acquisition, or provision of low- or moderate-income housing; or

(c) Any public benefit nonprofit entity, if the entity uses the supplies, services, or construction procured in the furtherance of its stated nonprofit purpose.

(2) The executive director shall adopt such rules as are necessary to implement the certification process required by this section.

(3) Repealed.

24-110-208. Review of procurement requirements. To the extent possible, the executive director may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public procurement units. The executive director, through the division of local government within the department of local affairs, may also collect such information from local public procurement units. The executive director may make available all such information to any public procurement unit upon request.

PART 3

CONTRACT CONTROVERSIES

24-110-301. Contract controversies. In the case of a cooperative purchasing agreement, controversies which arise between an administering public procurement unit and its bidders, offerors, or contractors may be resolved in accordance with article 109 of this title.

ARTICLE 111

Preferences in Awarding Contracts - Federal Assistance Requirements

24-111-101. Exemptions from prescribed methods of source selection. Notwithstanding the requirements of section 24-103-201, state procurement contracts, where appropriate, shall be awarded as provided in sections 17-24-111, 24-30-1203, and 26-8.2-103, C.R.S.

24-111-102. Priorities among preferences. (1) When two or more socioeconomic procurement programs are applicable to the same procurement, businesses benefitting from such programs shall be considered in the following order of precedence:

(a) Correctional industries;

(b) Industries for the visually impaired;

(c) Industries for persons with severe disabilities.

24-111-103. Compliance with federal requirements. When a procurement involves the expenditure of federal assistance or contract funds, the executive director of the department of personnel or the head of a purchasing agency shall comply with the appropriate federal law and the rules and regulations promulgated pursuant to such law which are mandatorily applicable.

ARTICLE 112

Effective Date - Applicability

24-112-101. Effective date - applicability. (1) This code shall take effect on January 1, 1982. The provisions of this code apply to contracts solicited or entered into on or after said date, although the parties to a contract may agree to the application of this code to a contract solicited or entered into prior to January 1, 1982.

(2) Contracts validly entered into prior to January 1, 1982, and the rights, duties, and interests flowing from them remain valid on or after said date and may be terminated, performed, or enforced as required or permitted by any statute or other law amended or repealed by the enactment of this code as though such repeal or amendment had not occurred unless the parties agreed at the time of formation of such contract that the provisions of this code would apply.

GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE

ARTICLE 113

State Government Competition
with Private Enterprise

24-113-101. Legislative declaration. The general assembly hereby finds and declares that state government competes with the private sector when state government provides certain goods and services to the public. Recognizing this problem, it is the intent of the general assembly and the purpose of this article to provide additional economic opportunities to private industry and to regulate competition by state agencies, including institutions of higher education. To that end, it is the intent of the general assembly that neither the faculty nor administration of such institutions use research

equipment or facilities purchased or provided with state funds to provide goods or services to the public for a fee when such action is in direct competition with private companies that provide similar goods or services.

24-113-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the Colorado commission on higher education.

(2) "Institution of higher education" means a state-supported college, university, or community college.

(3) "Invited guests" means persons who enter onto a campus for an educational, research, or public service activity and not primarily to purchase or receive goods and services not related to the educational, research, or public service activity for which such persons enter onto the campus.

(4) "Private enterprise" means an individual, firm, limited liability company, partnership, joint venture, corporation, association, or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

(5) "State agency" means a department, office, commission, institution, board, or other agency of state government. Such term shall not include the Colorado state museum, the state historical society, or the Auraria higher education center established in article 70 of title 23, C.R.S., nor shall such term include institutions of higher education.

24-113-103. State competition with private enterprise prohibited - exceptions. (1) A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless specifically authorized by law.

(2) A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section.

(3) The restrictions on competition with private enterprise contained in this section do not apply to:

(a) The development, operation, and management of state parks, historical monuments, and hiking or equestrian trails or to the management, protection, or restoration of Colorado's forest and soil resources;

(b) Correctional industries established and operated by the department of corrections pursuant to article 24 of title 17, C.R.S.;

(c) State veterans' homes, except the state veterans' home at Rifle, Colorado;

(d) The Colorado tourism board;

(e) Printing and distributing information to the public if the state agency is otherwise authorized to do so and printing or copying public records or other material relating to the state agency's public business if the costs of such printing, copying, and distribution are recovered through fees and charges;

(e.5) Printing of the first class, as described in section 24-70-203 (1) (a), performed by the legislative council print shop under a contract awarded through competitive bidding pursuant to section 2-3-304 (7), C.R.S.

(f) The department of public safety;

(g) The construction, maintenance, and operation of state transportation facilities;

(h) The provision of free medical services or equipment to indigents in association with a community service health program; and

(i) The regional transportation district.

(4) The provisions of section 24-113-104 and not the restrictions contained in subsection (1) of this section shall apply to institutions of higher education.

24-113-104. Competition with private enterprise by institutions of higher education - rules. (1) Institutions of higher education shall not, unless specifically authorized by statute:

(a) Provide to persons other than students, faculty, staff, and invited guests, through competitive bidding, goods, services, or facilities that are available from private enterprise, unless the provision of the good, service, or facility offers a valuable educational or research experience for students as a part of their education or fulfills the public service mission of the institution of higher education; however, institutions of higher education may sponsor or provide facilities for recreational, cultural, and athletic events or facilities for food services and sales. If the institution of higher education enters into competitive bidding, its bids shall include all direct and indirect costs of providing the good or service unless the agency receiving the bid requires all bidders to use a specific procedure or formula.

(b) (I) Provide goods, services, or facilities for or through another state agency or unit of local government, including by intergovernmental or interagency agreement, which, if provided directly by the institution of higher education would be in violation of this section.

(II) In determining whether the provision of a good or service offers a valuable teaching, educational, or research experience, the following criteria shall be considered:

(A) Whether the provision of the good, service, or facility is substantially and directly related to the instructional, research, or public service mission of the institution of higher education;

(B) Whether the provision of the good, service, or facility is necessary or

convenient for the campus community;

(C) Whether there is a demand in the public for the good, service, or facility;

(D) Whether the price charged for the good, service, or facility reflects the direct and indirect costs and overhead costs of providing such good, service, or facility and the price in the private marketplace; and

(E) Whether measures have been taken to ensure that the provision of a good, service, or facility is only for students, faculty, staff, or invited guests and not for the general public.

(2) (a) The commission shall develop, after consultation with governing boards of institutions of higher education and Colorado business organizations, guidelines for the provision of goods, services, and facilities to students, faculty, and staff of institutions of higher education and to the invited guests of such students, faculty, and staff.

(b) Repealed.

(3) (a) The governing board of each institution of higher education shall adopt, in accordance with guidelines established by the commission, procedures for the hearing of complaints by privately owned businesses. If a privately owned business makes a complaint of unfair competition in relation to the activities of an institution of higher education, the business shall have an opportunity for a hearing regarding such complaint. The complaint shall first be heard by the chief executive officer of the institution, or his designee, and appeal may be made by the privately owned business to the governing board of the particular institution involved in the complaint.

(b) Repealed.

(4) This section shall not apply to:

(a) The Colorado health sciences center operated by the university of Colorado, except in those cases in which the health sciences center provides prosthetic or medical devices, or services related to such devices, and a surgical or medical treatment or procedure is not involved in the application of the device;

(b) The provision of free medical services or equipment to indigents in association with a community service health program;

(c) Public service radio and television stations licensed to a governing board or to the institution of higher education under its jurisdiction.

24-113-105. State agency competition - complaints - advisory board. (Repealed)

ARTICLE 114

Private Enterprise Employee Protection

24-114-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

(2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure regarding a private enterprise under contract with a state agency which, if not disclosed, could result in the waste of public funds, could endanger the public health, safety, or welfare, or could otherwise adversely affect the interests of the state.

(3) "Employee" means any person employed by a private enterprise under contract with a state agency.

(4) "Private enterprise under contract with a state agency" means any individual, firm, limited liability company, partnership, joint venture, corporation, association, or other legal entity which is a party to any type of state agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction for any department, office, commission, institution, board, or other agency of state government.

(5) "Supervisor" means any person who supervises or is responsible for the work of one or more employees.

24-114-102. Retaliation prohibited. (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor of a private enterprise under contract with a state agency shall initiate or administer any disciplinary action against any employee on account of the employee's disclosure of information concerning said private enterprise. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or to a member of the general assembly the information to be disclosed prior to the time of its disclosure.

24-114-103. Civil actions resulting from disciplinary actions or from disclosure of information. Any employee may bring a civil action in the district court alleging a violation of section 24-114-102. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

FINANCING OF CRITICAL STATE NEEDS

ARTICLE 115

Financing of Critical State Needs

24-115-101. Short title. This article shall be known and may be cited as the "Critical State Needs Financing Act".

24-115-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The population of the state has grown rapidly in recent years, and that growth has increased the burdens placed upon state and local governments.

(b) The state and local governments have found it difficult to maintain existing infrastructure and to fully fund critical needs due to a decline in state revenues that resulted from an economic downturn and constitutional restrictions on state revenues and expenditures that impaired the ability of the state to fully recover from that decline in state revenues when economic conditions improved.

(c) In enacting this article, it is the intent of the general assembly to provide an administrative framework for the state to use to incur voter-approved multiple-fiscal year financial obligations to be used to finance critical state needs as efficiently and effectively as possible.

24-115-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of directors of the critical needs financing corporation.

(2) "Commission" means the transportation commission created in section 43-1-106 (1), C.R.S.

(3) "Corporation" means the critical needs financing corporation created in section

24-115-104 (1).

(4) "Department" means the department of transportation created in section 43-1-103 (1), C.R.S.

(5) "Excess state revenues" means revenues collected by the state during any state fiscal year in excess of the limitation on state fiscal year spending calculated pursuant to section 20 (7) (a) of article X of the state constitution and article 77 of this title.

(6) "Executive director" means the executive director of the department.

(7) "Issuing authority" means the department with respect to notes issued to finance transportation projects and the corporation with respect to notes issued for any other purpose.

(8) "Notes" means voter-approved critical needs notes authorized to be issued in accordance with section 24-115-110 (1).

(9) "Transportation projects" means projects identified and approved as strategic transportation projects included in the strategic transportation project investment program of the department by resolution of the commission, which resolution may be amended by further resolution.

24-115-104. Critical needs financing corporation - creation - composition of board of directors - powers. (1) There is hereby created an independent public body politic and corporate to be known as the critical needs financing corporation. The corporation shall be a body corporate and an instrumentality of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state. Notwithstanding the service of elected officials of state government or employees of agencies of state government on the board, the corporation shall be treated and accounted for as a separate legal entity with separate corporate purposes as set forth in this article. Assets, liabilities, and funds of the corporation shall not be consolidated or commingled with assets, liabilities, or funds of the state or of any entity that is capable of being a debtor in a case under the United States bankruptcy code, title 11 of the United States Code, as amended, or any successor bankruptcy code. Assets of the corporation shall not be used to pay debts or financial obligations of the state.

(2) (a) The governing body of the corporation shall be a board of directors, which shall consist of the following five ex officio members:

(I) The director of the office of state planning and budgeting;

(II) The state controller;

(III) The state treasurer;

(IV) A member of the joint budget committee of the general assembly selected by and to serve at the pleasure of the members of the committee; and

(V) The chair of the capital development committee of the general assembly or

any successor committee.

(b) Each ex officio member of the corporation may designate an official or employee of the member's agency or committee to represent the member at meetings of the corporation, and each designee may lawfully vote and otherwise act on behalf of the designating member.

(c) A member of the board or a designee of a member of the board is immune from personal liability for any action taken by the member or designee that is within the scope of the board's authority under this article.

24-115-105. Organizational meeting - chair - personnel - surety note - conflict of interest. (1) (a) The director of the office of state planning and budgeting shall call and convene the initial organizational meeting of the board and shall serve as its chair pro tempore. At the meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties to any executive officer or other agent of the board, and such other matters as the board deems proper. At the meeting, and annually thereafter, the board shall elect one of its members as chair.

(b) The board shall appoint an executive officer and such other personnel as it deems necessary. The executive officer shall have expertise in the area of public finance and shall have any powers specified in this article or delegated by the board in accordance with this article. The executive officer and any other personnel appointed by the board shall not be members of the board, shall serve at the board's pleasure, and shall receive no compensation for their services.

(2) The executive officer or any other person designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, papers filed with the board, minute books or journals of the board, and its official seal. The executive officer or designated person may cause copies to be made of all minutes and other records and documents of the board and may give certificates under the official seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely on such certificates.

(3) The board may delegate, by resolution, to one or more of its members, to its executive officer, or to an indenture trustee or any other third party to whom the board has assigned any rights of the corporation, such powers and duties as it may deem proper and to its executive officer or any other person designated by the board, the power to set the interest rates and other terms of any particular note issue and to invest proceeds of notes held by a commercial bank or trust company having full trust powers, subject to such limitations as shall be prescribed by the board by resolution.

(4) The executive officer and any other personnel appointed by the board are immune from personal liability for any actions taken by them that are within the scope of

the authority granted to them by this article or delegated to them by the board.

24-115-106. Meetings of board - quorum - expenses. (1) Three members of the board shall constitute a quorum for the purpose of conducting business and exercising the board's powers. Action may be taken by the board upon the affirmative vote of three members of the board. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board, for any purpose whatsoever, shall be open to the public and records of the corporation shall be subject to the open records law under article 72 of this title. However, the board may go into executive session as permitted pursuant to section 24-6-402. Notice of meetings shall be as provided in the bylaws of the corporation. If a meeting of the board is called for the sole purpose of adopting resolutions authorizing the issuance of notes by the corporation, one or more members of the board may participate in the meeting and may vote on the resolutions through the usage of telecommunications devices, including, but not limited to, the usage of a conference telephone or similar communications equipment. Participation through telecommunications devices shall constitute presence in person at such meeting, but use of telecommunications shall not supersede any requirements for public hearing otherwise provided by law. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board are public records.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including travel and lodging expenses, incurred in the discharge of their official duties. Any payments for expenses shall be paid from the critical needs fund, created in section 24-115-111.

24-115-107. General powers of corporation. (1) In addition to any other powers specifically granted to the corporation in this article, the corporation has the following powers:

(a) To have perpetual existence and succession as a body politic and corporate;

(b) To adopt, amend, or repeal bylaws for the regulation of its affairs and the conduct of its business, consistent with the provisions of this article;

(c) To sue and be sued;

(d) To have and to use a seal and to alter the same at its pleasure;

(e) To maintain an office at such place as it may designate;

(f) To borrow no more than two hundred fifty thousand dollars from a private sector financial institution, or from the state, at prevailing interest rates, for the purpose of defraying expenses of the corporation incurred prior to the issuance of any notes pursuant to this article. The final repayment date of any borrowing shall be no later than the last

day of the state fiscal year in which the borrowing is undertaken, and any certificate, trust indenture, or other instrument providing for the borrowing shall expressly state that the borrowing shall be repaid on or before that date.

(g) To issue note anticipation notes for the purpose of raising no more than two hundred fifty thousand dollars to defray expenses of the corporation incurred prior to the issuance of any notes pursuant to this article. The final maturity date of any note anticipation notes shall be no later than the last day of the state fiscal year in which the anticipation notes are issued, and any certificate, trust indenture, or other instrument providing for the issuance of anticipation notes shall expressly state that the anticipation notes shall be repaid on or before that date.

(h) To make and execute contracts, including, but not limited to, trust agreements, trust indentures, note purchase agreements, tax regulatory agreements, continuing disclosure agreements, ancillary financial facilities, and all other instruments necessary or convenient for the exercise of its powers and functions under this article; and

(i) To do all things necessary and convenient to carry out the purposes of this article. The powers granted to the corporation shall be liberally construed to effect the purposes of this article. However, the corporation shall not undertake any enterprise, operations, or business other than the issuance of notes as authorized by this article.

24-115-108. Corporate fiscal year - account of activities and receipts for expenditures - report - audit. The fiscal and budget year for the corporation shall commence on July 1 and end on June 30 of each year. The corporation shall keep an accurate account of all its activities and of all its receipts and expenditures and shall submit an annual report that sets forth a complete and detailed operating and financial statement of the corporation for the most recently ended fiscal year to the joint budget and legislative audit committees of the general assembly or any successor committees no later than January 15 of any year in which notes remain outstanding. The state auditor may investigate the affairs of the corporation, examine the properties and records of the corporation, and prescribe methods of accounting and the rendering of additional periodical reports in relation to the undertakings of the corporation.

24-115-109. Limitation on power of corporation to declare bankruptcy. Notwithstanding any other provision of law, the corporation is not authorized to be, and no public officer, organization, entity, or other person shall authorize the corporation to be, a debtor in a case under the United States bankruptcy code, title 11 of the United States Code, to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding. The state hereby covenants with the holders of any notes issued pursuant to this article that the state will

not limit or alter the prohibition on the filing of voluntary bankruptcy petitions set forth in this section until one year and one day after the corporation no longer has any notes outstanding. The corporation and any trust established by the corporation are hereby authorized to include this covenant as an agreement of the state in any contract with the note holders of the corporation.

24-115-110. Critical needs notes - issuance schedule - distribution of note proceeds. (1) (a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (1), if the general assembly passes and the governor signs a joint resolution that requires the submission of a ballot issue to voters statewide that seeks authorization for the state to incur multiple-fiscal year financial obligations by issuing critical needs notes and the voters approve the ballot issue an issuing authority may issue, on one or more occasions, notes, which shall have a maximum maturity of no more than twenty-five years. The board or the executive director, as applicable, shall determine the specific dates on which the issuing authority issues notes, the principal amount of notes to be issued on any date, and the redemption and other terms of notes.

(b) An issuing authority shall issue notes only for the purposes, under the terms, and up to the maximum amounts approved by voters through the approval of a statewide ballot issue.

(c) If the amount of excess state revenues that is retained by the state as authorized by voters statewide through their approval of House Bill 05-1194, enacted at the first regular session of the sixty-fifth general assembly, at the November 2005 statewide election for any state fiscal year that immediately precedes a state fiscal year in which an issuing authority may issue notes is less than the maximum amount of annual payments of principal and interest on notes authorized by voters statewide for the state fiscal year in which the issuing authority may issue notes or any subsequent state fiscal year, the general assembly, by passage of a joint resolution, may, but shall not be required to, limit the maximum amount of scheduled annual payments of principal and interest on notes issued after the effective date of the joint resolution to any amount that is greater than or equal to the difference between the amount of excess state revenues retained and the amount of scheduled annual payments of principal and interest on notes issued prior to the effective date of the joint resolution. The passage of a joint resolution limiting the maximum amount of scheduled annual payments of principal and interest on notes shall not affect the voter authorization of notes, including, but not limited to, any restriction on the scheduled annual payments of principal and interest on notes or any other terms specified in the voter-approved ballot issue that authorized the issuance of the notes. The general assembly, by passage of a subsequent joint resolution, may remove or modify any limit imposed by joint resolution on the maximum amount of scheduled annual payments of principal or interest on notes, subject to any limits set forth in the voter-approved ballot

issue that authorized the issuance of the notes.

(2) (a) An issuing authority shall issue notes pursuant to a certificate executed by the board or the executive director, a trust indenture between the issuing authority and any commercial bank or trust company having full trust powers, or any other instrument issued or executed by the issuing authority.

(b) As the board or the executive director deems appropriate, the certificate, trust indenture, or other instrument authorizing notes may contain provisions setting forth the rights and remedies of the owners or holders of the notes, provisions for protecting and enforcing the rights and remedies of the owners or holders of the notes, and any other provisions for the security of the owners or holders of the notes. The provisions may include, but shall not be limited to, provisions regarding letters of credit, insurance, stand-by credit agreements, or other forms of credit ensuring timely payment of the notes, including the redemption price or the purchase price, and provisions regarding the reimbursement of providers of the credit from moneys available for the payment of principal of and interest on the notes for any amounts paid by the providers with respect to the notes.

(3) (a) A certificate, trust indenture, or other instrument authorizing the issuance of notes in accordance with the provisions of this article may pledge to the payment of notes all or any portion of the proceeds from the issuance of such notes and the moneys appropriated to the critical needs fund pursuant to section 24-115-111 to pay the principal or interest on notes. Proceeds and moneys pledged shall be used only for the purpose or purposes for which they are pledged. Any pledge of the proceeds of notes shall be valid and binding from the date of issuance of the notes. Any pledge of moneys appropriated to the fund shall be valid and binding from the time the moneys were appropriated to the fund pursuant to section 24-115-111. A pledge shall create a valid security interest, proceeds and moneys pledged shall immediately be subject to the lien of the pledge and security interest without any physical delivery or further act, and the lien of the pledge and security interest shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party irrespective of whether the claiming party has notice of the lien. The instrument by which the pledge and security interest is created need not be recorded or filed in order to perfect the pledge and security interest.

(b) An issuing authority shall apply the gross proceeds of notes issued pursuant to subsection (1) of this section that are not pledged to the payment of the notes or allocated to the payment of costs associated with the issuance and administration of the notes for the purposes specified in the ballot issue approved by voters of the state that authorized the issuance of the notes.

(4) Subject to the provisions of subsection (1) of this section, notes may be issued in any aggregate principal amount, may be issued in one or more series by the corporation or in three or more series by the department, may bear any dates, may be in any

denomination or denominations, may mature on any date or dates, may mature in any amount or amounts, may be in any form, may be payable at any place or places, may be subject to any terms of redemption with or without a premium, may contain any provisions that the board or the executive director deems appropriate regarding insurance to ensure the timely payment of the notes, and may contain any other provisions not inconsistent with the provisions of this article as the board or the executive director may determine; except that the maximum amount of notes that the department may issue before January 1, 2007, is six hundred million dollars.

(5) The rate or rates of interest borne by notes may be fixed, adjustable, or variable, or any combination thereof, without regard to any interest rate limitation appearing in any other law of this state. If any rate or rates are adjustable or variable, the standard, index, method, or formula shall be determined by the board or the executive director.

(6) Notes may be sold at public or private sale and may be sold at, above, or below the principal amounts thereof. The sale of notes shall not be subject to the "Procurement Code", articles 101 to 112 of this title, but when contracting for necessary and advisable services connected to the issuance of notes, the board or the executive director, whichever is applicable, shall use an open and transparent competitive selection process determined by the board or the executive director that provides the public sufficient information to evaluate the process.

(7) Notes shall be signed on behalf of the state by the members of the board, or by the executive officer of the board if authorized by the board, or by the executive director. Pursuant to article 55 of title 11, C.R.S., the applicable signature or signatures may be one or more facsimile signatures imprinted, engraved, stamped, or otherwise placed on the notes. If all of the signatures on notes are facsimile signatures, provision shall be made for a manual authenticating signature on the notes by or on behalf of a designated authenticating agent.

(8) Subject to the provisions of subsection (1) of this section, the power to fix the date of sale of notes, to receive bids or proposals, to award and sell notes, to fix interest rates, and to take all other action necessary to sell and deliver notes may be delegated to an agent of the board or the executive director.

(9) Any outstanding notes may be refunded by the board or the executive director pursuant to article 56 of title 11, C.R.S.

(10) The board or the executive director is authorized to engage the services of any investment bankers, consultants, financial advisors, underwriters, note insurers, letter of credit banks, rating agencies, agents, note counsel or other legal counsel, or other persons whose services may be required or deemed advantageous by the board or the executive director in connection with notes. The board or the executive director shall not be subject to the "Procurement Code", articles 101 to 112 of this title, when engaging services but shall use an open and transparent competitive selection process determined

by the board or the executive director that provides the public sufficient information to evaluate the process.

(11) The board or the executive director may, with respect to notes that have been issued or proposed, enter into interest rate exchange agreements in accordance with article 59.3 of title 11, C.R.S.

(12) The executive director and any member or employee of the board are immune from personal liability for any action taken within the scope of their authority under this article.

24-115-111. Critical needs fund - creation - appropriations to fund - repayment of notes from fund. (1) The critical needs fund is hereby created in the state treasury. The fund shall consist of moneys appropriated to the fund by the general assembly and all interest and income earned on the deposit and investment of moneys in the fund. The board or the executive director may expend moneys in the fund only to make payments of principal and interest on notes issued pursuant to section 24-115-110, to make transfers to any fund or account established for the payment of the principal or interest on any of the notes by the certificate, trust indenture, or other instrument authorizing the notes on the dates and in the amounts required by the certificate, trust indenture, or other instrument, to pay the reasonable administrative and issuance costs incurred by the issuing authority in connection with the notes, to pay the principal and interest on and any costs incurred by the corporation in connection with a borrowing pursuant to section 24-115-107 (1) (f) or note anticipation notes issued pursuant to section 24-115-107 (1) (g), to pay necessary expenses of the board as authorized by section 24-115-106 (3), and, to the extent that the amount of moneys in the fund or to be credited to the fund in any state fiscal year exceeds the amount needed for those purposes during the state fiscal year only, to directly pay the costs of transportation projects. Moneys in the fund at the end of any state fiscal year shall not be transferred to the general fund of the state. It is the intent of the general assembly to appropriate moneys from the general fund or other legally available sources to the fund in amounts sufficient to allow the issuing authorities to make all payments of principal and interest on notes issued pursuant to section 24-115-110, to pay the reasonable administrative and issuance costs incurred by the issuing authorities in connection with the notes, to pay the principal and interest on and any costs incurred by the corporation in connection with a borrowing pursuant to section 24-115-107 (1) (f) or note anticipation notes issued pursuant to section 24-115-107 (1) (g), to pay necessary expenses of the board as authorized by section 24-115-106 (3), and to ensure that the total amount of moneys in the fund available for expenditure by the department for all purposes for which the department may expend moneys from the fund is thirty million dollars in state fiscal year 2005-06, seventy million dollars in state fiscal year 2006-07, and one hundred million dollars in each subsequent state fiscal year.

(2) The intention of the general assembly to make appropriations to the critical needs fund as specified in subsection (1) of this section shall not be construed to be binding on any future general assembly, and such appropriations are subject to annual appropriation by the general assembly. Every contract entered into by an issuing authority that relates to the issuance or administration of notes issued pursuant to section 24-115-110 and imposes an obligation that is to be paid from the fund shall state that the financial obligations of the issuing authority or the state under the contract are subject to annual appropriations to the fund by the general assembly, in its sole discretion, in accordance with this section and that the contract shall not be deemed to create any indebtedness of the state within the meaning of the state constitution or the laws of the state concerning or limiting the creation of indebtedness by the state. A decision by the general assembly not to appropriate moneys to the fund shall not be construed as an action impairing any such contract.

(3) General fund appropriations made pursuant to this section are not subject to the limitation on state general fund appropriations set forth in section 24-75-201.1 because approval of a ballot issue that authorizes the issuance of notes and provides for the payment of notes by voters of the state constitutes voter approval for the exemption of those appropriations from that limitation.

24-115-112. Notes legal investments. All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in any notes issued in accordance with this article. Public entities, as defined in section 24-75-601 (1), may invest public funds in notes only if the notes satisfy the investment requirements established in part 6 of article 75 of this title.

24-115-113. Exemption from taxation. Except as otherwise provided in this section, the income from notes issued pursuant to this article is exempt from all taxation and assessments in the state. In the certificate, indenture of trust, or other instrument authorizing the issuance of notes, the board or the executive director may waive the exemption from federal or state income taxation for interest on the notes.

24-115-114. No action maintainable. An action or proceeding at law or in equity to review any act or proceeding or to question the validity or enjoin the performance of any act or proceeding or the issuance of any notes or for any other relief against or from any act or proceeding done under this article, whether based upon irregularities or jurisdictional defects, shall not be maintained unless commenced within thirty days after the performance of the act or proceeding or the effective date thereof, whichever occurs

first, and is thereafter perpetually barred.

24-115-115. Annual reports. (1) No later than January 15 of any year in which notes issued pursuant to this article are outstanding or any moneys are in the critical needs fund, each issuing authority shall submit a report to the members of the joint budget committee of the general assembly and the members of the legislative audit committee of the general assembly that includes, at a minimum, the following information:

(a) The total amount of notes issued by the issuing authority pursuant to this article;

(b) The total and itemized amounts of gross note proceeds received from the issuance of notes, note proceeds and earnings thereon expended, and moneys credited to the critical needs fund; and

(c) The total amount of moneys expended from the critical needs fund in each state fiscal year for the payment of notes issued by the issuing authority pursuant to this article, the costs to the issuing authority associated with the issuance and administration of the notes, the payment of principal and interest in connection with a borrowing pursuant to section 24-115-107 (1) (f) or note anticipation notes issued pursuant to section 24-115-107 (1) (g), to pay necessary expenses of the board as authorized by section 24-115-106 (3).

24-115-116. Investments. (1) Except as otherwise provided in subsection (2) of this section, proceeds from the issuance of notes may be invested in any manner in which public moneys generally may be invested as provided by section 24-75-601.1 or any other applicable law.

(2) An issuing authority, in consultation with the state treasurer, may direct a corporate trustee that holds any proceeds from the issuance of notes or any other moneys paid to the trustee in connection with the notes or any other moneys relating to the notes or moneys in the fund to invest or deposit the proceeds or other moneys in investments or deposits other than those in which public moneys generally may be invested or deposited pursuant to section 24-75-601.1 or any other applicable law if the board or the executive director, in consultation with the state treasurer, determines that the investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits of moneys in the state highway supplementary fund, and the investment will assist the department in the financing of the projects or purposes for which the notes were issued.

24-115-117. Construction of article. The powers conferred by this article shall

be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not directly or indirectly modify, limit, or affect, the powers conferred to the department, the executive director, or the commission by the state constitution or by any other law.

24-115-118. Voter approval required. Notwithstanding any other provision of this article, the corporation, the department, the board, and the executive director shall have the authority to issue notes and otherwise exercise the powers specified in this article only if voters statewide approve House Bill 05-1194, enacted at the first regular session of the sixty-fifth general assembly, at the November 2005 statewide election.