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## 0246 Committees on: Judiciary, Health, Environment, Welfare, and Institutions

100.0000  
Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1980  
COMMITTEES ON:

**Judiciary**

**Health, Environment,  
Welfare, and  
Institutions**



(COLORADO LEGISLATIVE COUNCIL).

*Committee on Judiciary*  
RESEARCH PUBLICATION NO. 246

December, 1979

LEGISLATIVE COUNCIL  
OF THE  
COLORADO GENERAL ASSEMBLY

Senators

Fred Anderson,  
Chairman  
Robert Allshouse  
Regis Groff  
Barbara Holme  
Dan Noble  
Don Sandoval  
Duane Woodard

Representatives

John Hamlin,  
Vice-Chairman  
William Becker  
Robert Burford  
Steven Durham  
Charles Howe  
Bob Kirscht  
Phillip Massari

\* \* \* \* \*

The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

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*Vice Chairman*

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*Director*

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*Assistant Director*



## LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL  
DENVER, COLORADO 80203  
839-3521  
AREA CODE 303

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REP. CHARLES B. "CHUCK" HOWE  
REP. BOB LEON KIRSCHT  
REP. PHILLIP MASSARI

To Members of the Fifty-second Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1979. This year's report consolidates the individual reports of ten committees into three volumes of research publications: No. 242, No. 245, and No. 246. The reports of the Committees on School Finance (Research Publication No. 243); and State Affairs (Research Publication No. 244), are contained in separate volumes as indicated.

Respectfully submitted,

/s/ Senator Fred Anderson  
Chairman  
Colorado Legislative Council

FA/pm

## FOREWORD

The recommendations of the Colorado Legislative Council for 1979 appear in five separate volumes (Research Publication Nos. 242 through 246). The Legislative Council reviewed the reports contained in this volume (Research Publication No. 246) at its meeting on December 27, 1979. The Legislative Council voted to transmit the bills included herein with favorable recommendation to the Governor and to the 1980 Session of the General Assembly.

The committees and staff of the Legislative Council were assisted by the staff of the Legislative Drafting Office in the preparation of bills and resolutions contained in this Volume. Gary E. Davis assisted the Committee on Judiciary; and Bill Hobbs and Patricia Lobo assisted the Committee on Health, Environment, Welfare, and Institutions.

December, 1979

Lyle C. Kyle  
Director

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LEGISLATIVE COUNCIL  
COMMITTEE ON JUDICIARY

Members of the Committee

Rep. Ron Strahle, Chairman	Rep. Martha Ezzard
Sen. Ralph Cole, Vice-Chairman	Rep. Anne Gorsuch
Sen. Don MacManus	Rep. Charles Howe
Sen. Al Meiklejohn	Rep. Gerald Kopel
Sen. Ron Stewart	Rep. Federico Pena
Sen. Robert Wham	Rep. Carl Showalter
Sen. Duane Woodard	Rep. Kathy Spelts
	Rep. King Trimble

Council Staff

Earl E. Thaxton Principal Analyst	Jim Gottschalk Senior Research Assistant
Elizabeth Vaos Research Assistant	

Senate Joint Resolution No. 46, adopted on June 30, 1979, directed the Legislative Council to establish an interim committee to examine the following areas:

1. the method of determining nominees to any court of record of the state of Colorado by the Supreme Court Nominating Commission or by a Judicial District Nominating Commission;
2. the system of associate and assistant county court judges within the state;
3. the Commission on Judicial Qualifications; and
4. the rule making authority delegated to the Supreme Court.

The Committee on Judiciary, appointed by the Legislative Council to undertake a study of the areas outlined above, focused primarily on the judicial selection system (item 1 above). The committee also examined the system of associate and assistant county court judges (item 2 above). Although some testimony was received concerning the operation of the Commission on Judicial Qualifications (item 3 above), there was no exhaustive discussion on this subject. Likewise, the committee did not have sufficient time to review the rule-making authority of the Supreme Court (item 4 above). Recommendations to the General Assembly concerning item 1 were adopted by the committee and are discussed in following sections of this report. Because of the lack of time to adequately study items 2, 3, and 4, the committee recommends that a committee be appointed next interim to examine the system of part-time county judges, the Supreme Court's rule-making authority, and to further study the operation of the Commission on Judicial Qualifications.

## JUDICIAL SELECTION SYSTEM

### Background

Prior to 1967, judges in Colorado were elected at partisan elections where they ran as candidates on an election ballot. In 1966, a judicial selection and tenure amendment to the Colorado Constitution was initiated by petition and submitted to the people at the general election held on November 8, 1966. The proposed amendment -- Amendment Number 3 (An Amendment to Article VI of the Constitution of the State of Colorado concerning the Judicial Department, and Provid-

ing for the Selection, Tenure, Removal or Retirement of Justices of the Supreme Court and Judges of Other Courts of the State of Colorado) -- was approved by 293,771 votes "Yes" to 261,558 votes "No". The amendment became effective on January 17, 1967. Thus, partisan election of judges was replaced by a judicial selection plan under which judges are appointed by the Governor upon nomination by an appropriate judicial nomination committee for their initial term on the bench. Thereafter they run on their records in a nonpartisan retention election.

The Colorado judicial selection plan is set forth in Article VI, Sections 20-25 of the Colorado Constitution. It provides for the appointment of judges to their initial term on the bench by the Governor for all courts of record in the state from candidates nominated by judicial nominating commissions. The state is divided into 22 judicial districts and the constitution (Article VI, Section 24) provides for the creation of a nominating commission for each judicial district. In addition, a statewide nominating commission is created for the Supreme Court and the Court of Appeals. Thus, there are 23 constitutionally created nominating commissions in Colorado with a total of 165 commissioners appointed to these commissions.

#### Purpose of the Committee's Inquiry

At the time the merit selection system for selecting judges was being considered for approval by the voters, it was represented that judges would be selected on the basis of proven merit, that only those applicants best qualified would become judges, and that the selection of judges would be removed from partisan politics. Senate Joint Resolution No. 46 directed the committee to study the judicial selection process with a view towards determining "the effectiveness of the supreme court nominating commission and the judicial district nominating commissions in recommending the best available nominees for consideration" for appointment by the Governor to fill a judicial vacancy.

This inquiry into the judicial selection process was initiated for several reasons. The system has been in operation for 12 years and many individuals believe that it is time to examine fully the system to determine whether it is operating the way it was intended to operate. In addition, rumors persist that there have been improprieties in the judicial selection process. These rumors have alleged that the system has been abused because (1) there has been a predetermination of which applicant will be selected by the nominating commission and subsequently appointed by the Governor, and (2) partisan political pressure on the Governor has influenced his appointments to the various commissions and his appointments to the court.

The committee determined that the purpose of the inquiry should be threefold: (1) determine if the judicial selection system is working the way it was intended to function when the system was adopted by

the voters 12 years ago (selections based on merit and removed from partisan political influence); (2) if the system is determined not to be functioning as it was intended, what modifications would be appropriate to improve the procedure; and (3) determine if the system has been tampered with or abused to its detriment.

### Committee Procedures

In order to determine the truth or falsity of the allegations of abuse, and to learn about the operation and procedures of the various nominating commissions, the committee received testimony from 37 witnesses and held 11 meetings during the interim. Approximately 850 pages of testimony have been placed in the record of the committee hearings.

The committee was authorized by S.J.R. 46 to hold hearings, and in connection therewith, to summon witnesses; to take testimony under oath, to assemble such records and documents as may in its judgment be deemed necessary, by subpoena duces tecum or otherwise; and to take other appropriate steps as may be necessary for the completion of the study. Joint Rule 33 provides that the Legislative Council may vest in any subcommittee (such as the Committee on Judiciary) the power to subpoena witnesses and to assemble records and documents by subpoena duces tecum or otherwise. Early in the interim, the committee requested and received from the Legislative Council authority to subpoena witnesses and documents. In this regard, the committee subpoenaed 22 witnesses to appear and issued one subpoena for the production of documents (a tape recording).

The committee received testimony from former Chief Justice O. Otto Moore, former Chief Justice Edward Pringle, and former Justice Donald Kelley.

The committee received testimony from the following individuals concerning the operation of the Supreme Court Judicial Nominating Commission:

Brooke Wunnicke	Jeremy Shamos
Norman Early	Kristie Hansen
David Greenberg	Josie Heath

The following members of the Supreme Court Judicial Nominating Commission were questioned by the committee:

Thomas Henley	Christopher Brachli
Neil Mincer	Richard Freese
Dorothy Lucero	Carol Tempest
Florence Anderson	Ruth Steele

Three other members of the nominating commission have not been examined -- Fred Thomas, Joseph Ulibarri, and Frances Jean Bujack.

On advice of counsel for the Supreme Court Judicial Nominating Commission, commission members refused to answer questions asked by the committee when it would violate their rule of confidentiality. Counsel for the commission, Mr. John Kobayashi, Mr. Roger Goldberg, and Mr. William Ris, were examined by the committee. The committee, through action of the Committee on Legal Services, retained the counsel of Mr. Dan Sears to advise the committee on appropriate action to take regarding legal issues which arose during the course of the committee's investigation.

The following individuals were questioned regarding the operation of the District Court Nominating Commissions:

Mr. Lee White	Judge John Althoff
Mr. David Greenberg	Mr. James Klodzinsky
Mr. Ken Monfort	Mr. Richard Hennessey
Mr. James Shelton	Mr. Dennis Malone
Mr. A. M. Dominguez	Mr. Robert Witek
Sen. James Kadlecak	Mr. Victor Gandy
Mr. Jack Olsen	

The committee also received a written statement from Governor Lamm.

At the meeting on November 21, the committee received a report from the Colorado Bar Association containing recommendations to improve the judicial selection process. Mr. Charles Traylor and Mr. Walter Steele submitted the report. A representative of the Colorado Trial Lawyer's Association also submitted recommendations.

### Committee Findings and Recommendations

#### Confidentiality Rule and Assertion of Privilege

Prior to the hearings of this committee the various nominating commissions adopted a strict rule of secrecy as to all their activities and deliberations. This rule, as adopted by the Supreme Court Nominating Commission, provides as follows:

- II H. All Commission proceedings and business, including the names of all proposed nominees and the names of nominees forwarded to the Governor, shall be confidential and may not be discussed outside Commission meetings except among Commission members or as made necessary by II (D) above, or as provided in III (C) below.

★ ★ ★ ★ ★

- II D. The Commission may conduct investigations of the candidates.

\* \* \* \* \*

III C. No other information shall be forwarded to the Governor, except that the Commission, or any of its members, may consult with the Governor at his request.

Several members of the Supreme Court Nominating Commission appeared before the committee and were interrogated concerning the processes utilized by the commission in selecting the nominees. Members of the commission answered a number of questions concerning the generalized procedures and selection processes of the commission, but asserted a privilege of confidentiality in refusing to answer specific questions concerning specific candidates for nomination, and specific questions relating to what they assert to be the commission's "business and proceedings," under the commission's confidentiality rule.

Commission members state that confidentiality is necessary for the commission to do its business, function effectively, and fulfill its responsibility. Confidentiality preserves the candor and the investigative techniques which are used to screen candidates in a way which will not reveal confidences.

The commission members, upon urging of counsel, refused to reveal anything which took place in their interviews, discussions, or investigations. They agreed to answer questions concerning their procedures, so long as the inquiry was of a general nature, and did not deal with specifics concerning particular applicants or decisions involving particular applicants. They informed the committee that they would not discuss individual applicants, their impressions of individual applicants, interviews of individual applicants, communications with applicants concerning official business of the commission, deliberations concerning applicants, how commissioners voted on applicants, investigations of particular applicants, and meetings held by the commission to select nominees, whether those meetings were of the entire group, whether they were one on one at a luncheon or otherwise during a recess, whether they were outside in a hall during commission business, or over the telephone. Further, they stated that they would not discuss communications with third parties concerning individual applicants, or concerning the business of the commission.

Those commission proceedings which focused on specific candidates and questions which would require commissioners to disclose candidates' names or communications with or about them were kept confidential. Because commissioners would not disclose the names of candidates or communications about them, they, obviously, did not disclose commission discussions pertaining to particular applicants.

For example, the committee heard repeated testimony in June, 1979, that the identity of the next justice of the Supreme Court was a matter of widespread public knowledge prior to the time the commission met to select the nominees. Refusal to answer specific questions concerning the truth or falsity of this knowledge prevented the committee

from finding the source of this information. The commission members' reliance on their self-imposed rule and claim of confidentiality and the consequent privilege against answering otherwise relevant questions posed by the committee hampered and frustrated the committee's attempt to find the truth in many areas. Throughout the testimony from various commission members, general and self-serving statements were made asserting that there were no improprieties involved in the commission deliberations. However, the witnesses refused to answer more particular questions concerning the basis for such assertions. The committee finds that this self-serving assertion of the privilege of secrecy was a serious impediment to the ability of the committee to determine what, if any, improvements to the present system were desirable or appropriate.

### Composition of Commissions

Concern was expressed by some witnesses and committee members about the fact that the Governor appoints all of the non-lawyer commission members and participates in the appointment of the lawyer members. The Governor thereafter makes the final appointment from the names submitted to him by the various commissions. Concern was expressed that this system leads to centralization of power in the Governor and the exclusive control of the selection process by the Governor.

Recommendations were received that the composition of the commission should be expanded to include appointments by the General Assembly. It was suggested that the General Assembly should be involved in the appointment of some of the non-lawyer members or the lawyer members, or both, thus adding more balance to the commission and alleviating the fear that the commissions are totally controlled by the Governor. Those recommendations were adopted by the committee and are included in the proposed Concurrent Resolution.

Another area of concern expressed by some witnesses focused on the fact that the constitution does not specify there is to be any division among political parties of the attorney members on the commission. In some instances, all attorney members of the nominating commission are of the same political party. It was felt that the attorney members may exercise, through persuasion and knowledge, more control over the proceedings than non-attorney members. When all attorneys are from the same political party, this may be too much control. It was recommended that the composition of the commission be altered so that no more than two attorney members of the district commissions and three attorney members of the Supreme Court Commission would be of the same political party. This recommendation was adopted by the committee and is included in the proposed Concurrent Resolution.

## Rules Promulgated by the Various Nominating Commissions

One of the major areas of concern to the committee was the authority of the various commissions to promulgate rules of procedure. This concern centered around the rule of confidentiality adopted by all of the commissions. The threshold question addressed by the committee is whether the various commissions have authority to promulgate their own rules of procedure, since no specific delegation of rule-making authority is contained in the constitution.

The question arose early in the deliberations of the committee as to whether the commissions have "inherent" authority to promulgate rules of procedure. Counsel for the Supreme Court Nominating Commission, and others, maintained that the commissions are autonomous constitutionally-formed bodies and therefore have inherent power to make those rules governing operation that are deemed advisable. Indeed, it was maintained that the commissions do not fall within the province of any of the three branches of government and may do as they see fit, without control or overview by any of the three constitutional branches of government.

The uncertainty as to whether or not the various commissions have "inherent" authority to promulgate rules of procedure, and the concern that such commissions may be unanswerable to any of the three branches of government, prompted the committee to consider various limitations which might be imposed on their claimed unlimited rule-making authority. One proposal was to amend the constitution to give the commissions such rule-making authority as provided by law. This proposal was considered and rejected in favor of an amendment to the constitution providing that the Supreme Court shall develop rules of procedure for the various commissions. This proposal is contained in the proposed Concurrent Resolution.

## Rules of Secrecy

The rules of various judicial district nominating commissions and, until recently, the rules of the Supreme Court Nominating Commission, provide that the names of the nominees sent to the Governor for consideration of appointment to judicial office are to be kept secret. Testimony presented to the committee indicated that in many instances the names of the nominees were leaked and were public knowledge despite the rule of secrecy. A question was also raised as to whether the rules of the various commissions could bind the Governor to the rule of secrecy. In addition, the weight of testimony presented to the committee indicated that the reasons for the secrecy rule really were not applicable to the nominees certified to the Governor and that they should be made public. For these reasons, the committee recommends that the names certified to the Governor be made public. An amendment to the constitution to accomplish this is contained in the proposed Concurrent Resolution.



In addition, the committee recommends Bill 60 which amends the Public Records Statute and provides that names of nominees which are submitted to the Governor by any judicial nominating commission shall be a public record.

#### Orientation of Newly Appointed Commission Members

It was pointed out to the committee in several instances that the newly appointed commission members receive little, if any, orientation as to the role and function of nominating commissions. Commission members are faced with the awesome task of selecting judicial nominees without any orientation as to what the responsibilities of the nominating commissions are and what is expected of commission members. It was suggested to the committee that annual orientation and educational seminars for nominating commission members should be held. In addition, it was suggested that a handbook, containing resource materials, should be developed as an aid to individual nominating commission members. Many of the newly appointed members are not familiar with the applicable constitutional provisions, relevant statutory provisions, rules of procedure of the various nominating commissions, the procedures used to screen and interview applicants, the role of the commission in the judicial selection process, the nature and purpose of the interviews in the selection and evaluation process, what qualities are desirable in trial judges and appellate judges, and the duties of each class of judge in the judicial system.

To implement this suggestion, the committee recommends Bill 61 which directs the State Court Administrator to prepare a manual and to develop a training program for commission members.

#### Time Limits for Operation of the Commissions

One of the provisions of the proposed Concurrent Resolution extends the time allowed for the selection of nominees by the judicial nominating commissions from thirty days to forty-five days. Testimony before the committee reflected a need for additional time for nominating commissions to consider applicants. In many instances there is advance notice of judicial vacancy, and meetings of nominating commissions can be scheduled well in advance of the actual vacancy, thus providing adequate time to consider applicants and to submit names of nominees to the Governor. However, when a vacancy occurs because of a death or unexpected resignation, the thirty-day limit does not allow adequate time to screen applicants and submit names of nominees to the Governor.

#### Lack of Public Input Into the Judicial Selection Process

It was clear from testimony before the committee that applicants for judicial nomination were often asked questions involving important public policy issues, in secret meetings of various commis-

sions, without any opportunity for persons not on a commission to know the answers to those questions. This lack of opportunity for public input and knowledge concerned the committee and various proposals were discussed to provide public participation. These proposals included completely opening the selection process, providing for open meetings when questions of public policy were asked, and providing for Senate confirmation of the appointees at which time public hearings would be held. This latter proposal was adopted by the committee and is included in the proposed Concurrent Resolution.

#### Need for Senate Confirmation of Governor's Selection

The committee finds that the current constitutional provisions concerning judicial appointment contain no criteria requiring that merit or ability should be controlling factors in the nomination and appointment process. Furthermore, the committee finds that political considerations can and have entered into the selection process at different levels.

In addition to providing an opportunity for public participation in the selection process through the Senate confirmation, the committee believes that open Senate hearings will help make the process as non-political or non-partisan as possible, and help allay suspicion engendered by the secrecy formerly imposed. The committee further believes that the provision for Senate confirmation will add the necessary checks and balances to the selection process and that such a provision is necessary to maintain public confidence in the judicial selection system.

BILL 60

A BILL FOR AN ACT  
SPECIFYING THAT WRITINGS OF JUDICIAL NOMINATING COMMISSIONS ON  
WHICH THE NAMES OF JUDICIAL NOMINEES ARE SUBMITTED TO THE  
GOVERNOR BE SUBJECT TO THE PUBLIC RECORDS LAW.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Specifies that writings of judicial nominating commissions on which the names of nominees are submitted to the governor are subject to the public records law.

---

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

SECTION 1. 24-72-202 (6), Colorado Revised Statutes 1973,  
as amended, is amended to read:

24-72-202. Definitions. (6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. It "PUBLIC RECORDS" INCLUDES WRITINGS OF ANY

JUDICIAL NOMINATING COMMISSION ON WHICH THE NAMES OF NOMINEES ARE SUBMITTED TO THE GOVERNOR, BUT THE TERM does not include criminal justice records which are subject to the provisions of part 3 of this article.

SECTION 2. 24-72-204 (1)(c), Colorado Revised Statutes 1973, is amended to read:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal. (1) (c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court, EXCEPT AS PROVIDED IN SECTION 24-72-202 (6) RELATING TO THE NAMES OF JUDICIAL NOMINEES.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL 61

A BILL FOR AN ACT

1 CONCERNING THE PREPARATION OF TRAINING PROGRAMS BY THE STATE  
2 COURT ADMINISTRATORFOR MEMBERS OF JUDICIAL NOMINATING  
3 COMMISSIONS, AND MAKING AN APPROPRIATION THEREFOR.

---

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires the state court administrator to prepare an instruction manual for members of judicial nominating commissions and to develop and implement an annual one-day training program for all members of judicial nominating commissions.

---

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

5 SECTION 1. 13-3-103, Colorado Revised Statutes 1973, as  
6 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

7 13-3-103. Nominating and qualifications commissions -  
8 expenses - training programs for members of nominating  
9 commissions. (3) The state court administrator shall prepare  
10 and have printed an instruction manual for members of judicial  
11 nominating commissions, and the administrator shall develop and  
12 implement an annual one-day training program for all members of

1   judicial nominating commissions. Such training programs shall  
2   include, but not be limited to, a review of applicable  
3   constitutional and statutory provisions relating to judicial  
4   nominating commissions, a ~~des~~cription of the process involved in  
5   obtaining, reviewing, investigating, and interviewing applicants,  
6   a discussion of the legal, academic, practical, and personal  
7   qualifications a judge or justice should possess, suggestions as  
8   to the manner of submission of nominees' names to the governor,  
9   and a review of ethical considerations, including aspects  
10  relating to public involvement or comments, investigations,  
11  political considerations, and personal or professional  
12  acquaintances with applicants.

13       SECTION 2. Appropriation. There is hereby appropriated,  
14  out of any moneys in the state treasury not otherwise  
15  appropriated, to the judicial department, for the fiscal year  
16  beginning July 1, 1980, the sum of ten thousand eight hundred ten  
17  dollars (\$10,810), or so much thereof as may be necessary, for  
18  the implementation of this act.

19       SECTION 3. Safety clause. The general assembly hereby  
20  finds, determines, and declares that this act is necessary for  
21  the immediate preservation of the public peace, health, and  
22  safety.

## BILL 62

### HOUSE CONCURRENT RESOLUTION NO.

1 SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AN  
2 AMENDMENT TO ARTICLE VI OF THE CONSTITUTION OF THE STATE OF  
3 COLORADO CONCERNING JUDICIAL APPOINTMENTS, AND PROVIDING FOR  
4 SENATE CONFIRMATION THEREOF, LEGISLATIVE PARTICIPATION IN  
5 THE APPOINTMENT OF NONLAWYER JUDICIAL NOMINATING COMMISSION  
6 MEMBERS, LIMITATIONS ON THE NUMBER OF LAWYER MEMBERS ON A  
7 COMMISSION FROM THE SAME POLITICAL PARTY, ADDITIONAL TIME FOR  
8 JUDICIAL NOMINEES' NAMES TO BE SUBMITTED TO THE GOVERNOR,  
9 DISCLOSURE OF NOMINEES' NAMES TO THE PUBLIC, AND THE  
10 ADOPTION OF PROCEDURAL RULES BY THE SUPREME COURT FOR USE BY  
11 ALL JUDICIAL NOMINATING COMMISSIONS.

---

#### Resolution Summary

(Note: This summary applies to this resolution as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that judicial appointments shall be made with the consent of the senate or senate judiciary committee if the senate is in recess.

Provides that the president of the senate and the speaker of the house of representatives shall participate in the appointment of nonlawyer members to judicial nominating commissions.

Limits the number of lawyer members on a commission from the same political party.

Allows judicial nominating commissions additional time for the submission of nominees' names to the governor and provides that nominees' names be made public.

Provides that the supreme court provide uniform rules of procedure to be followed by all judicial nominating commissions.

---

1        Be It Resolved by the House of Representatives of the  
2        Fifty-second General Assembly of the State of Colorado, the  
3        Senate concurring herein:

4                SECTION 1. At the next general election for members of the  
5        general assembly, there shall be submitted to the qualified  
6        electors of the state of Colorado, for their approval or  
7        rejection, the following amendment to the constitution of the  
8        state of Colorado, to wit:

9                Section 20 (1) of article VI of the constitution of the  
10       state of Colorado is amended to read:

11               Section 20. Vacancies. (1) (a) A vacancy in any judicial  
12       office in any court of record shall be filled by appointment of  
13       the governor, BY AND WITH THE CONSENT OF THE SENATE WHICH SHALL  
14       GIVE REASONS FOR ITS ACTION. THE APPOINTMENT SHALL BE MADE from  
15       a list of three nominees for the supreme court and any  
16       intermediate appellate court and from a list of two or three  
17       nominees for all other courts of record, such list to be  
18       certified to ~~him~~ THE GOVERNOR by the supreme court nominating  
19       commission for a vacancy in the supreme court or a vacancy in any  
20       intermediate appellate court and by the judicial district  
21       nominating commission for a vacancy in any other court in that  
22       district. In case of more than one vacancy in any such court,



1 the list shall contain not less than two more nominees than there  
2 are vacancies to be filled. The list shall be submitted by the  
3 nominating commission not later than ~~thirty~~ FORTY-FIVE days after  
4 the death, retirement, tender of resignation, removal under  
5 section 23, failure of an incumbent to file a declaration under  
6 section 25, or certification of a negative majority vote on the  
7 question of retention in office under section 25 ~~hereof~~ OF THIS  
8 ARTICLE.

9 (b) If the governor shall fail to make the appointment (or  
10 all of the appointments in case of multiple vacancies) from such  
11 list within fifteen days from the day it is submitted to him, the  
12 appointment (or the remaining appointments in case of multiple  
13 vacancies) shall be made by the chief justice of the supreme  
14 court, BY AND WITH THE CONSENT OF THE SENATE WHICH SHALL GIVE  
15 REASONS FOR ITS ACTION, from the same list within the next  
16 fifteen days. A justice or judge appointed under the provisions  
17 of this section shall hold office for a provisional term of two  
18 years and then until the second Tuesday in January following the  
19 next general election. A nominee shall be under the age of  
20 seventy-two years at the time his name is submitted to the  
21 governor.

22 (c) IF AN APPOINTMENT NEEDS TO BE MADE TO ANY JUDICIAL  
23 OFFICE DURING A RECESS OF THE SENATE, THE SENATE COMMITTEE FOR  
24 JUDICIARY MATTERS SHALL BE THE CONSENTING AUTHORITY FOR THE  
25 APPOINTMENT AND SHALL GIVE REASONS FOR ITS ACTION. THE SENATE,  
26 OR SENATE COMMITTEE FOR JUDICIARY MATTERS, IN DELIBERATING UPON

1 NOMINATIONS FOR JUDICIAL OFFICE MAY SIT WITH CLOSED DOORS, BUT IN  
2 ACTING UPON NOMINATIONS IT SHALL SIT WITH OPEN DOORS, AND THE  
3 VOTE SHALL BE TAKEN BY AYES AND NOES, WHICH SHALL BE ENTERED UPON  
4 THE SENATE JOURNAL.

5 Section 24 (4) of article VI of the constitution of the  
6 state of Colorado is REPEALED AND REENACTED, WITH AMENDMENTS, to  
7 read:

8 Section 24. Judicial nominating commissions.

9 (4) (a) Members of the supreme court judicial nominating  
10 commission selected by reason of their being citizens admitted to  
11 practice law in the courts of this state shall be appointed by  
12 majority action of the governor, the attorney general and the  
13 chief justice. No more than three lawyer members of the supreme  
14 court nominating commission shall be of the same political party.

15 (b) Commencing January 1, 1981, nonlawyer members of the  
16 commission shall be appointed as follows: Three by the governor  
17 (no more than two of whom shall be members of the same political  
18 party), and three by the joint action of the president of the  
19 senate and speaker of the house of representatives (no more than  
20 two of whom shall be members of the same political party). In  
21 the event additional congressional districts are established in  
22 this state, an additional nonlawyer member shall be appointed by  
23 the governor from each such district, with a corresponding  
24 reduction in the at-large members.

25 (c) Appointments of nonlawyer voting members shall be made  
26 to the supreme court nominating commission for the following

1 terms: One member appointed by the governor and one member  
2 appointed by the joint action of the president of the senate and  
3 the speaker of the house of representatives shall serve until  
4 December 31, 1981, one each until December 31, 1983, and one each  
5 until December 31, 1985. Thereafter, each voting member shall  
6 serve until December 31st of the sixth year following the date of  
7 his appointment.

8 Section 24 of article VI of the constitution of the state of  
9 Colorado is amended BY THE ADDITION OF THE FOLLOWING NEW  
10 SUBSECTIONS to read:

11 Section 24. Judicial nominating commissions.

12 (5) (a) Members of each judicial district nominating commission  
13 selected by reason of their being citizens admitted to practice  
14 law in the courts of this state shall be appointed by majority  
15 action of the governor, the attorney general and the chief  
16 justice. No more than two lawyer members of a judicial district  
17 nominating commission shall be of the same political party.

18 (b) Commencing January 1, 1981, nonlawyer members of  
19 judicial district nominating commissions shall be appointed as  
20 follows: Two by the governor, and two by the joint action of the  
21 president of the senate and speaker of the house of  
22 representatives. If the governor, attorney general, and chief  
23 justice determine there should be additional nonlawyer members on  
24 the commission in a judicial district having a population of  
25 35,000 inhabitants or less, any such additional nonlawyer members  
26 shall be appointed by majority action of the governor, attorney

1 general, and chief justice.

2 (c) Appointments of nonlawyer voting members shall be made  
3 to each judicial district nominating commission for the following  
4 terms: One member appointed by the governor and one member  
5 appointed by the joint action of the president of the senate and  
6 the speaker of the house of representatives shall serve until  
7 December 31, 1982 and one each until December 31, 1985.  
8 Thereafter, each voting member shall serve until December 31st of  
9 the sixth year following the date of his appointment.

10 (6) Any nonlawyer vacancy on the supreme court nominating  
11 commission or on a judicial district nominating commission shall  
12 be filled by the same appointive authority which appointed the  
13 person whose vacancy is to be filled.

14 (7) No voting member of a judicial nominating commission  
15 shall hold any elective and salaried United States or state  
16 public office or any elective political party office and he shall  
17 not be eligible for reappointment to succeed himself on a  
18 commission. No voting member of the supreme court nominating  
19 commission shall be eligible for appointment as a justice of the  
20 supreme court or any intermediate appellate court so long as he  
21 is a member of that commission and for a period of three years  
22 thereafter; and no voting member of a judicial district  
23 nominating commission shall be eligible for appointment to  
24 judicial office in that district while a member of that  
25 commission and for a period of one year thereafter.

26 (8) When any names of nominees are submitted by a judicial

1 nominating commission to the governor for appointment, by and  
2 with the consent of the senate, such names shall also be  
3 immediately made public by the commission.

4 (9) The supreme court shall provide uniform rules of  
5 procedure to be followed by all judicial nominating commissions.  
6 Such uniform rules of procedure shall include such rules as are  
7 reasonable and necessary to achieve an orderly, fair, impartial,  
8 and nonpolitical process for conducting its business and to  
9 conduct investigations of applicants.

10 (10) All appointments existing on December 31, 1980, of  
11 nonlawyer members to the supreme court nominating commission and  
12 to each judicial district nominating commission shall terminate  
13 on said date. Thereafter, new appointments shall be made as  
14 provided in this section, and any member whose term is terminated  
15 early by this subsection (10), may be reappointed to succeed  
16 himself once on a commission notwithstanding paragraph (c) of  
17 subsection (4) of this section.

18 SECTION 2. Each elector voting at said election and  
19 desirous of voting for or against said amendment shall cast his  
20 vote as provided by law either "Yes" or "No" on the proposition:  
21 "An amendment to article VI of the constitution of the state of  
22 Colorado concerning judicial appointments, and providing for  
23 senate confirmation thereof, legislative participation in the  
24 appointment of nonlawyer judicial nominating commission members,  
25 limitations on the number of lawyer members on a commission from  
26 the same political party, additional time for judicial nominees'

1 names to be submitted to the governor, disclosure of nominees'  
2 names to the public, and the adoption of procedural rules by the  
3 supreme court for use by all judicial nominating commissions."

4 SECTION 3. The votes cast for the adoption or rejection of  
5 said amendment shall be canvassed and the result determined in  
6 the manner provided by law for the canvassing of votes for  
7 representatives in Congress, and if a majority of the electors  
8 voting on the question shall have voted "Yes", the said amendment  
9 shall become a part of the state constitution.

## Minority Report

The undersigned members of the Interim Judiciary Committee do hereby dissent from the conclusions and various recommendations contained within the final majority report adopted by the committee on December 20, 1979.

We, therefore, offer the conclusions and recommendations set forth in this minority report.

From the inception of the interim study of the merit judicial selection system the minority members of this committee have contended that the current selection system is functioning as intended and sound in principle. It is also the committee member's contention that the judicial appointments made during the last twelve years reflect an overall equal balance between the number of Democratic and Republican appointments made by both Republican and Democratic governors.

An analysis of judicial appointments made by Governors Love, Vanderhoof, and Lamm indicates:

- a) That there have been 101 Democratic appointments to all Colorado courts, 102 Republican appointments.
- b) Governor Lamm appointed 52 of the 101 Democratic judges and 34 of the 102 Republican judges.
- c) Governors Love and Vanderhoof appointed 49 of the 101 Democratic judges and 68 of the 102 Republican judges.  
(See Appendix A).

Therefore, the minority members of this committee find that in general the present method of judicial selection primarily recognizes legal merit rather than political affiliation and is working as intended and to the best interests of maintaining a sound judicial system. Furthermore, according to the weight of the testimony by witnesses, both pro and con, the current selection process has resulted in an improved quality of judges.

The members further conclude that although there are occasional instances of abuse of judgment or procedures by those involved in the selection process, we find that the basic system has not been tampered with or abused to its detriment since its inception in 1967.

Although we find that some minor procedural changes are appropriate, we find no merit to such fundamental changes as Senate confirmation of judicial nominees as recommended by the majority report. Such a change would, in our view, result in more political pressures and abuses within the political climate of the General Assembly to the detriment of an impartial and independent judiciary.

We also conclude that the allegations of the majority report that the appointment of Justice Dubofsky was public knowledge should not lead to the conclusion that it was predetermined by the appointing authority. The mere fact that there were rumors of the possible appointment in certain quarters does not justify an inference or conclusion of impropriety in the selection process. Indeed the evidence presented to the committee, in our view, justifies that these were mere uninformed inferences made by an unsworn witness.

The undersigned members also take issue with any inference in the majority report that members of the nominating commission acted improperly in asserting the privilege of confidentiality through counsel in testimony before the committee. We have no reason to question the legality or fairness of an assertion of privilege that is exercised to protect confidences of applicants or others in the screening of judicial applicants.

In conclusion, in order to achieve minor procedural changes within the current judicial selection system, we offer the following possible recommendations for further consideration by the General Assembly:

- 1) The time allowed for the selection of nominees by the nominating commission should be extended from 30 to 45 days.
- 2) The Supreme Court should be vested with the rule-making authority for the commissions.
- 3) Two members -- one lawyer; one non-lawyer -- should be added to each nominating commission through appointments by the leadership of the General Assembly; however, the two legislative appointees should not be of the same political party.
- 4) The names of the two or three judicial nominees sent to the Governor by the nominating commissions should be public at that time by the commission.

Therefore, it is our view that these above changes -- although minor -- might result in some improvement in the electorate's reaffirmation by vote in what is basically a sound method of judicial selection.

Sen. Ron Stewart  
Rep. Chuck Howe  
Rep. Gerald Kopel  
Rep. Federico Pena  
Rep. King Trimble



JUDICIAL APPOINTMENT  
1967 - December 5, 1979

<u>Total Appointments:</u>	<u>Love/ Vanderhoof</u> 137 (59%)	<u>Lamm</u> 95 (41%)	<u>Subtotals of Party Affiliation According to Court</u>
Political Affiliations All Appointments:			<u>All Courts</u>
Republican	63 (49%)	34 (36%)	102 (44%) Republican
Democrat	49 (35%)	52 (55%)	101 (43%) Democrat
Independent or unknown	20 (15%)	9 ( 9%)	29 (12%) Ind./Unknown
Subtotal	137	95	232
Supreme Court:			<u>Supreme Court</u>
Republican	3 (100%)	1 (24%)	4 (57%) Republican
Democrat	0	2 (50%)	2 (29%) Democrat
Independent or unknown	0	1 (25%)	1 (14%) Ind./Unknown
Subtotal	3	4	7
Court of Appeals:			<u>Court of Appeals</u>
Republican	9 (75%)	0	9 (75%) Republican
Democrat	2 (17%)	0	2 (17%) Democrat
Independent or unknown	1 ( 8%)	0	1 ( 8%) Ind./Unknown
Subtotal	12	0	12
District Court:			<u>District Court</u>
Republican	25 (51%)	17 (34%)	42 (42%) Republican
Democrat	18 (33%)	31 (52%)	49 (49%) Democrat
Independent or unknown	6 (12%)	2 ( 4%)	8 ( 8%) Ind./Unknown
Subtotal	49	50	99

<u>Total Appointments:</u>	<u>Love/ Vanderhoof</u>	<u>Lamm</u>	<u>Subtotals of Party Affiliation According to Court</u>
County Court (as of 6/26/79)			<u>County Court</u>
Republican	31 (42%)	16 (39%)	47 (41%) Republican
Democrat	29 (42%)	19 (46%)	48 (42%) Democrat
Independent or unknown	13 (18%)	6 (15%)	19 (17%) Ind./Unknown
	<hr/>	<hr/>	<hr/>
Subtotal	73	41	114

NOTE: All figures are based on Colorado Bar Association Report of June 26, 1979, updated.

From records in Governor's Office through December 5, 1979.

## Minority Report

Representative Martha Ezzard and Senator Ron Stewart dissent from the majority report on the provision for Senate confirmation of judicial nominees for the following reasons:

1. The committee's proposed revisions in the selection process are designed, at least in part, to lessen political influence -- particularly that of partisan politics -- in the selection process. We believe adding Senate confirmation to the process has the potential of encouraging such partisan decision-making in selection of judges.

2. Opportunity for legislative and public input are already provided in the Concurrent Resolution reported favorably by the committee, through the provision for legislative appointments to the nominating commissions and through release of the three finalists' names by commissions before final selection by the Governor.

3. We object to giving the Senate Judiciary Committee special power to act upon judicial appointments when the legislature is not in session. No other standing committee has such power to confirm appointments during the interim. Although we are confident the current Senate Judiciary Committee would act responsibly, we believe creating this exception is poor legislative precedent from a policy standpoint.

## MINORITY REPORT ON THE APPOINTMENT OF JUSTICE JEAN DUBOFSKY

### INTRODUCTION

The majority report states that one of the primary reasons for authorizing the committee to investigate judicial selection procedures was rumors alleging that "There has been a predetermination of which applicant will be selected by the nominating commission and subsequently appointed by the Governor." These rumors alleged that Justice Jean Dubofsky's appointment to the Supreme Court was predetermined by Governor Richard D. Lamm. However, there were no allegations that Justice Dubofsky was not qualified to become a Justice of the Supreme Court.

Testimony given to the committee did not substantiate the allegation. Thus, we have prepared this summary of the testimony to ensure that the merit selection system is not improperly criticized because of the unsubstantiated charges. This summary also will ensure that the second finding of fact in the majority report is not misconstrued as implying that the committee found any improprieties or wrongdoing in Justice Dubofsky's appointment.

### SUMMARY OF FINDINGS

The clear weight of testimony given to the committee indicates that neither Governor Lamm nor any member of his staff ever contacted a member of the Supreme Court nominating commission for the purpose of requesting that Justice Dubofsky's name be forwarded to the Governor or informing nominating commission members of a gubernatorial preference for her. At most the testimony reveals that several people who either work in or frequent the State Capitol had heard rumors that the Governor respected Justice Dubofsky's legal talents and abilities and that other persons construed this to mean that the Governor had preselected Justice Dubofsky for the Supreme Court. All relevant testimony, including that from former Lamm aids, was that Governor Lamm never said that he wanted to get Justice Dubofsky's name on a list of nominees so that he could appoint her to the Supreme Court.

### DISCUSSION OF TESTIMONY

The following discussion summarizes the testimony given to the committee on this issue, with references to pages in transcripts of testimony prepared for the committee and available as of December 21, 1979.

## I. GENERAL ALLEGATION

Governor Lamm preselected Jean Dubofsky for the Supreme Court and manipulated the Supreme Court nominating commission in order to have her name included on the list of nominees for the June, 1979 appointment to the Supreme Court.

### FACTS PRESENTED TO THE COMMITTEE:

All nominating commission members who testified stated that neither the Governor nor any member of his staff ever contacted them to request that the name of Jean Dubofsky or anyone else be included in the list of nominees or to inform them of the Governor's alleged preference for the appointment. (September 13, 1979, pages 40, 45, 84, 100, 110; October 31, 1979, pages 9-10, 12, 40-44, 50, 73.)

David Greenberg and Jeremy Shamos, both former legal advisers to Governor Lamm who assisted the Governor in selection of judges, testified that the Governor never said to them in any context that he wanted to get Jean Dubofsky's name on a list of Supreme Court nominees and that the Governor never asked them to pressure the nominating commission (August 31, 1979, page 36). They also testified that they never contacted members of the Supreme Court nominating commission about Justice Dubofsky (September 14, 1979, page 192). Greenberg and Shamos both testified that they were aware that the Governor thought highly of Justice Dubofsky's legal abilities, talents, experience, and personal demeanor (September 14, 1979, page 192).

Similar testimony was received from Carol Tempest, a nominating commission member (October 31, 1979, pages 56-61) and Kristie Hansen, an attorney in Denver (November 21, 1979, transcript unavailable).

## II. SPECIFIC ALLEGATIONS

Several specific factual allegations were made by former Chief Justice O. Otto Moore in unsworn testimony to the committee on August 15, 1979. However, the allegations generally were refuted in sworn testimony given to the committee by other persons. The allegations and corroborating or rebutting testimony include the following:

1. ALLEGATION: The Governor stated during his campaign that he hoped to appoint a woman to the Supreme Court, according to David Greenberg, and Jean Dubofsky was "the number one woman for the appointment" (Moore Statement, page 7).

FACTS PRESENTED TO THE COMMITTEE: The testimony indicated that the Governor did state during his campaign that he wanted to appoint a woman to the Supreme Court, but that he did not state that Jean Dubofsky was either his number one choice or his preference. Mr. Greenberg testified that he had heard that the Governor mentioned several women who he thought were qualified for the Supreme Court, including Jean Dubofsky, but that he had not stated a preference for

any particular woman (August 31, 1979, page 37; September 14, 1979, page 192; October 31, 1979, pages 38-39).

2. ALLEGATION: Brooke Wunnicke was a unanimous nominating commission choice in December, 1978, and Jean Dubofsky was not on the list (Moore Statement, page 7).

FACTS PRESENTED TO THE COMMITTEE: All nominating commission [members] who were asked testified that, to the best of their recollection, no applicant in either December, 1978 or June, 1979 received a unanimous vote of all commission members (September 13, 1979, pages 44, 86, 102, 111).

3. ALLEGATION: Judge Pierce and Judge Rovira were interviewed by the Governor prior to the December, 1978 appointment, but Ms. Wunnicke was not (Moore Statement, page 8).

FACTS PRESENTED TO THE COMMITTEE: A representative of the Governor stated on the record that the Governor interviewed only Judge Pierce before the December, 1978 appointment because Judge Pierce was the only nominee about whom the Governor had no personal knowledge (November 20, 1979, transcript unavailable).

4. ALLEGATION: As quoted in the Denver Post on July 3, 1979, several nominating commission members expressed displeasure with events leading to the Dubofsky appointment (Moore Statement, page 8).

FACTS PRESENTED TO THE COMMITTEE: In their testimony, nominating commission members did not state that there were any improprieties in the events leading to the appointment of Justice Dubofsky (September 13, 1979, pages 45, 95, 101, 110-111; October 31, 1979, pages 42, 56).

5. ALLEGATION: The same nominating commission members made conflicting decisions in December, 1978 and June, 1979 about the relative merits of Ms. Wunnicke and Justice Dubofsky (Moore Statement, page 8).

FACTS PRESENTED TO THE COMMITTEE: This allegation implies that only the intervention of the Governor changed the minds of the nominating commission members to reverse their earlier views. However, the exact same people were not involved in the two decisions. The nominating commission had three new members appointed between the December, 1978 and June, 1979 appointments to the Supreme Court (Read into record by Representative Kopel on August 15, 1979).

6. ALLEGATION: It was common knowledge around the State Capitol and elsewhere the "Jean Dubofsky was the person wanted for the Supreme Court by the Governor" (Moore Statement, page 9).

FACTS PRESENTED TO THE COMMITTEE: Brooke Wunnicke testified that several persons told her that she was not likely to get the Supreme Court appointment and she should be prepared to be disap-

pointed (August 31, 1979, page 7). Ms. Wunnicke also testified that these statements were all hearsay and were made to her immediately prior to the interviews for the June, 1979 appointment and not for several months before (August 31, 1979, pages 2, 11-12). Norman Early, a Chief Deputy District Attorney in Denver, testified that the Governor's alleged preference for Justice Dubofsky was the worst kept secret in town (August 31, 1979, pages 29, 33).

Several people, including Carol Tempest, a nominating commission member, testified that the rumor which they heard was the Governor had high respect for Justice Dubofsky's abilities, but no one testified that they had ever heard the Governor state his preference to make Jean Dubofsky the first woman appointed to the Supreme Court (September 14, 1979, page 192; October 31, 1979, pages 56-64). Several other nominating commission members testified that they never heard any such rumors at all (September 13, 1979, pages 30, 102; October 31, 1979, pages 10-12, 38, 43-44, 96).

7. ALLEGATION: Quoting from the Rocky Mountain News of July 8, 1979, nominating commission members were aware that the Governor wanted Jean Dubofsky on the Supreme Court (Moore Statement, page 9).

FACTS PRESENTED TO THE COMMITTEE: Most nominating commission members testified that they were not aware that the Governor allegedly wanted Justice Dubofsky on the Supreme Court prior to their June, 1979 meeting (September 13, 1979, pages 30, 40, 45, 84, 100, 102, 110; October 31, 1979, pages 9-10, 12, 38, 40-44, 50, 73, 96). Carol Tempest, on the other hand, testified that she had heard the rumors on which this allegation was based (October 31, 1979, pages 56-64).

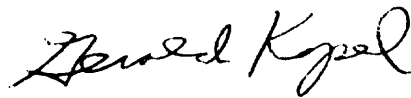
8. ALLEGATION: A nominating commission member told Norman Early, a Chief Deputy District Attorney in Denver, that the Governor wanted Jean Dubofsky on the Supreme Court (Moore Statement, page 10).

FACTS PRESENTED TO THE COMMITTEE: No nominating commission member told Mr. Early that the Governor wanted Justice Dubofsky on the Supreme Court (August 31, 1979, pages 27-28, 32-33). Mr. Early testified that a nominating commission member whom he had called may have asked if Mr. Early knew who the Governor wanted, but Mr. Early had no recollection of whether he told the nominating commission who he thought the Governor wanted (August 31, 1979, pages 27-28). Mr. Early testified that the nominating commission member, Mr. Fred Thomas, had no knowledge of who the Governor allegedly wanted (August 31, 1979, page 32).

#### CONCLUSION

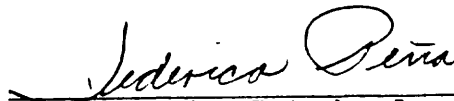
Based on the testimony summarized above, our conclusion is that the factual allegations made by former Chief Justice O. Otto Moore were not substantiated and, in large part, were refuted. Moreover, while Justice Moore stated during the August 15, 1979, committee hear-

ing that much of his statement was based on comments made to him by Brooke Wunnicke, Ms. Wunnicke testified that she had no direct knowledge to support any allegations of impropriety or wrongdoing and that she was not making such charges (August 31, 1979, pages 2, 6, 12-13). At the time this report was prepared, transcripts were not available for the afternoon of August 15, 1979, or the morning examination of Ms. Wunnicke on August 31, 1979. Testimony given on both days contain additional discrepancies with Justice Moore's allegations. Similarly, transcripts of testimony given to the committee on November 20 and 21, 1979, also were not available at the time this report was prepared. However, testimony on those days was consistent with this report.



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Representative Gerald Kopel



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Representative Federico Pena



LEGISLATIVE COUNCIL  
COMMITTEE ON HEALTH, ENVIRONMENT,  
WELFARE, AND INSTITUTIONS

Members of the Committee

Sen. Ted Strickland, Chairman	Rep. Gwenne Hume
Rep. Art Herzberger, Vice-Chairman	Rep. Stan Johnson
Sen. Sam Barnhill	Rep. Lee Jones
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	Rep. Claire Traylor

Council Staff

Joyce Emerson  
Senior Analyst

Dave Ferrill	Martha King
Senior Research Assistant	Senior Research Assistant

The interim Committee on Health, Environment, Welfare, and Institutions had under consideration the following topics: a study of arthritis programs; a study of programs for the blind and visually impaired; a study of solid and hazardous waste; and the Nurse Practice Act.

The committee recommends one bill pertaining to hazardous waste and two bills relating to hazardous materials. Additionally, two items are recommended for inclusion on the Governor's 1980 Legislative Agenda: Colorado School for the Deaf and Blind and a revision of the Nurse Practice Act.

## ARTHRITIS

### Background Report

In H.J.R. 1052, the committee was given the following assignment:

A study of the problems of Colorado citizens afflicted by arthritis and the search for methods, both medical and procedural, by which relief can be given to said victims, including examination of legislative action on arthritis taken in other states and the possibility of an epidemiological survey of arthritis victims.

In carrying out this charge, the committee heard testimony from representatives of the Rocky Mountain Chapter of the Arthritis Foundation, the Colorado Department of Health, the University of Colorado School of Medicine, other health-related organizations, and private citizens.

### Data on Arthritis in Colorado

The Arthritis Foundation presented the committee with information which described the incidence of the disease in Colorado and the lack of sufficient medical care for arthritis victims. The information supplied, based on figures compiled by the National Center for Health Statistics in a 1978 survey, is summarized below.

- 1) Over 400,000 Coloradans suffer from arthritis and related rheumatic diseases.

4,000 children have Juvenile Rheumatoid Arthritis.

74,000 persons have Rheumatoid Arthritis (which affects

young and middle-age adults).

180,000 persons have Osteoarthritis (which affects older adults).

- 2) 63,000 Coloradans are disabled by arthritis.
- 3) Surveys indicate that less than half of those affected by arthritis are receiving appropriate medical care.
- 4) An estimated \$10 million is spent by Coloradans annually on worthless remedies for their arthritis.
- 5) Few physicians and allied medical professionals have received adequate training in arthritis treatment.

Additionally, it was asserted during testimony that, on a national average, there are 17 million working days and \$17.4 billion in wages lost annually due to arthritis.

#### Arthritis Foundation Proposals

The Rocky Mountain Chapter of the Arthritis Foundation presented the committee with four recommendations for arthritis legislation:

- 1) that the committee endorse the concept of a Colorado Arthritis Act;
- 2) that the General Assembly authorize the Department of Health to undertake an educational program for the state;
- 3) that the General Assembly allocate funds for post-graduate fellowships for rheumatologists; and
- 4) that the General Assembly authorize an epidemiological survey in the state to include at least information on the cause, incidence, and effect of arthritis in the state.

Proposal for a Colorado Arthritis Act. In presenting this proposal to the committee, which they characterized as their objective in asking for the interim study, the Arthritis Foundation cited legislative activity in other states. Such legislation would embody in statute the General Assembly's intent to recognize the significance of arthritis as a major health problem in the state, and to ensure adequate funding for a comprehensive arthritis program.

Proposal for a state educational program. In 1975, the School of Medicine received \$250,000 in federal funds for an outreach program, through which 20 communities were provided with clinic services for patients and educational services for physicians. When the federal funds were phased out, the Arthritis Foundation approached the

General Assembly for support in 1978, and an appropriation in the amount of \$15,000 was included as a line item in the budget of the Department of Health for arthritis education programs. These programs were especially targeted for the rural areas of the state. The Arthritis Foundation matched these funds with a grant of an equal amount to the department. With this \$30,000, the Colorado Arthritis Action Program was instituted to upgrade the quality of care for arthritis victims. The program was a two-phased educational effort, consisting of: a) educational programs for patients and their families to inform them of the care which is available in the state; and b) seminars for physicians and other health professionals to inform them about the many advances which have been made in the diagnosis and treatment of arthritis.

Through the Action Program, which was conducted for five months in 1979, educational programs were held in 15 non-metropolitan locations around the state with a total of 833 arthritis patients and other interested persons and 115 physicians and other health professionals attending.

The Arthritis Foundation summarized this proposal with the statement that little current knowledge on arthritis treatment exists among primary care physicians, other medical professionals, and the public. With the necessary state support, a continuation of educational outreach programs will result in earlier and more effective treatment for patients, and therefore will reduce the disabilities that result from arthritis, the cost of treatment, and the level of human suffering.

Proposal for post-graduate fellowships in rheumatology. At the present time, only 18 rheumatologists or arthritis specialists are practicing in the state of Colorado, which equates to a ratio of one such specialist for every 22,222 arthritis victims. Fourteen of these specialists practice only in the Denver area, thus leaving large areas of the state with no access to any specialized care. The Arthritis Foundation stated that, while every arthritis patient does not need specialized care on a continuing basis, primary care physicians very frequently need to consult with an arthritis specialist at critical points in the course of the disease.

In making this proposal, it was stated that the University of Colorado School of Medicine is most equipped to provide the expert training needed to meet the requirements of the sub-specialty of rheumatology, and that additional fellowship support from the state would enable more such specialists to be trained in Colorado. The cost of providing this specialized training is between \$16,000 and \$18,000, annually, and it was suggested that state-funded fellowships could be granted with a stipulation that the recipients practice in certain areas of the state.

Proposal for epidemiological survey. The Arthritis Foundation presented evidence for a statewide survey, describing the current dearth of information about arthritis in Colorado. They recommended

that studies be conducted to answer a variety of questions: the number of Coloradans with the disease; the types of arthritis cases in the state; whether some groups in the population are more susceptible to the disease, or more likely to be disabled by it; how many arthritis victims are receiving adequate treatment; what is the cost of arthritis treatment currently being borne by patients and by the state; and to what extent do adequate treatment facilities and medical personnel exist in various regions of the state.

The contention was made that the responsibility for such studies lies most appropriately with the Colorado Department of Health, working in conjunction with the Arthritis Division of the University of Colorado School of Medicine. The Arthritis Foundation requested that state funding for this undertaking be provided by the General Assembly.

### Committee Recommendations on Arthritis

The Committee took no action on the proposals concerning a proposed Colorado Arthritis Act and for a state-supported epidemiological survey.

Concerning continued funding for the outreach educational program, the committee recommends that the present method of funding the program through the annual long appropriations bill be continued.

The committee supports the concept of a designated fellowship in rheumatology at the School of Medicine, but does not recommend the creation of a new fellowship position. Instead, the committee recommends that one of the currently existing state-supported fellowships at the School of Medicine be designated as a rheumatology position, with a stipulation that the incumbent spend a significant amount of time in the outreach educational program. This recommendation is to be forwarded to the Joint Budget Committee for their consideration for inclusion in the long bill.

## PROGRAMS FOR THE BLIND AND VISUALLY IMPAIRED

### Background Report

The committee was charged with the following assignment, as contained in H.J.R. 1052:

A study of all state programs serving the blind and the visually impaired citizens of Colorado which are under regulation or administration by the Office of Services to the Blind and Visually Impaired in the Depart-

ment of Social Services, with the direct assistance of the National Federation of the Blind of Colorado, for the purpose of ascertaining the benefits by said programs to blind and to visually impaired citizens of the state, making recommendations as to future directions that should be taken by said programs, and developing time-tables for implementing such recommendations.

Preparatory to an identification of specific issues relative to this charge, the committee undertook a thorough review of current state-supported programs for the blind and visually impaired, and heard testimony from several consumer organizations for the blind, private citizens, and representatives from state and private programs for the blind.

### Review of State Programs for the Blind and Visually Impaired

Early in the interim, committee staff was requested to conduct a review of various programs for the blind and visually impaired in order to provide the committee with a working knowledge of the types and levels of services which are delivered to this disabled group by state agencies. Prior to conducting this review of programs, the staff was instructed to confine the review to an explanation of the nature of the services being provided rather than an analysis of the adequacy, quality, or appropriateness of these services. The committee decided that such an analysis could be provided subsequent to the review by several of the consumer organizations and state agencies which either receive or deliver these services.

The review focused primarily upon the Office of Services for Blind and Deaf Individuals in the Division of Rehabilitation, Department of Social Services. At the committee's direction, the review also included the Library for the Blind, and the School for the Deaf and Blind in the Department of Education. Subsequent to this staff review, the committee devoted one of its interim meetings to a tour of the facilities which house the programs described below.

Office of Services for Blind and Deaf Individuals. The office is one of four major service delivery sections of the Division of Rehabilitation in the Department of Social Services. Until July, 1979, it was known as the Office of Services to the Blind and Visually Impaired, when it was redesignated to reflect an administrative reorganization which consolidated blind and deaf services. Services of the office are delivered through its four units: Vocational Rehabilitation Services; Home Teaching/Elderly Blind; The Rehabilitation Center for Visually Impaired and Hearing Impaired; and the Vending Facilities Program.

The Vocational Rehabilitation Services unit serves as the entry point for all clients who are to receive vocational rehabilitation services in the Office of Services for the Blind and Deaf. The stated goal of this unit is "to assist each individual served to achieve his

or her maximum vocational potential". The unit's primary responsibilities, as described by the unit administrator, are: case finding; diagnostic evaluation; and vocational rehabilitation.

To be eligible for the services provided by the Rehabilitation Unit the client must be determined to have a visual or hearing impairment that constitutes a substantial handicap to employment, and that there exists a reasonable expectation that rehabilitation services may benefit the individual in terms of employability.

The unit is charged with the responsibility of maintaining a register of "legally blind" persons in the state. A person is determined to be legally blind if vision is 20/200 or less in the best corrected eye, or if his maximum field of vision is twenty degrees or less. The register now numbers about 4,300 persons.

The Home Teaching/Elderly Blind unit provides decentralized services to clients who have an impairment which constitutes or results in a substantial handicap in the performance of daily living activities. These clients are not necessarily employment-bound, but rather tend to be elderly persons (many of whom have recently become blind), and preschool children who are not yet of the age for public school or vocational rehabilitation programs. Some vocationally oriented clients who are on waiting lists for vocational rehabilitation services may be served by the teaching unit. The unit determines eligibility for home teaching services.

The goals of the unit are to enable clients to: overcome the handicapping effects of their disability; become as independent as possible; resume responsibilities held prior to their disability; and participate more fully in a vocational program. The services provided to meet these goals are communication skills, home management, personal adjustment, and mobility skills.

The Rehabilitation Center is a resource for referral from counselors in the rehabilitation unit. It provides a variety of pre-vocational and vocational services to its clients. The stated goals of the Rehabilitation Center are: to enable clients to develop the self-sufficiency to pursue specific training for employment; to enable clients to choose a vocation and obtain the appropriate training for it; and to enable clients to obtain and succeed in competitive employment.

New clients at the center (commonly known as the "workshop") undergo a two-week evaluation session, after which time a staffing session is held to determine specific goals for the client in each area of the workshop -- rehabilitation teaching, orientation and mobility, vocational evaluation, work adjustment, and in some cases psychological services or vision treatment. A plan is developed to meet the specific goal established for each client, including monthly benchmarks to measure the client's progress.

It is through the work adjustment program that the client's ac-

tual vocational preparation takes place. The ultimate goal of the program is to move into competitive employment those clients who have limited work experience and work disabilities. Through the use of work samples or actual sub-contract production, the clients are given the opportunity for graduated skill development. Depending on the individual's productive capacity, piece rate wages are paid to the clients in the sub-contract area.

Some long-term sheltered employment is provided at the center for clients who are somewhat productive, but inappropriate for competitive employment. A "work activity program" is offered for those severely handicapped persons whose productivity is inconsequential, and who are not likely to ever be placed in competitive employment.

An additional service offered at the Rehabilitation Center is the Skills Center, where rehabilitation teaching in the areas of daily living and communication is provided. The daily living area offers training designed to improve the skills necessary for taking care of one's personal needs such as cooking, housekeeping, grooming, and use of leisure time. The communications area provides training in the various methods which will enable a visually impaired person to communicate effectively, depending on the client's level of disability and need.

The Vending Facilities Program promotes, establishes, and supervises locations for vending facilities to be operated by trained blind persons. The purpose of the program, which was established by the federal Randolph-Sheppard Act in 1936 (amended 1974), is to provide an opportunity for legally blind persons to become self-employed in business locations which are established and monitored by the program.

Potential vendors are referred to the vending program from the Rehabilitation Services Unit. Trainees who need basic skills instruction are routed through the Rehabilitation Center and, when appropriate, are sent on for comprehensive vending facilities training. The individualized training is done at the School for the Deaf and Blind in cooperation with the school and is geared toward specific client needs.

Most of the 50 existing vending facilities in the program are located in federal, state, and county government buildings. Article 8.5 of Title 26, C.R.S. 1973, gives priority to blind persons who are licensed by the unit in the authorization of vending facilities on state property.

School for the Deaf and the Blind. The Colorado School for the Deaf and Blind in Colorado Springs is constitutionally responsible for providing the education of deaf and blind children who cannot be advantageously educated in the other schools or educational institutions of the state. Effective July 1, 1977, the school was transferred from the Department of Institutions to the Department of Education.



The school, which offers both day and residential programs, is a comprehensive educational center which embraces a full service component -- individualized instructional planning, appropriately certified teachers, qualified supervision of instruction, periodic audio-logical and psychological assessment, appropriate and functional amplification, satisfactory family contacts, and counseling services by personnel trained in working with the hearing and visually impaired.

The school's educational program offers both academic and vocational instruction, and the educational support services include the evaluation center, library, physical education, and organized athletics. The residential living program provides living accommodations for the students as well as instruction in self-help skills, personal hygiene and grooming, household care, and social adjustment. Vocational rehabilitation services are provided at the school by the Division of Rehabilitation in the Department of Social Services. In 1978, the Vending Facilities Training Program was initiated at the school.

Library Services for the Blind and Physically Handicapped. The library is a service offered within the state Department of Education to Coloradans who are physically unable to read or use conventional print materials. The program is operated under an automated circulation system whereby cassette tapes and flexible disc records are regularly mailed to persons subscribing to the service. Playback equipment (tape players and record players) is provided free-of-charge to patrons under a federal program administered by the Library of Congress.

The program provides informational and recreational reading material in the form of novels and periodicals which are prepared by the Library of Congress. Other special interest material can be recorded upon a patron's request under the state program. The Colorado Library for the Blind also maintains a supply of large print books. Through a cooperative agreement with the Utah State Library, Coloradans have access to braille books.

#### Identification of Specific Issues Relative to Study of Blind Programs

After completion of its review of programs currently being offered in the state for blind and visually impaired persons, the committee was provided with testimony from several interested organizations and individuals. Both the committee's review of programs and the subsequent testimony brought to light a number of specific issues to which the committee could direct its attention for possible legislative action.

School for the Deaf and the Blind. Mr. Robert Dawson, Director of the Colorado School for the Deaf and Blind, testified on the current status of the school's activities and provided his analysis of some of the problems being faced by the school in the recent past.

Of major impact to the school has been the "mainstreaming" of disabled students into regular education programs in public schools in their home communities. Since 1973, when legislation was passed which implemented this policy, the student body population has decreased by 37 percent, and a higher proportion of students have multiple disabilities, such as emotional disturbance, mental retardation, or learning disabilities, in addition to visual impairment or deafness.

As a result of these changes, Mr. Dawson explained that the school's facilities are not used to the extent that they once were, and that they are seeking opportunities to extend their services to the blind and deaf communities in other ways, such as programs for pre-school children and persons beyond school age.

At the request of the committee, Mr. Dawson prepared a proposal for the use of school facilities to provide basic rehabilitation and educational services, in coordination with other human service agencies in the area, for disabled persons in the community, especially blind adults. This proposal served as the basis for the committee's recommendation relative to the School for the Deaf and Blind.

Office of Services for Blind and Deaf Individuals. As an introduction to the discussion of the adequacy and quality of current services being provided to the blind and visually impaired by the Division of Rehabilitation, the committee requested three groups to provide their responses to a series of questions that had been prepared and distributed to these groups -- the National Federation of the Blind of Colorado, the American Council of the Blind of Colorado, and the Office of Services to Blind and Deaf Individuals in the Division of Rehabilitation. Attached as Appendix A is a copy of the letter from the committee which contains the questions. The letter is accompanied by the written responses of the three groups.

The issues presented below are those which were identified by the committee in the course of its review of current programs in the Office of Services to Blind and Deaf Individuals and during testimony presented in committee hearings related to its study of these programs. These specific issues, which are discussed in the remainder of this section, are:

(a) the effect that the internal reorganization of the division will have on the number of rehabilitation counselors serving blind clients;

(b) the practice and philosophy of paying blind workshop employees less than the federal minimum wage;

(c) the compliance of Colorado's Rehabilitation Plan with federal regulations; and

(d) the relocation of the Rehabilitation Center (workshop) to a new facility.

(A) Internal Reorganization of Blind and Deaf Services in the Division of Rehabilitation

During the review of programs offered by the Division of Rehabilitation for blind clients, it was pointed out that, in July of 1979, the division's rehabilitation services for deaf clients were transferred from the General Program section of the Division to the Division of the Services for the Visually Impaired. The section name was changed to Services for Blind and Deaf Individuals in order to reflect this transfer.

In response to the question as to whether this reorganization has resulted in a decrease in staff capability for providing direct services to blind clients, the staff prepared the following staffing analysis within the newly formed section.

Staffing analysis. The division's fiscal year 1978-79 appropriation allocated 50 FTE for services to the visually impaired, while its fiscal year 1979-80 appropriation allocated 63 FTE for services to the visually impaired and hearing impaired. Six positions were designated as hearing impaired, with 57 for the visually impaired (or for both, as in the case of secretarial or supervisory staff).

There are four units within the office of Services for Blind and Deaf individuals:

- a) Rehabilitation Services Unit;
- b) Home Teaching Unit;
- c) Rehabilitation Center (skills center; "workshop"); and
- d) Vending Facilities Program.

The following narrative describes some differences between the FY 1978-79 and FY 1979-80 organizational staff.

The Rehabilitation Services Unit increased its direct service staff positions serving blind clients by one, and received five positions for direct service to deaf clients as of July 1, 1979. In addition, two new supervisory positions were allocated to the unit, one for the Denver District and one for the Southern District. The two persons filling the positions were formerly counselors and continue to carry caseloads as direct service providers. In addition to the five office locations for Rehabilitation Services (Denver, Pueblo, Grand Junction, and Greeley) two new locations were added, one in Alamosa, and one in Sterling. The vast majority of services to both blind and deaf clients are provided through the Rehabilitation Services Unit. Five positions in the unit are currently vacant because of budget shortages.

The Rehabilitation Center staff positions remained the same, except for the addition of a clerk typist. The center serves prima-

rily visually impaired clients or visually impaired clients with additional disabilities. It is assumed that the minimal number of deaf clients who are expected to be referred to the center can be served by existing staff persons.

The Home Teaching Unit received an additional teaching position, which has not yet been filled because the personnel budget for the unit is short of funds. The unit serves visually impaired persons and is not expected to receive a significant number of deaf client referrals.

The Vending Facilities Program staff positions remained unchanged and the program will continue to serve solely visually impaired clients as current or potential vending facility operators. It is possible that deaf clients may be referred to the program for food service training, but existing personnel will be able to serve them.

In addition to the units and positions discussed, the office received a new position for a Coordinator for Deaf Services.

When the staffing change in the Rehabilitation Services Unit was specifically questioned, a chart (Appendix B) was prepared which indicates that there was an actual net increase of two rehabilitation counselors for service to blind clients through the Rehabilitation Unit.

#### (B) Payment of Less than the Federal Minimum Wage to Clients of the Rehabilitation Center (Workshop)

The practice and philosophy of paying less than the minimum wage in the workshop was criticized by some of the participants in the interim study. To answer some of the concerns and misconceptions which arose relative to this practice, the committee was provided with an analysis of the federal regulations which allow for less than the minimum wage to be paid to disabled workshop clients. The committee also explored the fiscal and programmatic impacts that would result from ensuring a minimum wage for all workshop clients.

Attached as Appendix C is a review of the "certificate program" by the U.S. Department of Labor, which grants workshops authority to pay a wage which is lower than the federal minimum. Additionally, the attachment included responses to specific questions relative to the impact that would result from mandating a minimum wage for clients of Colorado's Rehabilitation Center.

#### (C) Compliance of Colorado's Rehabilitation Plan with Federal Regulations

The passage of Public Law 95-602, known as the "1978 Rehabilitation Amendments", contained a number of new opportunities for

improving services available to blind persons. In a presentation by representatives of the National Federation of the Blind (NFB) of Colorado, it was stated that the Colorado Rehabilitation Plan has not sufficiently addressed the provision of some of these services. In the presentation, the following services, relative to the provisions of PL 95-602, were recommended for improvement in the state plan:

1) placement services -- the need for maximum efforts to place handicapped individuals in competitive employment;

2) consumer input -- the need for a formal mechanism for participation in the planning process by individuals and organizations who are consumers of services, as such participation is required of state agencies in PL 95-602;

3) evaluation of the quality of services -- the need to provide in the state plan a process for measuring consumer satisfaction and for performance standards for evaluating staff productivity;

4) the use of profit making organizations in the delivery of services -- as PL 95-602 encourages the use of private organizations to provide evaluation and training services to blind clients;

5) eligibility requirements -- as current requirements for services seem to be tied to a rather restrictive financial need test, a more comprehensive approach to the delivery of services is needed. This would permit the state to provide reader services, including electronic devices used for gaining access to printed material for blind persons, regardless of financial need.

In an additional remark, representatives of the NFB stated that the recent consolidation of blind and deaf programs in the Division of Rehabilitation runs counter to the intent of PL 95-602, which encourages states to develop separate programs for services to the blind.

#### (D) Relocation of the Rehabilitation Center in a New Facility

One of the most significant drawbacks in the workshop program cited by division personnel and other participants in the interim study was the inadequacy of the physical facility itself. It was stated that the physical plant does not meet the standards of the U.S. Occupational Safety and Health Administration (OSHA), that it is too small, and that it is a degrading atmosphere for clients and staff alike.

Simultaneous to the committee's interim study, the division was in the process of locating a new facility for the workshop program, and the committee was kept apprised of the progress of these efforts. An initially proposed site, the Robinson Dairy Building, was toured by the committee during the time that the division was negotiating the terms of a lease for the building. Due to a number of factors, including excessive renovation costs, the short term of the lease, and

disapproval of the location of the building because of flood-plain zoning, the Robinson Dairy site was abandoned. Subsequently, the committee was informed that the Hirschfeld Building was being pursued as a new location for the workshop, and that a lease for it was being negotiated. At the conclusion of the committee's interim deliberations the lease had not been finalized, but the acquisition appeared promising.

### Committee Recommendations

In summarizing the issues which the committee would consider for final recommendations, the following were identified: a) staffing issues within the division relative to services for the blind; b) the payment of minimum wages to clients of the workshop; c) the implementation of services for the blind and visually impaired through the State Rehabilitation Plan, and its compliance with provisions of PL 95-602; and d) issues relating to the School for the Deaf and Blind.

Recommendations concerning the Division of Rehabilitation. In reducing these issues to specific recommendations, the committee concluded that issues relating to both division staffing and workshop minimum wage could be addressed through the state plan, and that adequate consumer input in the planning process could ensure examination of these issues, thus eliminate the necessity of separate legislative provisions on each issue.

After endorsing the concept of an advisory committee to assist in policy matters relating to services to the blind, several options for providing such input were considered. The mechanism recommended by the committee is an advisory council under the administrative prerogative of the Executive Director of the Department of Social Services. The council would provide review and advice over the policies of the entire Division of Rehabilitation. Specifically, the proposal (submitted by the Department of Social Services) would create a fifteen member Division of Rehabilitation Advisory Committee to be appointed by the Executive Director of the Department of Social Services. The advisory committee would be representative of handicapped consumer groups and other organized councils dealing with handicapped issues, and would work with the director of the division on all programs administered by the division. The advisory committee would be functional by February 1, 1980, and prior to that time an ad hoc task force of handicapped consumers would be organized to develop recommendations on such issues as representation on the committee and terms of appointment for committee members.

The HEWI committee requested that the executive director confirm in writing his intentions to create the advisory committee, and that a letter also be sent to the House and Senate HEWI Committees of Reference during the 1980 session of the General Assembly.

Recommendations concerning the School for the Deaf and Blind. Although the committee had initially pursued the specific issue of the use of school facilities for community-based programs for blind adults, subsequent testimony and on-site inspection of the school prompted the committee to recommend that all aspects of the operation of the school be included as an item on the Governor's agenda for the 1980 session.

## SOLID AND HAZARDOUS WASTE MANAGEMENT

### Background Report

#### Federal Legislation

In order to address the growing national problem resulting from improper disposal of wastes, Congress enacted the Resource Conservation and Recovery Act (RCRA) in 1976. The basic objectives of RCRA are:

- to improve practices in solid waste disposal to protect public health and environmental quality;
- to regulate control of hazardous waste from generation through disposal; and
- to establish resource conservation as the preferred solid waste management approach.

The RCRA requires the Environmental Protection Agency (EPA) to develop a federal hazardous waste management program which will regulate hazardous wastes from generation to disposal. Subtitle C of the RCRA mandates the EPA to determine criteria for identifying hazardous wastes, and to promulgate standards for hazardous waste management by generators, transporters, and owners and operators of hazardous waste treatment, storage, and disposal facilities. Individual states are encouraged to develop their own hazardous waste programs, which, upon approval by the EPA, may be operated by the states in lieu of the federal program. If a state chooses not to develop its own EPA approved program, EPA is responsible for enforcing the federal program within that state. The EPA is required to promulgate guidelines to assist states in the development of their own hazardous waste programs, and Subtitle C provides for monetary grants to assist states in the development and implementation of authorized programs.

#### Interim Committee on H.E.W.I.

In H.J.R. 1052, enacted in the 1979 session, the committee was given the following assignment:

A study of solid wastes management in the state for the following purposes:

(I) to address the problems of the sources of generation, handling, transportation, and disposal of hazardous and solid wastes in Colorado and elements of a program to address this problem;

(II) to spell out, in an implementable fashion, the responsibility of state, regional, and local governments;

(III) to determine legislative needs for dealing with hazardous and solid wastes in Colorado and the funding mechanisms to be available to each level of government;

(IV) to provide a mechanism for the public and private industry to play a major role in all phases of solid wastes management; and

(V) to stress prevention of problems in order to avoid the need for expensive cures in the future.

Initially, the committee heard testimony from government, industry, and consumer group representatives about their perceptions of existing problems and needs related to both hazardous and solid waste disposal. The major concerns elicited in testimony pertained to hazardous waste management; and, as a result, the committee focused its study on hazardous waste, rather than on the broader area of solid waste management.

#### Identification of the Problem

National. It is estimated that only 10 percent of the 35 to 40 metric tons of hazardous waste produced yearly in the United States is disposed of properly. A September, 1979, report, "Hazardous Waste Disposal", by the U.S. House Subcommittee on Oversight and Investigations concluded that hazardous waste disposal is one of the most serious problems facing the country today. The report called federal and state efforts to control hazardous waste disposal "totally inadequate."

According to EPA estimates, there may be 32,000 waste disposal sites in the country that threaten public health or the environment. Of those, about 1,200 are considered to pose an immediate threat and would cost about \$31 billion to properly clean up. The house subcommittee concluded that the cost of cleanup is far more expensive than initial proper disposal, and it outlined several recommendations to EPA and Congress to improve efforts to address the problems of hazardous waste disposal. Of primary importance, according to the report, is the expeditious completion by EPA of the hazardous waste regula-



tions specified by RCRA. It is projected that these regulations will be issued by July, 1980.

Colorado. It is estimated that Colorado may have 2,000 generators of hazardous wastes. According to the Colorado Department of Health, the demand for disposal of such wastes is increasing dramatically. The problem is illustrated by the situation at Lowrey Landfill, where only three million gallons of chemicals were deposited in 1973, compared with 10 million gallons in 1978. There is currently no approved site in the state designated to receive hazardous wastes, nor are there regulations which specify where and how to dispose of such wastes. Arapahoe Chemicals, Inc., reported that it currently transports its final segregated hazardous waste hundreds of miles to qualified disposal sites in Arkansas and Idaho, because of the lack of a designated site within Colorado.

The extent of the problem in Colorado is unknown. The Colorado General Assembly, by enacting S.B. 336 in 1979, declared that "a statewide study of disposal of hazardous wastes ... is necessary prior to enactment of specific legislation governing the disposal of such wastes." The bill mandates the Department of Health to conduct the study and report its findings to the General Assembly by January 10, 1980. According to the Department of Health, the S.B. 336 report will: present survey findings of hazardous waste generation in the state; identify criteria for disposal sites and examine the location of potential sites that meet such criteria; and present legal issues involved in the disposal of hazardous wastes.

Concerns expressed by interested parties. In light of the fact that counties have the primary responsibility for providing landfills, local government representatives expressed several concerns regarding hazardous waste disposal. Concerns include a need for personnel training, technical assistance, information exchange, and financial assistance. The process for the establishment of hazardous waste sites was of major concern to local officials. They also objected to granting the power of eminent domain to the state for acquisition of land for hazardous waste disposal sites.

Industry representatives testified that the lack of a state plan to regulate the handling and management of hazardous waste is having a significant impact on commerce and the ability of businesses to make long-range plans. They cautioned against the state's duplication of regulations promulgated by other government agencies (e.g., the Occupational Safety and Health Administration, the U.S. Department of Transportation, and the Colorado Public Utilities Commission) and expressed concern about costs to be borne by companies, especially for transporting hazardous wastes long distances to disposal sites.

Representatives from other interested groups, such as the Colorado League of Women Voters, Eco Cycle, and Keep Colorado Beautiful, underscored the need for a state waste policy which would include provisions for material reuse, recovery, and recycling, whenever possible.

## Committee Action

During the course of its study, the committee considered a proposed hazardous waste management bill submitted by the Colorado Department of Health. In reviewing the bill, several major problems were identified. Because of these apparent unresolved problems, and in order to allow committee staff and various interested parties time to review and comment on provisions in the proposed bill, the committee scheduled an additional meeting. At that time, the committee addressed a revised version of the proposed Department of Health bill, as submitted by an ad hoc group comprised of interested persons from state, local, and federal governments, industry representatives, and a member of the committee.

After hearing testimony and discussing concerns raised by committee members, it was decided that, due to time constraints, the committee would not recommend any specific bills for consideration by the General Assembly during the 1980 legislative session. The committee did, however, vote to endorse general provisions concerning hazardous waste and emergency response powers for dealing with hazardous materials incidents, including preventive measures. The committee voted to request the Legislative Council to include the topics of hazardous waste and emergency response provisions for hazardous materials incidents in its request to the Governor of items to be placed on his Legislative Agenda for the 1980 session.

At its November 26, 1979 meeting, the Legislative Council reviewed the report of the committee which recommended that the Governor be requested to place bill topics rather than specific bills on the legislative agenda for 1980. The Legislative Council accepted the report as partially complete and asked the committee to hold an additional meeting for the purpose of preparing bills which address the two topics endorsed by the committee.

After the meeting at which the committee voted on its initial recommendation to the Legislative Council, it was understood by the committee that interested persons would meet subsequent to committee action in order to draft bills containing provisions endorsed by the committee for introduction in the 1980 session.

Two ad hoc groups met separately on several occasions to address the two topics endorsed by the committee. The group which prepared a revised version of the hazardous waste bill was comprised of representatives from Arapahoe Chemicals, Inc., Colorado Association of Commerce and Industry, Colorado Counties, Inc., the Colorado Municipal League, the Department of Health, Eastman Kodak Company, Hewlett-Packard, the interim HEWI committee, Public Service Company of Colorado, the U.S. Environmental Protection Agency, Rocky Mountain Oil and Gas Association, the Legislative Drafting Office, and Legislative Council staff.

The ad hoc group which met and drafted a bill concerning emergency response and preparedness to hazardous material incidents

included representatives from the parties listed above in addition to representatives from: CF&I Steel Corporation, Colorado State Patrol, the Division of Communications, the Division of Disaster Emergency Services, the Public Utilities Commission, and the U.S. Department of Transportation.

The committee met for a final time and reviewed three bills which had been drafted in response to suggestions made by the ad hoc groups. After hearing testimony on the proposed bills, the committee voted to recommend to the Legislative Council that the Governor be requested to place three bills on the legislative agenda for 1980.

### Committee Recommendations

#### Concerning Hazardous Waste -- Bill 63

While it was understood that the provisions of the Federal Resource Recovery and Conservation Act of 1976, as amended, do not necessitate state action at this time, the committee concluded that Colorado is in need of a hazardous waste management program, including a designated hazardous waste disposal site.

The intent of Bill 63 is to establish a program of regulation over the storage, treatment, and disposal of hazardous wastes in Colorado. Under provisions of the bill, no person could lawfully treat, store, or dispose of any hazardous waste without having been granted a permit to do so from the Colorado Department of Health (unless specifically exempted).

The bill requires that the State Board of Health promulgate hazardous waste management rules and regulations consistent with the rules and regulations of the United States Environmental Protection Agency issued pursuant to the RCRA, unless it is necessary to substitute alternate rules and regulations.

The program established by the bill includes the following major provisions:

Department of Health responsibilities. The Department of Health is required to designate quantities and classifications of hazardous waste to be regulated and to issue permits for the treatment, storage, and disposal of hazardous waste, except for specified exemptions listed in the bill. The bill requires the department to inspect permitted operations and enforce the conditions of the permits, unless it enters into an agreement with a local government entity to do so.

In addition, the department is to conduct a program to encourage resource recovery and treatment of hazardous waste as alternatives to disposal, and is to provide technical advice to hazardous waste generators, to owners and operators of treatment plants, storage

facilities, and disposal sites, and to counties and municipalities requesting such advice.

Disposal sites. The Department of Health is to designate hazardous waste disposal needs in the state, time periods during which permit applications may be submitted, and land areas that are acceptable for the disposal of specified types of hazardous waste.

The bill provides that before applying to the department for a permit to operate a hazardous waste disposal site, a person must first receive a certificate of designation for the proposed site from the Board of County Commissioners (or from the governing board of the municipality, as the case may be). The bill lists several factors which must be considered by the local authorities when considering an application for a certificate. The certificate of designation is not effective until the Department of Health issues a disposal site permit, and the department is not required to issue a permit if, in its judgment, the applicant is not qualified.

The bill allows the department, with the approval of the General Assembly, to acquire land and lease it to others for disposal purposes. It also specifies that a disposal site permit may not be issued unless the site is state-owned property, or there are provisions to transfer the property to the state or the federal government upon closure, or the site owner is able to demonstrate to the department that he is able to adequately maintain the site, with oversight by the department.

If by January 1, 1983, no certificates of designation have been issued by local authorities for a disposal site, the department is required to submit a report to the General Assembly for review and legislative action.

Funds. The bill creates a "hazardous waste service fund" to finance the state program for maintenance and monitoring of hazardous waste storage, treatment, and disposal facilities. Permit fees for those facilities are to finance the service fund.

The bill also creates a "hazardous waste trust fund" to offset long-term costs for the maintenance of hazardous waste sites upon closure. Fees collected from disposal site facility permits, in addition to service fund fees, are to be used to finance the trust fund.

Penalties. The bill provides for both civil and criminal penalties for violators of the article. It also empowers the Department of Health to inspect any property on which hazardous waste is reasonably believed to be located in order to determine compliance with the article. In the event of an emergency involving hazardous waste, the department may lay an embargo upon or impound hazardous waste in the possession of any person who fails to comply with the provisions of the article.

### Concerning Transportation of Hazardous Materials -- Bill 64

The committee recommends Bill 64 in order to address certain omissions identified in S.B. 121, which was enacted during the 1979 session. S.B. 121 authorized the Colorado Public Utilities Commission to control intrastate transportation of hazardous materials by motor vehicle. Bill 64 would expand the authority of the PUC to include transportation of hazardous material by rail and to include interstate transportation by motor vehicle and by rail. The bill's provisions specify that the authority for control by the PUC will apply only insofar as compatible with federal law and when not creating an undue burden on interstate commerce.

### Concerning Hazardous Material Incidents -- Bill 65

In order to address state needs related to hazardous materials incidents, the committee first reviewed existing statutory provisions for emergency response. A chart summarizing these provisions appears as Appendix D. Bill 65 is intended to supplement and augment the existing local, state, and federal programs and authorities involved in the prevention of and response to hazardous material incidents. It does not affect the jurisdiction of law enforcement or fire-fighting forces. The bill designates responsibilities for the prevention of, response to, and clean-up of hazardous material incidents.

Department of Health responsibilities. The bill requires the Department of Health to: develop plans for the prevention of, response to, and resolution of hazardous material incidents; provide technical staff to train and advise local and state personnel to deal with hazardous material incidents; and establish and maintain a data resource center to provide technical information and advice needed to respond to hazardous material incidents. The bill allows the department to establish a fee-based program to collect hazardous material from individuals who wish to dispose of it.

The department is also authorized to enter and inspect any property on which hazardous material is reasonably believed to be located in such a manner to present a threat to the public health and safety or environment.

Prevention. The bill requires persons responsible for storage, handling, or transportation of hazardous material to make every reasonable effort to provide for the prevention of hazardous material incidents, and to provide plans to be used in the event of such an incident. If an incident occurs, the persons responsible must take immediate action to correct the effects of the incident and must notify appropriate authorities.

Incidents endangering public health. In cases where the Department of Health determines that immediate danger exists, or is imminent, because of activities involving hazardous material, the bill allows the department to issue a cease and desist order to persons involved, or to apply to a district court for a restraining order or

injunction, or to do both. Furthermore, if the department determines the above procedures do not provide adequate protection, or if a hazardous material incident has occurred which presents an immediate danger, the department is authorized to issue emergency orders, including orders to lay an embargo upon or impound the hazardous material.

Clean-up. The bill places the responsibility for containment and cleanup of a hazardous material incident with the person responsible for the facility or vehicle by which the incident occurred. The proposal also authorizes the Department of Health to issue clean-up orders to persons responsible for incidents, and to take specified legal action in cases of non-compliance. In cases of non-compliance, or when it is not practicable for the responsible party to provide the necessary clean-up, the department is to take necessary steps to clean-up the effects of the incident and to recover any public funds expended for the clean-up from the responsible persons.

Extremely hazardous material. Before extremely hazardous materials may be transported within Colorado, the Department of Health must be notified.

Penalties. The bill provides penalties for violators of the article and for persons who willfully contribute to hazardous material incidents.

Division of Disaster Emergency Services. The bill amends the statutory provisions pertaining to the Division of Disaster Emergency Services to include hazardous material emergencies in the definition of "disaster". The inclusion would incorporate provisions for hazardous material incidents in state and local disaster plans. In addition, the division is required to assure that regular training and educational programs about hazardous material incidents are conducted.

The Governor's Disaster Emergency Council membership is changed by the bill to include the Executive Director of the Department of Health.

## NURSE PRACTICE ACT

### Background Report

The committee was authorized by the Legislative Council to appoint a subcommittee to review proposed amendments to the Nurse Practice Act, and to arrive at a final recommendation concerning the introduction of a bill in the 1980 session of the General Assembly. This action was in response to the General Assembly's decision during the 1979 Session not to adopt the legislation necessary to continue the Board of Nursing and the Board of Practical Nursing pursuant to the sunset law. As a result, the boards are in their final "wind-up" year and will cease to exist after June of 1980, unless a continuation bill is adopted in the 1980 Session.

The failure of H.B. 1389 was not based on a question of whether the two boards should continue to exist, but rather on a number of unresolved issues pertaining to the practice of nursing. In an effort to develop an agreement on these issues, an ad hoc group of nursing and health industry representatives was formed to draft a proposed Nurse Practice Act for introduction in the 1980 session.

The ad hoc group was advised to work independent of the subcommittee and to present their final conclusions to the subcommittee. The final recommendation of the subcommittee would be contingent upon the ability of the group to demonstrate that a compromise position on the contentious issues that surrounded H.B. 1389 had been made. If consensus was reached, the subcommittee would recommend a "broad title" for the Governor's legislative agenda in 1980, thus allowing legislative consideration of these issues. If consensus was not reached, the subcommittee would recommend a "narrow title" for the agenda, which would pertain only to the continuation of the two boards.

At the final meeting of the subcommittee, each of the organizations that participated in the ad hoc group was given the opportunity to assess the group's success at achieving a consensus, and to offer its recommendation concerning a "broad" versus a "narrow" title for the Governor's agenda. Based on a majority of the opinions expressed in these responses, the subcommittee adopted a recommendation for a "broad title" for the Governor's agenda.

The subcommittee was informed by participants in the ad hoc group that specific draft language for proposed legislation was still being discussed among the participants. The subcommittee directed these organizations to continue working toward the completion of a final draft of a proposed bill. To ensure that all communications between the groups could be documented, the subcommittee also directed the participants to reduce their recommendations to writing and to circulate them among all participating organizations, including a copy to the Legislative Council staff so that the subcommittee and interested legislators could be kept apprised of the development of these proposed amendments to the Nurse Practice Act.

## APPENDIX A

### Personal Skills Training

1) Training in personal skills (e.g., Braille instruction, mobility training, homemaking skills, etc.) are offered to clients by both the Rehabilitation Center and by the Home Teaching Unit. In what ways do the clients and their needs differ?

2) In your opinion, is there a noticeable difference in the availability and quality of the personal skills training being provided at the Center as opposed to the personal services provided through the Home Teaching Unit? Are these services adequate? If they are not, what specific recommendations do you have to correct the deficiencies?

### Vocational Rehabilitation

1) In what ways do the vocational rehabilitation programs at the Rehabilitation Center for the Visually Impaired differ from the vocational rehabilitation services provided through the Unit for Vocational Rehabilitation Services for Blind and Deaf?

2) Is there a difference in the quality and availability of rehabilitation services at the Center as contrasted to those provided through the Unit for Vocational Rehabilitation Services for Blind and Deaf?

3) Please give a listing of the occupational areas in which clients of the Center receive training, and comment on the quality of each of these areas and its potential for meeting future employment needs.

4) What is the job placement rate for clients of the Center and for clients of the Vocational Rehabilitation Unit?

5) Are the vocational rehabilitation services currently available to blind persons in Colorado adequate? If not, what specific recommendations would you make to correct these deficiencies?

### Sheltered Workshop

1) What is the distinction between the "pre-vocational" client and the long-term worker at the Workshop?



2) Please provide a general profile of a long-term worker in the Workshop. Generally, what is the potential for placement of these workers in competitive employment?

3) How are wages for blind workers determined and what would be the fiscal impact of paying at least the minimum wage to all workers? Would the payment of minimum wage have programmatic impacts?

#### Separation of the Skills Center and the Workshop

1) What are the advantages and disadvantages of locating the Skills Center in the same facility with the sheltered workshop?

2) If these two functions were separated physically, how should the Skills Center and the Workshop be structured? In other words, what programs should be offered as part of a Skills Center and what should be included in the Workshop program?

#### Vending Facilities Program

Is the Vending Facilities Program effective? Should the program be expanded? What would be necessary to expand it?

#### State Plan

Is the State Rehabilitation Plan consistent with federal rehabilitation legislation (specifically the "Rehabilitation Act of 1973" as amended by P.L. 95-602)?

#### General Comments

Do you have any additional concerns or recommendations which you would like to bring to the committee's attention?

August 14, 1979

THE TESTIMONY OF  
THE NATIONAL FEDERATION OF THE BLIND OF COLORADO  
  
PRESENTED TO  
THE COLORADO GENERAL ASSEMBLY STUDY COMMITTEE ON  
SERVICES TO THE BLIND  
DIANE MCGEORGE

The National Federation of the Blind expresses its appreciation to you Senator Strickland, to the committee, and to the 52 General Assembly for making it possible for us to join with you in serious discussion concerning programs serving blind citizens of Colorado.

During the past few years there has been steady progress in the development of better programs by the passage of the legislation which has amended the States' Civil Right Act to include handicapped persons as a protected class, and by adoption of an amendment to the insurance code which prohibits discrimination on the basis of blindness, partial blindness or physical handicap. Employment opportunities for blind persons have been enhanced by the passage of legislation which extends the Federal Randolph Sheppard Act to include state owned locations. The active support by the National Federation of the Blind of Colorado of programs in the Office of Services to the Blind and Visually Impaired has been evident in the funding of the programs serving the elderly blind and the expansion of the vending stand program. Finally, the strong advocacy role which we have played has challenged the Offices of Services to the Blind and Visually Impaired, to be responsive to the needs of those persons for whom it was designed.

We believe that the passage of SJR 13 is a major milestone in the continued progress toward the creation of a truly outstanding program. The passage of the study resolution has already stimulated serious and far reaching dialogue among consumers, the agency, and now you, the committee. It is necessary to place at the core of this dialogue the issue of blindness itself. For if we do not understand the nature of blindness, we will be misguided in our attempts to create programs which are responsive to the real needs of blind persons. There are two aspects to blindness. There is the physical disability, and there is the societal role which is assigned to each blind person. In his book, The Making of Blind Men, Robert Scott has described the way in which blind persons are taught to be dependent, non-productive, second class citizens. Even though Mr. Scott's study was supported and financed by the established agencies in the field of work with the blind, his study is an indictment of the way in which those very agencies teach this traditional role and exercise the power which they possess to

to maintain blind persons in this second class status. Let me hasten to add that Mr. Scott is not associated with the National Federation of the Blind nor does he comment on the struggle which organized blind consumers have been waging to break free from the domination of those agencies. There is an emerging alternative role to that of the one which we, the National Federation of the Blind, perceive to be the foundation of the teaching mission of the Office of Services to the Blind and Visually Impaired and of other programs serving blind persons in our state. The making of the new blind citizen begins with a trust in the fundamental normality of blind persons. The organization of an independent and responsible life style must be grounded in such trust. When one possesses such trust, alternative skills which blind persons need will be learned with ease and used with confidence.

But it is not enough to speak in philosophical terms. We must address the problems of transforming our philosophy into concrete recommendations for change. However, it is our belief that important changes must be grounded in sound philosophy if we are to achieve the goals which we all so sincerely seek.

Now let us turn to the questions which have been set forth by the committee.

#### I

The central theme of the remarks which follow is that the future development of services to the blind and visually impaired in Colorado must be built upon the creation of a truly effective "learning center". Such a center sets the tone for all other services provided throughout the State. We shall indicate in more detail the design which we propose for such a learning center. The home teaching program should be an extension of such a learning center. Many blind persons who live in rural areas, who are older, or do not want to participate in the skills center need assistance to develop alternative skills of daily living and a better self image. The home teaching program should be designed to meet these needs.

A great deal of consideration should be given to the establishment of a much closer administrative relationship between the learning center and the home teaching program than currently exists.

#### II

It is our understanding that the Rehabilitation Counseling Unit for the Blind and Deaf and the Rehabilitation Center operate in an integrated fashion. The Rehabilitation Counseling Unit often refers clients to the Rehabilitation Center for evaluation and training. Other clients of the counseling unit are placed in training programs which are operated by third parties. This includes colleges, universities, community colleges and other vocational programs. In our discussions with consumers, of these services, the following points have emerged:

1. The training programs operated by the Rehabilitation Center are not geared for realistic training or placement in competitive employment. Broom winding, mop making, reception and the subcontract area seem especially ineffective for training persons to be placed in competitive employment. The sewing and photo lab areas appear to have more potential. However, they have not been utilized to any significant degree.
2. Many consumers feel that the Rehabilitation Counseling Unit lacks a broad based knowledge of occupational areas for which blind persons may seek employment. This is especially the case when a person employed in a career area loses his/her sight and must adjust to this situation.
3. Concern has been expressed by many consumers that career counseling has channeled clients into a limited range of occupational choices.
4. The Rehabilitation Center has placed a very limited number of trainees and long-term employees in competitive employment.
5. While the Rehabilitation Counseling Unit, serving the blind and deaf has made some attempt to upgrade job placement as a priority of the program, this remains a major area needing improvement.

### III

The distinction between "pre-vocational" and long term employees in the Workshop needs a further clarification. The issuance of a certificate of exemption by the Department of Labor allows long term employees to be continued in a trainee status up to five years. Sub-minimum wages may be paid under this arrangement. Other arrangements about which we are not clear can be made which allows very long term employees to be paid sub-minimum wages. We have not been able to determine a significantly different profile for the various classifications of persons employed in the workshop. We do not believe that the current practice of paying sub-minimum wages to employees or trainees at the Workshop is in the best interest of either rehabilitation or justice. The practice of using the piece work method to set the wage level for employees is particularly inappropriate. Employees report that they often have nothing to do and are not paid for these idle hours. They do not receive vacation pay or other benefits. The nature of the work for which the shop contracts, the low bids submitted for contracts by the Workshop, and the equipment used in production facilitates against the payment of an adequate living wage. Complaints have also been made concerning the effectiveness of training which employees have received. The payment of at least minimum wage to all employees would force the Workshop to become a more efficient production unit. If this is not feasible then

serious consideration should be paid to a more appropriate setting for the delivery of services to the multiply handicapped, including the deaf blind. We believe that a program should recognize the fundamental dignity of all its clients and the the salary which these clients receive is a reflection of the level of respect in which they are held by the agency controlling their employment.

#### IV

The Vending Stand Program is one of the oldest programs serving the employment needs of blind persons. It has proven to be a lucrative and dignified source of employment for many blind persons. Its continued growth is a goal worthy of pursuit. Funding has been appropriated by the Legislature for four new sites in this fiscal year. It is our opinion that this can occur if the Office of Services to the Blind and Visually Impaired will take a more aggressive stance in the location and development of these sites.

Totally blind persons wishing to enter the Vending Stand Program have expressed the concern that training procedures systematically discriminate against them. The use of training films in the program create problems for the totally blind person. The refusal to permit to operate the grill limits training opportunities and reinforces a negative stereotype of blindness. The placement of Vending Stand sites in locations not accessible by public transportation is a practice which is also discriminatory with regard to blind persons. At best, it places the blind operator in a position of dependency, since he or she must be driven to work by sighted persons.

#### V

The Colorado State Rehabilitation Plan has not been revised to take into account advancement in services which are potentially available to blind persons as the result of the passage of P.L. 95-602. Section 3.14 permits the development of a comprehensive reader service available to all blind persons. This program permits the State to serve persons regardless of financial need. This program needs to be vigorously implemented in order to maximize the employment opportunities and success in employment of blind persons. P.L. 95-602 also, provides for funding for the development of centers to serve the elderly blind. This program also needs immediate attention. Section 3.14 of Public Law 95-602 will permit the purchase of electronic devices, including the Opticon, Visual Tech and paperless Braille equipment for individuals where employment opportunities depend on having this equipment. Many blind persons have expressed recently the need for such technical aides. Currently the Office of Services to the Blind and Visually Impaired exercise an arbitrary policy in providing such assistance.

P.L. 95-602 offers the opportunity for providing comprehensive services in this area. This is an extremely important area meriting immediate attention. The effectiveness of many blind persons can be increased if the agency will aggressively pursue funds to implement comprehensive services.

## VI

We have reserved comment on the significance of the separation of the Skills Center from the Workshop until this point. In order to highlight its importance for the further development of services to the blind in Colorado. As we stated above, the central theme of our comments has been the need for the upgrading of the Skills Center to that of a genuine learning center. We believe that the current arrangement which places the Skills Center administratively under the supervision of the Director of the Workshop distorts the central role of a learning center in programs serving the blind. The current relationship has the effect of limiting the Skills Center to a support system for the Workshop. Many persons who really need to receive training in a learning center refuse to attend programs at the Skills Center because they believe that the vocational goals toward which they are being directed include workshop employment.

The upgrading of the Skills Center to that of a genuine learning center includes the development of a far reaching curriculum that will examine the historical role which blind persons have been assigned, the current legal and social status of blind persons, career information, the use of alternative methods for gaining access to print material, independent travel skills, and the acceptance of blind persons as normal productive citizens.

## VII

A final general comment refers to the inclusion of services to the deaf in the Office of Services to the Blind and Visually Impaired. On July 1, two counselors who work with deaf clients were moved from the General Rehabilitation program to the Office of Services to the Blind and Visually Impaired. The result of this move was to promote two counselors working directly with blind clients to supervisory positions. This has meant that the caseloads of the remaining counselors have been increased. An additional layer of bureaucracy has been created. There appears to be no improvement of services to deaf clients as a result of this administrative re-organization. However, there is clearly a reduction of the quality of services to blind clients. If there is a logic to combining services to the blind with services to the deaf, we are yet to receive any demonstration of what it might be.

## VIII

In conclusion we wish to make the following recommendations:

1. Separate the administration of the Skills Center from that of the Workshop.
2. Upgrade the status of the Skills Center to that of a genuine learning center.
3. Consolidate the Home Teaching Program with that of the learning center.

4. Adequately staff the learning center and the Home Teaching Program.
5. Increase mobility and orientation services to a level adequate to meet the needs of blind persons in the State.
6. Develop training programs which have realistic potential to place blind persons in competitive employment.
7. Upgrade job placement services within the Rehabilitation Center and the Rehabilitation Counseling Unit.
8. Develop a clear distinction between trainees and long term employees of the Workshop.
9. Pay at least minimum wage to workshop trainees and employees.
10. Develop a benefit package for production employees of the Workshop.
11. Expand the number of employment opportunities in the Vending Stand Program.
12. Develop a training program without systematic discrimination against blind trainees.
13. Bring into harmony the Colorado State Plan for services to the blind and visually impaired with Public Law 95-602.
14. Remove services to the deaf from the Office of Services to the Blind and Visually Blind.
15. Develop in-service programs which will enhance the basic trust of employees of the Office of Services to the Blind and Visually Impaired in the fundamental normality of blind persons.
16. Reassess the appropriateness of the Office of Services to the Blind and Visually Impaired to provide services to persons whose primary disability is mental retardation.

PRESENTATION OF  
AMERICAN COUNCIL OF THE BLIND  
TO  
LEGISLATIVE COUNCIL  
August 14, 1979

First, let me introduce myself. My name is Brenda Hewitt and I am the Chairperson of the American Council of the Blind of Colorado. I wish to express my appreciation for this opportunity to represent consumers throughout the State. Consumer input is vital in the effective dissemination of service by any organization or Governmental agency, and perhaps especially so for a group with needs as specialized as blind consumers of Rehabilitation Services. The legislative Council has placed a great deal of effort into this preliminary hearing and we in turn have striven to answer its questions from both our own experience and by research into less familiar areas.

First, I will try to clarify the nature of services rendered to clients by some of the entities within Services for the Blind and give you a picture of how they work together to deal with each client's individual needs, along with how some of the services can be improved. Second, I'd like to explore some of the types of clients that move through the sheltered workshop and some of the problems with this service, including across-the-board payment of minimum wage and physical facilities. Next, I'd like to consider the vending facilities program and perhaps make some suggestions that might increase the numbers and improve the quality and accessibility of vending sites. I also wish to consider the State Plan for Rehabilitation Services, its function, and its compliance with current rehabilitation legislation.

The home teaching program and the Skill Center may serve the same client at different points in his development and they also serve different groups. The home teaching service may be the client's first contact with Rehabilitation Services. The client usually wishes to learn one or two skills, and does not wish to venture outside his own environment. As his confidence grows, he may then be placed in the Skill Center for evaluation of skill lacks and remedial training. At this point, the client is exposed to others with similar problems, which can decrease his feelings of isolation.

The course of study at the Skill Center is much more concentrated than through the home teaching program. The client progresses more rapidly and develops skills in more areas, as his instruction encompasses five full days a week as long as he is in the Skill Center. After leaving the Skill Center, the home teacher may again serve the client to reinforce the techniques and skills learned in the Skill Center. This added follow-up aids the client in dealing with problems in his home environment, such as marking cooking equipment, etc.



The home teaching service also deals with clients who, for psychological or economic reasons cannot attend the Skill Center. Some of these groups include rural clients and elderly clients just losing their vision. Problems of these clients may require solution within the home environment, rather than in a centralized setting. Thus, the Skill Center and home teaching service work in tandem, referring clients from one to another as their needs change. The home teaching program also allows for individualized treatment within the home setting for clients who cannot or do not wish to attend the Skill Center.

The facilities both in the Skill Center and in the area of home teaching are not adequate for the ever-growing client load. Both services have a waiting list. To remedy this situation, some of the clients have been placed in a supervisory role in the Skill Center, but there is still a shortage of staff. This can be shown by the amount of idle time spent by the clients. There may be a gap of as much as a couple of hours between segments of a client's programmed day. This could be remedied by increasing the program, which would call for more staff personnel.

The situation is much the same for the home teaching unit, especially in rural areas where travel can be extremely time-consuming. One of the ways this problem can be alleviated without a large increase in staff might be through use of a volunteer coordinator. Many skills, such as cooking and sewing, could be taught by nonprofessional individuals. Many persons are interested in serving the handicapped in any way possible, as witnessed by Gary Rose, head of the terminated Governor's Council on the Handicapped, who received many calls from elderly groups requesting information as to how they could give their time and energy to the betterment of the handicapped. An example of the value of such a program can be seen by examining the State Library for the Blind and Physically Handicapped. Through their Coordinator of Volunteers, the Library's collection of recorded materials is being augmented by use of unpaid narrators throughout the state.

Another remedy for both the Skill Center and home teaching service would be to make greater use of the Special Education Internship Program through the University of Northern Colorado. Students could be used to teach such specialized skills as Braille, precane mobility, etc.

Another service performed by State Services for the Blind and Deaf and perhaps the one most usually thought of is that of vocational training and counseling. It is through this area of service that a plan is developed and carried out to place a client in employment in the community. Vocational Rehabilitation for the Blind and Deaf has many sources it uses for training and rehabilitation, services which it has no facilities to provide directly. One of these sources is the Rehabilitation Center. Vocational Rehabilitation refers clients to the Center for evaluation, training in independent living skills, such as cooking, communications, etc., and employment evaluation and work adjustment training. After such evaluation and/or training, clients are

often referred back to Vocational Rehabilitation for further training and/or placement. The major function of Vocational Rehabilitation Services is to plan and coordinate the client's entire training and placement program through use of outside sources, including the evaluation and training facilities at the Rehabilitation Center.

Both the coordinative function of Vocational Rehabilitation and the evaluative function of the Rehabilitation Center suffer because of lack of necessary staff to handle increasing demands. As will be made clear later, the Rehabilitation Center also hasn't enough space to adequately expand its services.

As I have already stated, the primary function of the Rehabilitation Center is training, not direct placement into competitive employment. Most of the skills taught in the Rehabilitation Center, such as broom and mop-making, sewing and basic assembly are not directly marketable in outside industry. However, all of these functions teach basic work concepts, such as attendance, adhering to work schedules and routines, quality control, etc. After learning these basic concepts, the client can then be referred back to Vocational Rehabilitation and skills development and/or placement in the outside job market. Our investigation shows that the rate of placement through Vocational Rehabilitation is higher than through the Rehabilitation Center since, as has been emphasized before, this is its function, whereas the function of the Rehabilitation Center is training and evaluation.

Services for Vocational Rehabilitation could be improved if there were more counselors to provide services on a state-wide basis. Also there is a need for a qualified mobility instructor in each section of the state to increase availability of service in this area. Currently, mobility instructors are hired under contract and paid for their services in this way.

Another way to increase efficiency might be to hire placement specialists to work in conjunction with the counselors on job development and placement throughout the community. In any case, the counselor should develop a greater awareness in this area. Reduction in caseload would help to facilitate development of job knowledge, as this is a time-consuming function, and time is what the counselors have the least of.

I have covered the general functions of Vocational Rehabilitation and the Rehabilitation Center. I would now like to focus on a specific area of the Rehabilitation Center - the sheltered workshop. There are two basic types of employees in the shop - one who is there for a relatively short time, usually about one year, the prevocational client, and the other who is there longer than one year, the long-term employee. The prevocational trainee is there for one of two reasons: training in personal and work adjustment, i.e., work concepts, such as attendance, adherence to a set schedule, etc., or because the income provided by

working in the shop is necessary during the acquisition of outside training to obtain a more marketable job skill. This type of employee is usually moved into competitive employment and/or training after a period of approximately one year.

The second type of employee, the long-term employee, also can be categorized into two different subgroups. The first group consists of people whose production level is extremely low. It takes them a good deal longer to perform any given task than a sighted person. These people receive training in basic test physical abilities, etc. This type of employee is usually multiply handicapped. There is little hope of competitive placement for such workers. However, they can be useful and productive to their potential in a workshop setting.

The second type of long-term employee can produce at a relatively high level. However, for psychological or social reasons they cannot or will not function in the competitive job market. This type of long-term worker and the workshop are mutually dependent upon each other. It is these workers who bring the shop's rate of production up to a level at which they can competitively bid for contracts. The shop provides for this type of worker a social environment in which he can function. These employees are encouraged in various ways, however, to seek competitive employment.

With further counseling, many of this type of long-term employee could be placed. All of these people have written goals, but many resist outside employment. Basic areas of improvement can be stressed, but there is no known way to increase motivation. Many, in fact, return to the workshop after being placed in competitive jobs.

Another method of encouraging competitive employment, besides counseling, has to do with the wages paid at the workshop. In order to create an incentive for outside placement, wages at the shop should be at a considerably lower level than in the competitive market. Most work in the shop is paid by the piece. If a worker cannot produce at a level comparable to the minimum established in the shop, which is \$1.45 per hour, he is still guaranteed this minimum. This prevents discouragement of those employees who are functionally incapable of a higher production level. For those who can produce at a higher level, their wages increase beyond the guaranteed minimum as their production increases. The guaranteed minimum for piece work in the competitive job market is based on the minimum wage. It is this wage difference between the shop and outside industry that provides another good incentive for outside employment for those who are capable of competitive production.

If all workers in the workshop were guaranteed the Federal minimum wage, it has been estimated that this would cause approximately a \$50,000 increase in the operating budget. Since there would be no comparable increase in production, these funds would have to be drawn from other programs, such as counseling, training, etc.

There are inequities in the present wage system, however. When a nondisabled person is put into the workshop, he is automatically guaranteed the Federal minimum wage. It would seem to be far more equitable to pay the sighted workers on the same basis as the blind workers.

In order to make the workshop more equivalent to a competitive setting, workers should be accountable, as far as possible, for their own production rate. In a competitive situation, if an employee does not produce at a level to justify his existence, he must either improve his performance or be terminated. As far as possible, this should be emulated in the workshop setting. If an employee is not producing up to his potential, he should be subject to progressive counseling and/or discipline, just as he would be in private industry.

Housed in the same facility as the workshop is the Skill Center. There are several advantages and disadvantages to this arrangement. The Skill Center uses some of the facilities of the workshop to perform evaluation of such things as manual dexterity. If the workshop and the Skill Center were separated by a long distance, either there would have to be duplicate facilities or clients would have to be transported from Skill Center to workshop and back as was necessary in their training program. This could also create logistical difficulties for the staff involved in interfacing between the two programs.

The disadvantages of having the two facilities together are that clients from the Skill Center tend to develop negative attitudes about blindness by being in close proximity with the workshop setting. The goal of the Skill Center is to foster the development of techniques which will aid in independence both in life and employment. Many of the employees at the workshop are, therefore, poor examples for Skill Center trainees to follow.

If these two facilities were to be separated, the following structure would probably develop:

<u>Skill Center</u>	<u>Workshop</u>
Mobility training	Work evaluation
Communication training	Work adjustment
Cooking and household skills	Long-term employment
Grooming skills	
Counseling	

In this system, there would be referral back and forth as there is between home teaching and Skill Center.

Another state program providing employment for blind and visually impaired persons is the vending facilities program. This program offers the participants to earn far more than minimum wage. As their skill and knowledge grow, the sky is the limit for the operators in this program.

At this time, the state is funding four new facilities each year. The program is expanded each year by legislative allocations for new facilities. To further expand, more allocations are needed, as well as a person to find and develop sites. Also, sites should be developed for easier operation by totally blind vendors, and attempts should be made to find sites accessible by public transportation.

All of the above programs are governed by the State Plan for Rehabilitation. This plan is the state's agreement and/or commitment to carry out the Federal Rehabilitation Act in accordance with its intent and guidelines. The State Plan is approved by the State of Colorado and the Department of Health, Education and Welfare prior to implementation. It is our understanding that the State Plan will be altered as appropriate to bring it into compliance with the 1978 amendments to the Rehabilitation Act of 1973.

In summary, our recommendations for improvement of State Rehabilitation Services for the Blind are as follows:

1. The primary needs for all Services for the Visually Impaired lie in the area of increased funding for both facilities and personnel. This is especially true for the Rehabilitation Center. The Center needs a new facility which is in compliance with all present building codes with space to house both the Skill Center and the workshop, preferably several floors apart. Also, the appropriate personnel would be needed to deal with the expanded capability of this new facility.
2. In the home teaching service, a Volunteer Coordinator could be used to incorporate the utilization of facilities available in the community to enhance services, especially in rural areas. More professional teaching staff would also be helpful in increasing service to outlying areas. Often in remote areas, travel is a time-consuming part of the home teacher's job. Distribution of more staff in these areas could decrease this considerably.
3. For Vocational Rehabilitation, the number of counselors should be increased, both in urban and rural areas. This would speed delivery of counseling services to clients. Also, the development of a placement specialist position to work in close conjunction with the counselors to provide placement services to clients should be considered.
4. For the vending facilities program, more funding is necessary for the establishment of new vending sites. These facilities should be accessible by public transportation, and should be developed so that they can easily be operated by totally blind vendors. More supervisory staff may be necessary as the program increases in size.

5. To aid in the implementation of changes in Rehabilitation Services, we also recommend the formation of a consumer advisory committee to work with the agency in trying to correct service deficiencies. This group should be composed of members of consumers throughout the state, as well as independents.

I hope this input will aid in better understanding of present services and alternatives for their improvement.

RESPONSES TO LEGISLATIVE QUESTIONS  
REHABILITATION CENTER FOR THE VISUALLY IMPAIRED AND DEAF

A. Personal Skills Training

1. Rehabilitation Center services vs. Home Teaching Unit.

- a. The purpose of the Rehabilitation Center for the Visually Impaired and Deaf personal skills training is to provide a comprehensive program which will enable each individual to achieve his maximum independent living skills and vocational potential. In general, clients receive instruction from the rehabilitation teacher and orientation and mobility instructor on a daily basis, which allows for maximum concentration of training and results in acquisition of adequate skill levels in the shortest time possible. This is particularly beneficial for those clients who are high-functioning and are anxious to enter training or placement with as little delay as possible. This type of concentrated program is also beneficial for those clients whose combinations of disabilities and/or retention capabilities are such that daily instruction and reinforcement is necessary to enable them to acquire and improve personal skills in a reasonable amount of time. All clients enter the Rehabilitation Center Evaluation and Training Unit upon referral from the Vocational Rehabilitation Unit. Therefore, all clients receiving personal skills training from the Center are active Rehabilitation cases who are either in extended evaluation, or have been determined eligible for Rehabilitation services. Although these clients can receive services from the Home Teaching Unit also, many need vocational evaluation and work adjustment services in addition to personal skills training, and all of these services can be provided simultaneously through full day programming at the Center. This again results in more timely provision of services.

b. Rehabilitation teachers, through the Home Teaching Unit, provide personal skills training to clients in their home. This is particularly beneficial for those clients who are unable to leave their homes for such training, such as those who must care for children, or those whose disabilities severely limit their ability to leave home. The teaching unit has rehabilitation teachers located in several cities throughout the state. Many clients living outside the Denver-metro area prefer to receive personal skills training in their own communities when possible, instead of coming to Denver for an indefinite period of time; therefore, the teaching unit is particularly appropriate for providing services to clients in rural areas. Personal skills training in the home is also quite beneficial for the client whose vocational goal is homemaker; this person is generally interested in learning skills particular to her own home environment. Lastly, there are many blind clients, including elderly blind, who are in need of personal skills training but who are not open rehabilitation clients and do not wish to receive or are not eligible for rehabilitation services from the vocational rehabilitation services unit. Therefore, the home teaching unit is the only unit in Services for the Visually Impaired and Deaf that can provide personal skills training to these clients (unless they are already a client of the Center).

2. Availability and quality of personal skills training.

a. There are more clients in need of personal skills training than both units combined can serve at any one time, so there are established waiting lists for services from both the center and teaching units. In particular, referrals for personal skills training at the center need to wait an average of 31 working days (1½ - 5 months) before they can be scheduled for rehabilitation teaching and orientation and mobility instruction; clients spend an average of between 2 and 2.2 months at



the center in personal skills training, being served on a daily basis, and staff members can serve an average of 5 - 6 clients at any one time. This means that between 30-34 clients can be provided comprehensive teaching services per year. In addition, both staff members serve another 10 - 20 clients per year on a limited basis; examples of this type of service include brush-ups on braille, cooking, budgeting, specific route orientation or bus travel for those already possessing some basic skills in these areas.

The home teaching unit has 9 rehabilitation teachers who provide personal skills instruction throughout the state of Colorado. Services generally are provided on an average of between 1 - 4 months after receipt of the referral. Clients are seen once a week for an average of 6 months, and each staff member can serve between 15 - 25 clients at any one time, depending on amount of travel involved. This means that each staff member can serve an average of 30 - 40 clients/year, depending on their territory.

- b. All of the staff members providing personal skills training in both unites are carefully and consistently screened to insure that services provided are of high quality. There are some resources available at the Center which make personal skills training at the center unique. The rehabilitation teacher has a weekly group meeting for clients who are interested; this allows clients an opportunity to develop and improve interpersonal skills through socialization. Coming to the center also allows clients an opportunity to meet and interact with other blind people and encourages clients' independence by requiring them to leave the safe environment of their homes. Other services such as low vision

evaluation, are also offered through the center and readily available to clients. Finally, clients have the opportunity to explore their vocational potential through exposure to the evaluation area or skilled training areas within the center. Due to the necessity for the teaching unit to provide services in clients' homes, it is necessary for rehabilitation teachers to rely on resources in the community to arrange socialization and recreational activities for clients.

- c. All clients referred to the Center who meet the entry requirements (see attachment) are provided services. However, we feel there is a need and we would like to be able to provide personal skills training to a greater number of clients on a more timely manner. We currently have a waiting list of 10 clients, some of whom have been referred as much as 4 months ago, and this is not an unusual occurrence. We feel that the addition of another rehabilitation teacher and mobility instructor is indicated and would enable us to improve availability of services to all people needing personal skills training, including those clients with poor learning ability.

Another circumstance which limits the number of clients we can serve at any one time and limits expansion of the variety of services we can provide is lack of adequate space. The need for and benefits from a new facility are discussed elsewhere.

Recommendations with respect to improvements desired in the teaching unit will be discussed by the supervisor.

## B. Vocational Rehabilitation

### 1. Vocational Rehabilitation Programs

- a. The vocational rehabilitation program at the Rehabilitation Center for the Visually Impaired and Deaf is quite complex and varied. We have several different types of programs available, and they are all quite individual.

A great distinction between the vocational rehabilitation programs at the center and the vocational rehabilitation services provided in the field is that the rehabilitation provides concrete, consolidated evaluation and training in work itself, in addition to specified services such as low vision, psychological testing, etc. The more concentrated services are of a nature where the individual must demonstrate their ability through a process of being evaluated by work samples, being provided work adjustment when indicated in sub contract work, and developing a more refined ability to carry out responsibilities and duties and develop more refinement of skills in the manufacturing areas. A secondary purpose of the rehabilitation center is to provide long-term adjustment for clients who, through difficulty, are not able to be productive and function in a capacity to meet competitive standards and must remain in the Center.

There is always the opportunity that as a person is qualified that a priority be given to entering classified and unclassified positions within the center, which are competitive in nature. The rehabilitation center does provide concrete employment opportunities for blind clients through sales programs, and employment at Mile-High Custom Raquet Stringing.

- 1) All of the clients in the evaluation and training unit are open rehabilitation cases held by district office 09 (Vocational Rehabilitation Services Unit) and the General Rehabilitation Program when referred, and the majority of these clients will retain their field counselor as the primary counselor. For these clients, we offer specialized concentrated personal skills and vocational adjustment

training unavailable elsewhere in the state to enable each client to be better able to participate in and derive maximum benefit from his overall rehabilitation program being developed by the referring counselor. This type of client is assigned a center rehabilitation counselor who monitors and coordinates provision of services within the center and offers counseling and guidance as needed; in addition, each other staff member working with the client develops a plan of services for their area of specialty based on the client's demonstrated and expressed needs, as well as the referring counselor's needs. When the client completes his program of services at the center to the satisfaction of the client, referring counselor and instructor, the client will then continue with the program of planned services developed with the referring counselor toward his vocational goal. After they have gained sufficient skills and abilities, the majority of this type of client leaves the center to enter some type of vocational or academic training program.

- 2) The Rehabilitation Center for the Visually Impaired is also a district rehabilitation office (#37), and has a small caseload of active clients which have been transferred by district office #09. These are clients who, after a reasonable period of evaluation, have been determined to have extensive needs in personal and for work adjustment areas and need an extended program of services from the center before they can enter training or competitive employment. There is no arbitrary time standard to determine when a case should be transferred; rather, it is a judgment made by the referring counselor and the center. When the case is transferred, then the

center rehabilitation counselor becomes the client's primary counselor and is responsible for ensuring provision of the full range of rehabilitation services, including case expenditures, vocational planning, job exploration and training outside the center, and placement for these clients. In this case, services offered by the center will include all of those offered by the Vocational Rehabilitation Services Unit. We also have a rehabilitation counselor who specializes in manual communications; she is the center counselor for the deaf and the deaf/blind, and provides rehabilitation services when these clients are transferred to district office #37.

- 3) There are several clients who are still receiving services from the rehabilitation center (primarily work adjustment services), but who are no longer active rehabilitation cases in any district office. Each of these clients has an individual plan of services to meet their adjustment needs, and any services offered in the center are available to them. The majority of these clients are in a work program, but they are provided with rehabilitation teaching, orientation and mobility, vocational evaluation, counseling, and placement services when they are appropriate. The most significant implication of not being an active rehabilitation case is that we have no authority to expend funds on behalf of the client. However, as these clients near readiness for competitive placement, often time a need will arise for some services to be purchased, for instance to procure extra-center vocational training or employment aids. At this time, these clients are then re-opened as an active rehabilitation case, which provides funds for necessary expenditures. It should also be noted that, at any time one of these clients needs

any type of service which cannot be provided unless the client is in an active rehabilitation status, his case will be opened, regardless of the amount of progress necessary before competitive placement is appropriate.

- b. The Unit for Vocational Rehabilitation Services for the Visually Impaired and Deaf provides rehabilitation services to clients throughout the state of Colorado in accordance to state and federal guidelines. The rehabilitation center is often a resource used by the unit to provide personal and work adjustment training to clients as a part of the planned services (See B.1.a.1. above). A more detailed discussion of the scope of these services will be provided by the supervisor of the Vocational Rehabilitation Services Unit.

## 2. Quality and Availability of Services

- a. The rehabilitation center and the vocational rehabilitation unit both strive to maintain the highest quality of services within the constrictions of personnel allotments and budgets. Ultimately, the quality of services depends on program organization, availability of resources, and individual staff member's abilities. As indicated above, the scope of the rehabilitation programs within the two units are substantially different, so it is difficult to compare the two in any of these areas. However, for those positions in each unit which are similar (i.e., rehabilitation counselors and mobility instructor), recruitment is standardized through the Colorado Personnel System, and applicants are carefully screened and tested to obtain applicants with the highest level of qualifications.
- b. The rehabilitation center serves the entire state of Colorado, but it is necessary for clients to be participating in a center program or to be a district office #37 client in order to receive vocational rehabilitation services from the center. This means that all clients receiving

services from the center are residing in or commuting to Denver, at least temporarily; very little work in the client's home community is done by the center staff, unless it is in the Denver-metro area. There are exceptions to this, i.e., assisting with placement in such areas as photo finishing, etc., but in general, provision of services takes place in the Denver area. In contrast, the Vocational Rehabilitation Services Unit has counselors officed throughout the state, so they can more readily provide rehabilitation services, including placement, in clients' home communities outside of the Denver area. Since the rehabilitation center has so many different programs under one roof, district office #37 clients have several resources readily available to them, such as personal skills training, vocational evaluation, psychological testing, and vocational adjustment training, which can enhance their rehabilitation program. However, these resources are also available to the vocational rehabilitation unit upon referral of their clients to the center for these services. The number of clients that can effectively be served by the center under the present staffing conditions and space limitations are about 225 - 250 per year; this number includes clients receiving extensive personal and work adjustment services and those receiving limited services, such as psychological testing, low vision evaluations, counseling, etc. Information on the number of clients serviced by the vocational unit will be supplied by the supervisor of the unit.

3. The major function of evaluation and training on all skilled jobs within the rehabilitation center is to improve a client's work adjustment. Work adjustment includes teaching clients good work habits (attendance, conformance

to rules, ability to accept supervision, ability to get along with co-workers, etc.), improving work stamina, improving and/or developing adequate work abilities (dexterity, coordination, organization, ability to follow directions, productivity, etc.). All vocational training opportunities within the center allow the client experience in working with machinery, working under less intense supervision, and handling more responsibility. Many of the skills gained while performing these higher level jobs are necessary for most jobs within competitive industry, and therefore transferable even if the exact occupation is not readily available in the Denver or Colorado labor market. Examples of this type of training available in the center are skilled jobs within the mop department (winding deck mops, cutting mop yarn, and sewing mop heads); broom department (winding brooms, stitching brooms and making Italian brooms), operating the brush machine, and operating power sewing machines in the home industries department. Some of the skilled job training slots within the center provide evaluation of the suitability of a particular vocational goal as well as work adjustment; these types of training slots offer the client an exposure to some of the aspects involved in certain occupations and can evaluate a client's potential for success, but further vocational training outside of the rehabilitation center is usually needed before the client can become fully competitive. Training of this variety within the rehabilitation center includes receptionist, cashier and vending stand operator. Training in film processing, janitorial work, truck driving, sales, tennis racket stringing, and engraving within the center are designed to enable a client to enter directly into employment. It should be noted that we currently only train engraving of plates and badges; since the majority of competitive employment opportunities includes metal engraving, it will be necessary



for clients to be provided with additional training, usually on-the-job, in metal engraving after leaving the center.

Within the last year, center staff have been in the process of developing written evaluation and training programs for each skilled job in the center. However, the process of developing detailed training programs is quite complex and takes a high degree of evaluation and training sophistication, including the ability to perform a quality job analysis which present staff do not have. Much training time has been devoted to developing staff's ability to develop written guidelines and implement standard training procedures, but additional training is still necessary. Providing needed staff training, developing written programs, improving quality of skilled training in the center is one of our highest priorities for the coming year. The quality of the hands-on training provided to clients varies with each area. Training in the vending stand, sales, home industries, and photo lab is of higher quality than other areas because training in these areas is a primary responsibility of a person involved only in that department. Most of the training on other skilled jobs within the center has to be done by staff members who have many additional responsibilities. This is particularly true of all training in the mop department, broom department, brush machine, truck driving, janitorial work; in addition to evaluating and training clients in these areas, the shop foreman has responsibility for the entire operation of the workshop. Therefore, it is almost impossible for him to be able to devote large uninterrupted blocks of time to training, even though most of our clients require intensive one-to-one training to become proficient in these complex jobs. In addition, we are currently without a trainer on the engraving machine. Because of the limited amount

of time present staff can devote to training and the extensive amount of time it takes to fully evaluate and train clients in various skilled jobs within the center, we have requested an additional full-time staff member in FY 81 whose responsibility would be to provide high quality vocational training on all skilled jobs within the center. We feel this would improve our capabilities of providing this service to more clients as well as vastly improving the quality of our training.

4. Since the rehabilitation center offers a variety of services to other counselors as well as provides complete rehabilitation services to its clients, the placement rate is not the only significant statistic to be considered. Often center clients enter into a vocational training program or continue planning with their counselors from the Vocational Rehabilitation Services Unit after they leave the center, but this process would not be possible or as meaningful if they have not received training from the center. Therefore, in addition to the placement rate, it is also important to look at the rate of center clients who enter training programs and who are in the plan development stage after leaving the center. For FY 78, a total of 182 clients were served, and we have knowledge of the current status of 160 of those. (In addition to losing track of some of the clients, others have moved or died.) Of these 160, 36 remained in the program, 33 have been placed in the community, 31 are in some type of training program, and 22 are developing plans with the Vocational Rehabilitation Services Unit. To date in FY 79, we have begun provision of services to 109 clients. Of these, 33 have been placed in the community, 26 are participating in a training program, 11 are engaged in vocational planning with their referring counselor, and 49 remain in the program. It should be noted that

the rehabilitation center offers any job openings for staff positions to center clients who might wish to apply, and qualified clients have the first opportunity to fill these positions. When a client becomes successfully employed in a staff position, he is considered to be a competitive employee and is counted in the placement statistic.

There has been a change in supervision for the vocational services at the center, and there has been a subsequent re-organization of program structure and job duties which more clearly outlines responsibilities and authority for placement activities; you can see that this appears to have increased the proficiency of the center to place clients into competitive employment.

The supervisor of the Vocational Services Unit will discuss placement rates for his unit.

5. The vocational rehabilitation services being offered through the center could be enhanced by the addition of staff members and a new facility. In addition to the three additional staff members we have already discussed, we have also requested a full-time placement specialist to place all clients that come through the center, even those retaining their referring counselor as the primary counselor; special emphasis would be for placement of our long-term workers and multiply-handicapped clients. This staff person would also be responsible for establishing job stations in industry to expand the range of vocational adjustment and transitional employment opportunities we can offer clients.

There are many areas that we would like to expand and additional services we would like to offer, but the severe lack of adequate space prohibits this. Not only is our current facility insufficient in space,

but it is also in very deplorable condition and the upper floor is not accessible to wheel chairs. There are already several documents existing that discuss and justify the need for a new facility.

### C. Sheltered Workshop

#### 1. Prevocational vs. long-term clients

a. Prevocational clients are those who, upon entry to the Rehabilitation Center for the Visually Impaired, do not possess a sufficient level of the most basic skills and/or abilities to participate in employment even at a sheltered level. Typically, the prevocational client has many of the following characteristics:

- 1) little or no receptive or expressive communication skills
- 2) mental retardation
- 3) inability to attend to a given task for more than 1 - 2 minutes without supervision
- 4) cannot distinguish between good and poor performance (cannot recognize errors and cannot comprehend concept of speed as applied to performing a task)
- 5) cannot follow simple directions consistently to perform more than a 2-step task
- 6) does not possess adequate independent self-care skills (toileting, feeding, etc.)

Prevocational clients receive intensive individual evaluation and training, primarily using work samples, to build their work abilities to a level where they are able to enter a work adjustment program with its less intense supervision. Occasionally, a prevocational client in the final stages of training might be slowly introduced to the subcontract work area on a very limited basis, but the majority of training will

still be provided with work samples until such time as a client can be at least 25% productive in subcontracts. Once the client is able to attend the subcontract area for the majority of his time, he will no longer be a prevocational client; he has then entered the work adjustment program. There is no set length of time that clients may receive prevocational training; each client will receive services based on his individual needs.

- b. Long-term workers are those clients who have been working at the rehabilitation center for at least 5 years. These clients have acquired enough basic work skills and abilities to enable them to engage in work within the workshop to varying degrees of success, but whose performance is not yet sufficient to enable them to be competitively employed. These clients are receiving work adjustment training which is aimed at improving their performance to enable them to engage in competitive employment. Services for these clients are individualized, and all services offered at the center are available for long-term clients; however, the major portion of their planned services involves work and eventual placement.

## W O R K S H O P

The profile of a long-term worker presently is composed of 6 individuals whose consecutive service time in the center is 5 years or more. The individual has been in the center since it was a sheltered employment setting, thereby identifying him as an employee. The individual has had competitive jobs, but has been unable to maintain employment only for very brief periods of time. The profile is predominately a male, blind individual with other disabilities with psychiatric background being most common as a secondary disability. The individuals have an average age of 46, with the range of stay being 5 to 27 years. The individual is paid an average of \$2.48 per hour, of which \$.54 per hour is supplemented with a pay range of \$2.03 to \$3.50 per hour. The individual receives all types of paid leave allowed to state classified positions. This individual most commonly receives additional public payment benefits and medical benefits with 33% receiving state retirement (PERA) benefits and state health insurance. The individual is performing in unskilled to semi-skilled positions and reluctantly works towards achieving personal vocational pursuit and goal accomplishment. Potential for placement is 19%, with a 50% chance the individual will reitre from the program (2 within the next 5 years), and 33% projected for longer-term employment. The center's change in management and rehabilitation philosophy will reduce this "employee" status and attitude from future occurrence. However, there is a trend, with increased numbers of blind with other severely limiting disabilities, which indicates a gradual growth of clientele who are of an activity level. With the years to come, these individuals who have work potential at typically less than 25% of competitive productivity show little potential for competitive employment or even the ability to perform on the existing manufacturing positions within the center, due to these individuals' lack of physical capabilities required in most of these jobs as well

as their work versatility. The center is striving with limited funds to develop more automated jobs which can accommodate these individuals to some degree, since such equipment can actually itself increase productivity with more limited skills and physical ability of an operator. Future trends are only limited numbers may be so accommodated, due to costs of such equipment. The center does not have an activity center, nor do present funding sources and amounts indicate such will or can be developed.

All work sites within the center can be divided between production base and non-production base jobs. Those of a production nature are time studied by sighted staff and/or individuals not being handicapped to perform given jobs. A standard average production rate is determined with a minimum additional allowance of 20% for personal, fatigue, and delay time. We contact local businesses wherever there is similar work performed, and base our pay on local prevailing industrial rates. When no such rates can be found, the minimum base used is the prevailing minimum wage. Precise time and quantity of production are maintained when individuals are performing on production jobs as to determine the individual's earned income. All individuals in the program before October 1977 were paid hourly wages and have been grandfathered in to be paid that hourly rate or their piece rate earnings, whichever is the greater. Individuals in quality assurance or other quasi-supervisory positions wherein production records are impossible or improbable to be maintained are paid hourly wages. Persons in non direct production evaluation and training programs are paid hourly. Raises are given in relationship to the individual's performance of job specifics, personal responsibility level, and accomplishment of duties.

The fiscal impact of minimum wage guarantee for long-term (over 5 years) employees would amount to supplementing approximately \$1,411.20 per month, or \$16,935.00 per year. For all clients in the program within a year, the costs would be approximately \$43,000.00 per year. The workshop cannot generate sufficient contributions to this amount with current production equipment and capabilities could not generate sufficient funds to offset this increase. The costs added to manufactured products or contracted services would escalate pricing to prohibitive marketing levels. Payment of minimum wage would have definite programmatic impacts. The program two years ago paid hourly wages to all clients, regardless of personal productivity or by any standard of performance measure. The result was confusion by many clients as to their comparative pay and personal value as a worker. There was no incentive for most individuals to achieve higher levels of work attainment and especially the desire to enter competitive employment and relevant skill training to be able to compete was absent. Most all individuals were led to believe that they were "employees" within a role sheltered from developing the confidence to "take on the real challenges" beyond the center itself. The implementation of piece rate production, analysis of jobs, and correlatable pay based on the standards of existing jobs and skill requirements of industry, the development of job specifications and descriptions by which to objectively measure and facilitate the individual's own personal progress and growth have provided a standard base which has greatly reduced these areas of confusion and prohibitors of developing a firm self worth.

Programmatic problems in paying minimum wage are:

1. There will be no objective base to assist individuals in understanding their comparative abilities to one another, and especially as it relates to competitive employment expectations of quantity and quality of work.
2. The program will revert to intense interpersonal conflict between clients, as well as staff, as to the purpose of the program, lack of progress of individuals



towards their personal needs to become competitive employees, and a genuine lack of developing a real self worth. Individuals will be paid regardless of personal achievement and progress. The primary incentive of monetary reinforcement will be lost. A goal of the center is to enhance successful endeavor, not to contribute to personal failure and misrepresentation of the expectations of the employment standards of competitive employment.

3. Individuals, as emphatically expressed before, will not participate in other areas of needed services such as low vision services, testing, counseling, rehabilitation teaching, orientation and mobility instruction, etc. unless they are paid also minimum wage. What messages are individuals being given as to real life expectations, and where will money be gotten to pay for these unusual benefits?
4. There will again be absolutely no incentive for individuals to vocationally progress or leave the program. No other known place in society will pay individuals regardless of what they do and for receiving all such services. As before, individuals will see themselves as "employees" and will not give up this complacent status for the fears and pressures of competitive employment within a sighted world, since the majority have had little or no previous experience in competitive jobs, and especially little success in being able to compete.
5. They will as in the past lose most of all public payment and medical assistance which the greater majority of individuals entering the program receive. These benefits will need to be paid by the center, and not by agencies so funded to provide these services. Where will the increased funding for supporting increased benefits to a larger sheltered population come from?

6. The center's primary mission will be dictated to become a provider of sheltered employment, rather than rehabilitation. History predicts its purpose and satisfaction of clients will deteriorate. Federal rehabilitation money cannot and will not be employed in the workshop to provide predominantly sheltered employment. The shop will either need substantial increases in general state funds and/or substantially increased production within the shop in order to generate cash funds. If the center is expected to make this substantial increase, dictations are that individuals must become even more productive, yet there is no incentive to become so. The center would need to selectively hire the most competent production clients, who in reality are the most ready and capable for competitive employment itself. Yet, the program would need to retain these individuals. It would be dictated that priority of program services would need to be given to the most productive individuals.
7. Rewards and consequences are the universal incentives in the world of work, of which money is primary. However, it could no longer be objectively used on any standardized basis to facilitate personal and vocational growth. Therefore, consequences would be the main tool for assisting individuals in improving. The primary educational tools at the staff's disposal would be negative reinforcement, including suspension, firing, etc.
8. A large portion of the staff in the center have been employed therein within the last two years. Many have been extensively making changes in the center to have it become a quality rehabilitation program. The dictates of minimum wage to have the center again become a sheltered workshop would certainly bring about another change in staffing amenable to this philosophy.
9. The amount of money required for leave benefits, health insurance, state retirement for clients, and health and related insurance benefits would need to be greatly increased for the ever increasing numbers of sheltered employees. This would be increased many fold.

10. Due to an ever-increasing number of long-term sheltered employees, more equipment and space would be required to accommodate persons who would not be leaving the program. New production items and lines would be the most lucrative endeavor to pay these increased costs. Money would need to be made available to purchase new production equipment to build a firm base. Also, vastly increased money would need to be expended to expand the marketing of items.

In summary, the association and history of National Industries for the Blind and its associated workshops clearly and indisputably show that with minimum and higher wages paid to clients dictates either phenomenal state supplementation for state operated programs, highly automated equipment, enriched state or non-profit programs, and long-term sheltered employment of the most capable blind persists with an ever increasing need for improved paid fringe benefits and modernization of production methods, equipment, and engineering.

#### SEPARATION OF SKILLS CENTER AND WORKSHOP

Since July 1977, there has been no separation distinction between the skills center and workshop, but rather a center with specialized evaluation and training staff. The change was to unify all services, thereby also making them much more available to all clients as needed through one central referral system. However, a work distinction has been made between direct rehabilitation services, including work samples, evaluation and training, and subcontracted work for an extension of evaluation and vocational adjustment training as opposed to manufacturing with its primary emphasis on semi-skilled and skilled evaluation and training and long-term adjustment.

The advantages of locating the two units in the same building are:

1. All rehabilitation services, as well as coordinated community services, are much more readily available to all clients at any time needs change, such as testing, counseling and guidance, medical assistance, community

training opportunities, job placement, orientation and mobility training, low vision services, all services within the same facility allows for more concentrated and flexible services to meet individual needs and changes in needed services.

2. Allows for more versatility of staff assignment in job duties and reduced staff costs with varying job demands. Co-coverage of work areas and team assignments can be most readily achieved. Staff supervision and training can be more intensely provided and monitored. There are staff in the center who still require intensive multi-supervisory training in personally making a transition from working with clients as sheltered employees rather than as facilitators in fully developing client work skills and employability. These individuals need to develop further skills in being able to effectively and efficiently evaluate and train people. Staff are available and have the knowledge to be able to cover in case of illness, vacations, etc.
3. The physical aspects of operating the business are considerably more efficient if all units are in one building. Accounting is performed in-house for the entire program. Truck scheduling is less confusing and better scheduled. Janitorial costs can be reduced. Secretarial staff can be more versatile and economically utilized. Fiscal control over equipment, purchasing, quality assurance, federal compliances, profit and loss improvement, safety training is more available. More readily we will have a progressive movement program without clients falling in the cracks or reverting to a 70-year history of sheltered employment due to evaluation and training units participative staffings with clients, assurance of progressive individual goals and progress review.

4. Versatility in maintaining in-program more consistently. e.g., lack of contract work can result in clients being put into the manufacturing area. Within our present facility, due to space problems, building not having adequate design and organization potential, the manufacturing has to be designed to a higher level for those evolving, wherein also higher base pay on developing skills, and a blurring of differences between workers. It would be ideal if separated by distinct floors or physically separated areas.

The previous number alluded to the fact that it is not wise to separate the skills center from the workshop. The advantages of maintaining one unified program greatly outweighs the separate program. The second point is that there is and for some time has been no division such as the workshop vs. the skills center, but rather the two have been unified as a program to provide the most complete services to all individuals. If a separation would occur, it could be best done in one building and would be separated by different floors or clear distinction of physical separation, such as walls. The evaluation and training components (skills center) presently does and should consist of home teaching, orientation and mobility, full range of counseling services, including job exploration and placements, the pre-vocational and evaluational components of work sampling and the subcontract work area, which would provide further situational assessment and vocational adjustment, vocational adjustment being teaching individuals work habits, interpersonal relationships, and basic work skills. The manufacturing area would be the most logical separation of program, since individuals in this program are of a higher level of functioning and should be distinguished as an incentive program for others to achieve. With the skills center would be all the specialized services, such as psychological testing, low vision services, etc.

A basic difference of the manufacturing model is that the focus is more on persons developing even more refined skilled levels. Another distinction of manufacturing is the increased expectations for productivity, greater quality expectations, and above all versatility of the individual being able to perform a number of jobs, as well as taking additional responsibilities beyond merely performing on contract work which is provided by indirect labor persons.

A problem in physically separating the two programs is what would be done with the specialized areas of evaluation and training, including the vending facility and relating evaluation, tennis racket stringing evaluation and training, sales training, truck driver training, janitorial training, photo lab training, engraving training, and sales employment program. All but the last program require a great involvement by rehabilitation staff to assure quality of evaluation, training, and adjustment services. Therefore, it creates a question as to any logical separation of these programs, since most are of a production nature and have a primary goal of providing services to individuals to enhance their employability. To separate this program, as well as to separate the evaluation and training unit from the manufacturing, has the potential of losing the primary value of rehabilitation.

ENTRANCE CRITERIA  
REHABILITATION CENTER FOR THE VISUALLY IMPAIRED

Experience has taught us that there are basic skill levels each client must have achieved in order to benefit from services at the Rehabilitation Center for the Visually Impaired. Therefore, we have developed a set of entrance criteria that will allow for acceptance of the largest number of clients that we can effectively work with. Our criteria are meant to be general guidelines for agencies referring clients to the Center. However, each referral will be examined on an individual basis, and the referring agency's input will be considered in making a decision on acceptance. For instance, we can and have provided services to clients not meeting these criteria if an attendant who can effectively control the deficient behaviors accompanies the client. Therefore, in addition to requesting written referral information, we like to talk to the client and/or referring agency in person so that we can be aware of any special needs a client might have.

The entrance criteria are divided into five different skill areas: Communications skills, self-care skills, emotional behavior, orientation and mobility skills, and ability to learn and work.

Communication Skills: All clients must be able to communicate basic needs by means of signs, gestures, fingerspelling, writing or speaking. The vocabulary does not need to be extensive, but the client must be able to follow simple directions, understand survival terms such as "stop", "no", etc., and be able to ask for help from others.

Self-Care Skills: Clients must be able to meet their own toilet needs and have independent feeding skills. We do not have sufficient staff to assist in these activities, so each client who needs help will need to bring an attendant. In addition, clients must not have an accompanying physical or mental disability which is so severely handicapping that it disrupts a client's meaningful participation in a training program to a large degree, such as numerous grand mal seizures or very active psychosis.

Emotional Behavior: All clients must demonstrate a lack of self-abusing and self-stimulating behavior, such as masturbating, flicking, chronic rocking, etc. They also must not be potentially dangerous to their co-workers or abusive to their external environment such as training materials, furniture, equipment, etc. Again, a client with an attendant would be acceptable if the attendant could control undesirable behaviors.

Orientation and Mobility: Clients who are ambulatory must possess enough balance to allow walking and sitting erect without danger of falling, and they must be able to follow sighted guide after instruction. Clients in wheel chairs must be able to move their own chairs within the building and be able to sit in the chair without falling. All clients must demonstrate a basic ability to learn a simple indoor route and must have the ability to learn to cope with the physical environment within the building (i.e., understand need to go around large objects rather than through them). If clients need to be physically taken from one area to another, attendant service must be arranged.

Learning and Working Behavior: Clients must be medically able to attend the Center regularly (average of 3 medically related absences/month) and must be capable of being responsible for attending classes and entering and exiting the building. Clients must have the concept of "beginning" and "end" and will start and stop when signaled. They will need to be able to attend to a task for at least fifteen minutes with minimal supervision and engage in work and/or classes for at least two hours. Clients will be required to follow simple directions to benefit from training and perform a two step task. Lastly, all meaningful training requires an ability to make gross discriminations based on shape, size and texture.

try to arrange schedules around each individual's needs. When medical or personal circumstances dictate, we will arrange part-time schedules; we schedule weekly so we can also make changes to fit a client's medical or business appointments.

We have also enclosed a referral form for your use. If you have clients that you believe meet the entrance criteria, please use this form to make referrals. It should be noted that all clients entering the Rehabilitation Center for the Visually Impaired need to be active clients of the Division of Rehabilitation. Therefore, you will need to contact the local branch office of the Services for the Visually Impaired and they will initiate referral activities to the Center.



## APPENDIX B

Direct Service Positions in the Rehabilitation Unit of Services  
to Blind and Deaf Individuals

Direct Service Personnel (Rehab Counselors)		Location	Number of Counties Served		Ratio Clients:Staff	Hearing Impaired Counselor 3/
1978	1979		1978	1979		
4	3	Denver 1/	10	10	1:100	yes (three)
1	1	Colorado Springs	8	7	1:96	yes
1	2	Pueblo 2/	16	7 6	1:60	yes
1	1	Grand Junction	18	14	1:47	no
1	1	Greeley	10	4	1:102	no
0	1	Alamosa	-	10	1:64	no
0	1	Sterling	-	6	1:7	no
8	10					

1/ One of the counselors became a supervisor but maintains her previous caseload level. Therefore, four persons are still actually providing direct services.

2/ One position is vacant due to budget constraints. In addition, the supervisor for the southern district currently maintains a small caseload.

3/ Four of the five allocated positions remain vacant due to budget constraints and lack of qualified applicants.

## APPENDIX C

### Distinction of Workshop Functions -- "Rehabilitation" and "Employment"

In general, workshops can be categorized into two broad areas, depending on the primary goal of the workshop -- the "rehabilitation" function and the "employment" function. This distinction is important when looking at the federal and state regulations concerning who is to supervise the program, what minimum wage can be justified, and whether program costs are eligible for federal reimbursement. It should also be noted that this differentiation does not in itself prevent a workshop from serving either type of client in the same workshop setting.

Rehabilitation workshops. The goals of rehabilitation include evaluation (testing, vocational determination, continuing review of development), work adjustment (acceptance of supervision, cooperation with fellow workers, developing good work habits), and training (developing or improving occupational skills). The supervision of rehabilitation aspects of workshop operations rests with the U.S. Department of Health, Education, and Welfare - Rehabilitation Services Administration. State workshops are reimbursed by the federal government for 80 percent of the costs of rehabilitation services.

Employment workshops. The function of workshop employment includes the pay of handicapped workers in sheltered workshops, their working conditions, and their placement in competitive employment.

### Payment of Wages to Workshop Clients

The authority for regulating the pay of blind or other handicapped workers in sheltered workshops is found in the Fair Labor Standards Act, the Service Contract Act, and the Walsh-Healy Public Contracts Act. The responsibility for administering the provisions of

these acts is placed with the U.S. Secretary of Labor.

The U.S. Department of Labor regulations which implement these acts provide for five types of "certificates" which authorize workshops to pay certain of their handicapped workers less than the federal minimum wage [Title 29, Code of Federal Regulations, Part 525]. Each certificate defines the classification of client groups and relates a minimum wage level to that group. The five certificates are:

1. Regular Program. This certificate covers those individuals in a production shop, who have been evaluated and have been provided any required training, but who are not capable of working in competitive employment. Under this certificate, clients are required to be paid the minimum wage set in the certificate, which may not be less than 50 percent of the federal minimum wage. A "learning rate" may also be authorized in the certificate for specific learning periods -- a client who hasn't previously worked in the workshop, a client transferred to a higher skilled job, or a returning client who requires relearning the operation.

2. Evaluation. Certificates for evaluation are not required to specify a minimum wage, but if evaluatees are to be paid less than 50 percent of the federal minimum wage, prior approval must be obtained from the state vocational rehabilitation agency. The amount of time an individual may be in evaluation is limited to the period specified in the certificate, with the maximum being six months, except for unusual circumstances.

3. Training. The function of training in the workshop is designed to develop behavior patterns which will help the client adjust to a work environment or teach a specific skill. As with evaluation certificates, a specific minimum wage is not required, though in some cases, the Department of Labor will establish minimums for training certificates. Payment of less than 50 percent of the federal minimum wage to training clients also requires prior approval by the state vocational rehabilitation agency. The amount of time for training is limited to that period stated in the certificate with the maximum being twelve months.

4. Individual certificates. A minimum wage may be established for an individual by name, whose productivity is considerably lower than the other handicapped workers in the regular program. The individual named in the certificate may be paid not less than 25 percent of the federal minimum wage. A wage less than 50 percent of the federal minimum wage must be approved by the state vocational rehabilitation agency, who must certify that the individual's earning capacity is severely impaired. Generally, a client covered by an individual certificate has been through evaluation and training, but is nonetheless a low producing worker.

5. Work Activity Center. A certificate for a work activity center does not require a minimum wage. Most individuals in such pro-

grams are severely mentally retarded, and placement in competitive industry is unlikely even after a long period in the workshop.

Additional requirements for certificates. Any workshop covered by any of the above certificates are required by the Department of Labor to meet certain additional requirements. Some of these include:

1. Handicapped clients working at piece rates shall not be paid less than the prevailing piece rates paid nonhandicapped employees doing the same work in the vicinity of the workshop.

2. Each handicapped worker must be informed in writing of the certificate rate applicable to him.

3. A work activity center must have a separate identifiable program and be physically separated from other workshop activities.

Additionally, workshops are required to maintain extensive records relative to the employees in the program covered by any of the certificates and they are also required to submit to the Department of Labor a comprehensive annual report concerning certificate programs.

#### Responses to Specific Questions

1. Do federal rules on workshops allow for any kind of supplemental income from state or local sources?

By being granted one of the above mentioned certificates, a state's workshop program is granted the authorization to pay clients less than the federal minimum wage. According to comments from a staff person from the Regional Office of the Department of Labor, a certificate is only applicable to the rate of payment (if less than the federal minimum), not to the source of funds from which wages are paid. Of course, if a state chose to supplement workshop wages to the level of the federal minimum wage then no certificate would be needed.

A more complex issue in this question is how such a supplement would affect the 80 percent federal reimbursement to "rehabilitation" workshop programs. According to material provided by the Division of Rehabilitation in the Department of Social Services, if workshop wages were supplemented to the minimum wage "this would certify that the center is a production workshop and therefore would no longer qualify for federal funding."

2. Do any other states supplement sheltered workshop salaries to the federal minimum wage?

Attached is a list provided by the Division of Rehabilitation which indicates that four state or public operated workshop programs are not certified, and therefore pay the minimum wage to all their blind clients. As noted on the attachment, the four agencies (in Ken-

tucky, Mississippi, New Jersey, and Tennessee) are supplemented by state appropriation.

3. What is the reasoning behind the federal rule which requires the minimum wage for sighted persons and below the minimum wage for non-sighted persons?

In the federal regulations (29 CFR 525) it is stated that, in order to prevent the curtailment of employment opportunities, those individuals whose earning or productive capacity is impaired by a handicap may be paid wages that are lower than the minimum wage. It is emphasized in the regulations that the lower wage for the handicapped person cannot be set arbitrarily, but must be related directly to the individual's level of diminished productivity due to his certified disability. As productivity improves, the wage level of the handicapped worker is to be raised proportionally.

If a non-handicapped person is working in the workshop (which is permitted under certain circumstances), the federal minimum wage is required, providing no certifiable disability exists.

4. What would be the impact upon the workshops to require some kind of a basic minimum wage for sheltered workshop employees?

According to the Division of Rehabilitation, the impact of such a requirement would be detrimental to the workshop's financial situation, to its program objectives, and to the other federal benefits received by handicapped employees.

Financial impacts. The Division has cited several problems that would result from the establishment of a basic minimum wage. It should be noted that these responses were based on the assumption that the basic minimum would be the federal minimum wage. If the basic minimum were to be less than the federal minimum, the impact of such a requirement would not be as great.

a. Subsidy to workshop's budget. The workshop often operates in a deficit situation; any additional expenses would need to be provided by the state. Based on a study of client wages and benefits as of January, 1979, it was estimated that a guaranteed minimum wage would cost the state approximately \$72,455.

b. Decrease in federal funding. The Division has stated that a guaranteed minimum wage to all clients would result in reclassification of the workshop as a "production" program and therefore jeopardize the HEW monies received for the "rehabilitation" component of its program. Currently, the workshop receives about \$180,000 annually from HEW, and this amount would also have to be provided by the state if the same level of services was to continue.

c. Effect on other workshops. The Division has stated that it is within the realm of possibility that other workshops which serve the disabled would also request state aid for a minimum wage guarantee if such a subsidy were provided to the Rehabilitation Center for the Blind and Visually Impaired. There are 23 other workshops for the disabled in Colorado which have minimum wage exemption certificates, and their claim for a subsidy might be based on the issue of disability discrimination.

d. Effect on contract bidding. Though not cited as an impact by the Division, a U.S. Department of Labor representative noted that any increase in the wage level of a workshop must be reflected in the bids submitted by the workshop to obtain revenue-producing subcontracts. The DOL mandates that 100 percent of workshop labor costs be included in contract bids. If workshop wages were increased relative to other workshops, it is possible that a competitive advantage would be given to the unsubsidized workshops, and a decrease in revenue might result.

Program Impacts. If a guaranteed minimum wage (assuming the federal minimum) was given to all workshop employees, the Division of Rehabilitation has cited the following programmatic impacts that might be expected:

a. Less incentive for improved performance. The center would have no objective base to assist individuals in understanding their abilities as they relate to competitive employment, especially expectations concerning the quality and quantity of work. Paying individuals a guaranteed minimum regardless of personal achievement and progress would have a demoralizing effect upon trainees who indeed could produce at a high level but would be paid the same as anyone who might produce less.

b. Reluctance of clients to move into other training areas. As a training facility, the workshop offers a number of rehabilitation services which entail the completion of routine tasks that are used to test and evaluate the clients. When individuals are paid high wages, they are reluctant to leave those jobs to participate in other training areas. While the person may benefit by the wages, his quality of life cannot be enhanced if there is no motivation to take advantage of a full range of rehabilitation services.

c. Reluctance of clients to leave the workshop. Payment of a guaranteed minimum wage provides no incentive for individuals to progress in vocational areas and

leave the protective atmosphere of the workshop. Since individuals would view themselves as employees, it is difficult for them to give up the security for the pressures of competitive employment within a sighted world. The major incentive for individuals to leave the center is the fact that they can earn much more in competitive employment than they can within the workshop.

Impacts on client benefits. The majority of clients entering the workshop are recipients of SSI (Supplemental Security Income) or SSDI (Social Security Disability Insurance) benefits. The payment of these benefits is not affected by their participation in employment programs, but once they are determined to be employed, clients' assistance payments may be endangered.

#### (1) SSDI

After an individual is employed who is on SSDI, he may be allowed a nine-month trial work period with an additional three-month transitional period to determine vocational employability. Any month in which an individual has gross earnings of more than \$50 constitutes a full work trial month. The individual can be evaluated for continuing disability at any time. Consequently, if a disability evaluation is made before the 12-month work period is completed and it is determined that an individual has overcome his handicap through substantial gainful employment, cash benefits are dropped immediately. A maximum earning of \$375 per month is in and of itself indicative of the individual's ability to return to substantial gainful employment. Any person who earns the minimum wage would have a gross income of approximately \$502 per month.

#### (2) SSI

An individual who is drawing this assistance will have \$1 deducted from his earnings for each \$2 of income. The trial work period is the same as SSDI. The \$375 per month earning is again a primary factor and the individual may have a continuing disability evaluation at any time and be found to be gainfully employed. Employment in sheltered workshops may have no special bearing on this decision.

In the event an individual is no longer eligible for these two cash benefits, they may also not receive the benefits of Medicare or Medicaid. For example, an individual on SSI earns \$502 per month. On the deduction formula, \$251 would be deducted from the earnings, leaving \$251 to be applied toward cash benefits. Since the SSI maximum benefit is \$208.20 for a single individual, that person would no longer be eligible for SSI since there is an excess of \$42.80 over that amount. The loss of that eligibility, therefore, means that person no longer can receive Medicaid. The question then becomes:

who will provide comprehensive medical care costs for individuals who have severely handicapping conditions. It does not appear that a training center should bear those costs. If so, then it would be necessary for the state to supply those funds.



October 12, 1979

List of Blind Workshops that are not certified to pay less than minimum wage.

1. Delaware Division for Visually Impaired - Wilmington, Delaware
2. \*Kentucky Industries for the Blind - Louisville, Kentucky
3. Blind Industries of Maryland -- Baltimore, Cumberland and Salisbury
4. \*Mississippi Industries for the Blind - Jackson, Miss.
5. \*New Jersey Commission for the Blind - Newark, N.J.
6. Lions Club Industries - Durham, North Carolina
7. Industries for the Blind - Greensboro, North Carolina
8. Oregon Industries for the Blind - Portland, Oregon
9. A. P. Mills - Memphis, Tennessee
10. \*Mason - Blandon Industries for the Blind - Nashville, Tennessee
11. Virginia Industries for the Blind - Charlottesville, Va.
12. Milwaukee Industries for the Blind - Milwaukee, Wisconsin (only unionized workshop)  
There were three in California which went bankrupt.
13. Massachusetts Locations - Fall River Industries for the Blind - Fall River  
Lowell Industries for the Blind - Lowell  
Pittsfield Industries for the Blind - Pittsfield  
Springfield Industries for the Blind - Springfield  
Worcester Industries for the Blind - Worcester  
Massachusetts Industries for the Blind - Boston

\*These are the only state or public operated industries that are non-certified. They are able to pay minimum wage because the states make appropriate allowances in the budget.

The commonality of non-profit workshops in being able to pay minimum wage is primarily that they hire blind clients who have no other disability. They are certain that all clients are not multiple handicapped and are certain that employees are 100 per cent productive. Their only purpose is to provide competitive employment, i.e; they do not provide rehabilitative services.

Source of this information is Deacon Millard, Public Relations for National Industries for the Blind in New Jersey.

APPENDIX D

Colorado Statutory Provisions  
For Emergency Response And For  
The Transport of Hazardous  
Materials

(see next page)

COLORADO STATUTORY PROVISIONS FOR EMERGENCY RESPONSE AND FOR THE TRANSPORT OF HAZARDOUS MATERIALS

Colorado Disaster Emergency Act of 1973

APPENDIX D

28-2-102. Purposes include:

- (d) to 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) to authorize and provide for cooperation in above.
- (f) to authorize and provide for coordination of activities relating to above.
- (g) to provide a disaster and emergency management system embodying all aspects of predisaster, pre-emergency preparedness, postdisaster, and postemergency response.
- (h) to assist in prevention of disasters caused or aggravated by inadequate planning for regulation of public and private facilities and land use.

Department of Military Affairs  
Division of Disaster Emergency  
Services (DODES)

Division Duties - 28-2-105

(2) prepare and maintain a state disaster plan.

(3) take an integral part in the development and revision of local and interjurisdictional disaster plans.

(6)(a) determine resource requirements of the state and its political subdivisions.

(6)(b)(c) promulgate standards for and review local disaster plans.

(6)(e) assist political subdivisions and disaster agencies to establish and operate training programs.

(6)(f) make surveys of industries, resources, and facilities (both public and private) as are necessary to carry out the purposes of this part 1.

(28-2-112) evaluate operational characteristics of the available systems of communications.

Local and Interjurisdictional

28-2-107. Each political subdivision shall be served by the division and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

- Each county shall maintain a disaster agency or participate in a local or interjurisdictional disaster agency.

- Each disaster agency shall prepare and maintain a local plan and shall prepare and distribute a statement of responsibilities of all local agencies and officials.

40-2.1-105(2) Any municipality may, by ordinance, authorize its law enforcement officials.\*

28-2-109. A local disaster may be declared only by the principal executive officer of a political subdivision. The declaration activates the local plan.

Office of the Governor

28-2-104. The governor is responsible for meeting the dangers to the state and people presented by disasters.

(5) an executive order or proclamation of a disaster emergency shall activate the disaster response of the state, local, and interjurisdictional disaster emergency plans.

28-2-104 (3) Creates a Governor's Disaster Emergency Council which shall advise the governor and the director of DODES on all matters pertaining to the declaration of disasters and the disaster response and recovery activities of the state government.

28-2-110 (1) The governor shall consider steps that could be taken on a continuing basis to prevent or reduce the harmful consequences of disasters.

(2) All state departments (in conjunction with DODES) shall conduct studies and adopt measures to reduce the impact of, and actions contributory to a disaster.

Department of Highways

Colorado State Patrol

24-30-903. Chief is vested with the responsibility for operation of communications facilities for patrol and highways performed by operators and radio dispatchers.

43-5-124. Chief has charge of the operation and conduct of the broadcasting and teletype system once it is established (subject to review and approval of the communications coordinator).

Department of Administration  
Division of Communications

24-30-901. The department shall be responsible for state government communications coordination.

Communications Coordinator

(24-30-903) (1)(a) formulate recommendations for a current and long-range communications plan (for approval by director and governor).

(1)(b) administer the approved plan and exercise general supervision over all communications systems, planning, and facilities (except those provided for the state patrol and division of highways).

(1)(c) review and approve, disapprove, or modify all communications and plans.

(28-2-112) ascertain what means exist for rapid and efficient communications in times of disaster emergencies. Intent of this section is that "adequate means of communications be available for use during disaster emergencies".

(43-5-124) supervise the construction and operation of a state radio broadcasting and teletype system.

(3) empowered to install teletype apparatus connecting district offices of state patrol.

Division of Communications

25-3.5-401. (2) (a) Directs the division to coordinate the emergency medical services (EMS) communications subsystem with the existing state telecommunications network (in consultation with the Department of Health).

The facilities of the system shall be made available for the use of several designated state and local agencies and any others that apply.

24-30-903. The patrol shall enforce all state laws pertaining to motor vehicles, their equipment, weight, cargoes, licenses, etc.

40-2.1-903. Officers of the State Patrol.\*

24-32-602. Chief is designated as the Superintendent of the Colorado Law Enforcement Training Academy.

24-32-609. (1) (a) Superintendent required to coordinate training at the academy to meet the needs of the patrol and other agencies which may use the academy.

24-32-612. Each state agency and political subdivision is authorized to send officers and employees engaged in law enforcement activities to the academy.

-110- Division of Highway Safety

24-42-103. Duties

(2) (a) to consult with state departments, institutions, and agencies, with political subdivisions...and to formulate current and long-range plans and programs involving all aspects and components of traffic safety.

(2) (b) to coordinate the activities of the above entities with respect to federal highway traffic safety legislation, programs, and activities.

Executive Order (5-11-76)

Declared official recognition of the Colorado Committee on Hazardous Materials, with direction to the Division of Highway Safety to enter into a working relationship with the committee. The committee sponsors training programs for police, fire, industry, and other interested personnel to teach response and safety techniques when dealing with transportation accidents involving hazardous materials.

Department of Regulatory Agencies  
Public Utilities Commission (PUC)

40-2-116. Duty to establish for motor carriers reasonable requirements to promote safety of operation (using as general guidelines the standards contained in the current rules and regulations of the DOT.

40-2.1-103. PUC shall promulgate rules and regulations for the safe transportation of hazardous materials by motor vehicle.

The rules may govern any safety aspect of the transportation deemed necessary or appropriate (including packing, handling, labeling, placarding).

PUC shall use as guidelines the DOT regulations relating to explosives and other dangerous articles (and may not make rules more stringent).

PUC investigative personnel.\*

Department of Revenue

42-4-228. Vehicles carrying any explosive or hazardous material as cargo shall:

- be marked or placarded in compliance with CFR title 49, chapter 1, part 177.

- shall carry shipping papers and a driver's log in compliance with PUC rules and regulations.

42-8-101. Establishes port of entry weigh stations on public highways in order "to facilitate enforcement of the laws of the state... concerning motor carriers..."

(108) Mandates the Governor to require that chief executive officers of the Department of Revenue, Colorado State Patrol, Division of Highways, Department of Agriculture, Division of Commerce and Development, and PUC "to cooperate to the fullest extent possible to the end that port of entry weigh stations...shall serve the broadest possible functions."

(2) (b) Directs the division to report to the General Assembly on the design and cost of the facilities necessary to implement a state-wide comprehensive EMS communications subsystem (by April 1, 1978).

(402) Requires division to consult with local government entities to ensure that provision is made for their entry into the system and that their present resources are being fully utilized.

Department of Health

25-1-107. Powers and duties

(s) to establish and enforce standards for exposure to toxic materials in the gaseous, liquid, or solid phase that may be deemed necessary for the protection of public health.

(t) to establish and enforce standards for exposure to environmental conditions, including radiation, that may be deemed...

25-3.5-101. Colorado Emergency Medical Services (EMS) Act.

25-3.5-102. Legislative intent: to establish an emergency medical services system, consisting of at least the following subsystems:

(201) treatment (department to establish specialized curricula for personnel who respond routinely to emergencies);

(301) transportation; and

(401) communication (to be coordinated, by the Division of Communications, with the existing state telecommunications network -- see Department of Administration, above)...

25-8-307. Water quality emergencies

25-7-112. Air pollution emergencies

25-11-103. Radiation control emergencies

\*Power to immobilize, impound, or otherwise direct the disposition of motor vehicles transporting hazardous materials when the officer or investigator deems that the motor vehicle or the operation thereof is unsafe and when the action is appropriate under rules and regulations promulgated by the PUC (SB 121, 40-2.1-105).

BILL 63  
A BILL FOR AN ACT

1 CONCERNING HAZARDOUS WASTE.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Repeals and reenacts article 15 of title 25, C.R.S. 1973, as the "Hazardous Waste Control Act of 1980". Establishes a program of regulation over the storage, treatment, and disposal of hazardous waste.

Designates the department of health as the agency responsible for hazardous waste management in this state. Requires the department to designate by rule and regulation quantities and classifications of hazardous waste to be regulated. Authorizes the department to enter and inspect private property under certain conditions for the purpose of determining unlawful acts and to issue appropriate orders in emergencies involving hazardous waste.

Provides that the operation of sites or facilities for the treatment, storage, or disposal of hazardous waste shall be unlawful unless a permit therefor is granted by the department. Provides for the payment of fees designed to offset the department's program expenses in supervising permit holders and, if the permit is for a disposal site, to offset the long-term maintenance costs for the site.

Authorizes the adoption of rules to carry out the provisions of the article and provides that such rules be consistent with the rules of the United States environmental protection agency issued pursuant to the federal "Resource Conservation and Recovery Act of 1976" unless deviation is warranted under specified circumstances.

Requires an applicant for a permit for a hazardous waste disposal site to first obtain a certificate of designation for the proposed site from the board of county commissioners or

governing body of the municipality, as the case may be.

Defines prohibited acts and prescribes civil and criminal penalties for violations. Exempts designated operations or activities from the provisions of the article.

Requires the department to submit a report prior to a specified date notifying the general assembly if there are persons who desire to apply for hazardous waste disposal site permits and who are qualified for such permits except for the fact that no board of county commissioners or governing body of a municipality will issue the required certificate of designation.

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

2 SECTION 1. Article 15 of title 25, Colorado Revised  
3 Statutes 1973, as amended, is REPEALED AND REENACTED, WITH  
4 AMENDMENTS, to read:

5 ARTICLE 15

6 Hazardous Waste

7 25-15-101. Short title. This article shall be known and  
8 may be cited as the "Hazardous Waste Control Act of 1980".

9 25-15-102. Legislative declaration. (1) The general  
10 assembly finds and declares that the proper management and  
11 disposal of hazardous waste is necessary for the preservation of  
12 the environment and the protection of the public health, safety,  
13 and welfare, and that such management and disposal is a matter of  
14 statewide concern. It is therefore the purpose of this article:

15 (a) To establish a program of regulation over the storage,  
16 treatment, and disposal of hazardous wastes; and,

17 (b) To assure the safe and adequate management of hazardous  
18 wastes within this state.

19 25-15-103. Definitions. As used in this article, unless  
20 the context otherwise requires:

1           (1) "Board" means the state board of health created by  
2 section 25-1-103.

3           (2) "Department" means the department of health created by  
4 section 25-1-102.

5           (3) "Disposal", when used in connection with hazardous  
6 waste, means any final action to abandon, deposit, inter, or  
7 otherwise discard waste after its use has been achieved or a use  
8 is no longer intended.

9           (4) "Hazardous material" means any material or combination  
10 of materials of a solid, liquid, contained gaseous, or semisolid  
11 form which, because of its quantity, concentration, natural  
12 persistence, environmental degradability, potential for  
13 assimilation in tissue, or toxicity, may cause or significantly  
14 contribute to an increase in mortality or an increase in illness,  
15 including physical abnormality, or which poses a substantial  
16 present or potential hazard to human health or the environment  
17 when improperly treated, stored, transported, disposed of, or  
18 otherwise managed.

19           (5) "Hazardous waste" means any hazardous material, alone  
20 or mixed with other hazardous or nonhazardous materials, which,  
21 in the possession of any person, has no commercial value or use  
22 in that person's commercial or personal activities and is to be  
23 discarded.

24           (6) "Hazardous waste generation" means the act or process  
25 of producing hazardous waste.

1       (7) "Hazardous waste management" means the systematic  
2 control of the collection, source separation, storage,  
3 transportation, treatment, recovery, recycling, and disposal of  
4 hazardous waste.

5       (8) "Operation", when used in connection with hazardous  
6 waste management, means the use of procedures, equipment,  
7 personnel, and other resources to provide hazardous waste  
8 management.

9       (9) "Operator" means the person operating a disposal site  
10 either by contract or permit.

11       (10) "Person" means any individual, public or private  
12 corporation, partnership, association, firm, trust, estate, the  
13 state or any department, institution, or agency thereof, any  
14 municipal corporation, county, city and county, or other  
15 political subdivision of the state, or any other legal entity  
16 whatsoever which is recognized by law as the subject of rights  
17 and duties.

18       (11) "Resource recovery", when used in connection with  
19 hazardous material, means the operation of preparing and treating  
20 any such material or portion thereof for recycling or reuse.

21       (12) "Storage", when used in connection with hazardous  
22 waste, means the containment of hazardous waste, either on a  
23 temporary basis or for a period of years, in such a manner as not  
24 to constitute disposal of hazardous waste. The term does not  
25 apply to any hazardous waste generation if such waste is retained  
26 on the site by the generator in quantities or for time periods  
27 exempted by rules and regulations promulgated by the board.



1       (13) "Transportation", when used in connection with  
2 hazardous waste, means the off-site movement of hazardous waste  
3 to any intermediate point or any point of storage, treatment, or  
4 disposal.

5       (14) "Treatment", when used in connection with an operation  
6 involved in hazardous waste management, means any method,  
7 technique, or process, including neutralization or incineration,  
8 designed to change the physical, chemical, or biological  
9 character or composition of a hazardous waste, so as to  
10 neutralize such waste or to render such waste less hazardous,  
11 safer for transport, amenable for recovery or reuse, amenable for  
12 storage, or reduced in volume.

13       25-15-104. Hazardous waste control agency - powers and  
14 duties. (1) The department is designated as the authority in  
15 this state responsible to ensure the protection of the public  
16 health and the long-term protection of the environment, for all  
17 phases of hazardous waste management.

18       (2) Pursuant to rules and regulations as provided for in  
19 section 25-15-108, the department shall, subject to the  
20 exemptions provided in section 25-15-117, issue permits for the  
21 treatment, storage, and disposal of hazardous waste and provide  
22 for the inspection of such operations and the enforcement of  
23 limitations and conditions of such permits. The department may,  
24 in accordance with the provisions of section 25-15-110, enter  
25 into an agreement with a local government to conduct any portion  
26 of such inspection and enforcement.

1           (3) The department shall designate by rule and regulation  
2 quantities and classifications of hazardous wastes to be  
3 regulated. Any person may petition the department to establish  
4 an exempted quantity of any hazardous waste.

5           (4) The department shall conduct a program to encourage  
6 resource recovery and treatment of hazardous wastes as  
7 alternatives to disposal, and said program shall include  
8 technical assistance and the compilation and dissemination of  
9 such information to potential users.

10          (5) The department, by its duly authorized representatives,  
11 shall have the power to enter and inspect any property, premises,  
12 or place in which hazardous waste is reasonably believed to be  
13 located for the purpose of determining the compliance or  
14 noncompliance with any provision of this article, any rules and  
15 regulations promulgated pursuant to this article, or any order or  
16 permit, or term or condition thereof, issued pursuant to this  
17 article; except that, if such entry or inspection is denied or  
18 not consented to and no emergency exists, the department is  
19 empowered to and shall obtain from the district court for the  
20 district in which such property, premises, or place is located a  
21 warrant to enter and inspect any such property, premises, or  
22 place prior to entry and inspection. The district courts of this  
23 state are empowered to issue such warrants upon a proper showing  
24 of the need for such entry and inspection. Any information  
25 relating to secret processes or methods of manufacture or  
26 production obtained in the course of the inspection shall be kept  
27 confidential.

1           (6) (a) In the event of an emergency involving hazardous  
2 waste which presents an immediate and substantial threat to the  
3 public health and safety or the environment, the department shall  
4 have the authority to issue such orders for the protection of the  
5 public health and safety or the environment as may be  
6 appropriate, including orders to lay an embargo upon or impound  
7 hazardous waste in the possession of any person who is not  
8 equipped to comply with or who fails to comply with the  
9 provisions of this article or any rules or regulations  
10 promulgated under this article.

11           (b) Any person against whom an emergency order is issued  
12 pursuant to this subsection (6) shall be entitled to an immediate  
13 hearing as provided in section 24-4-105 (12), C.R.S. 1973.

14           (7) The department may institute training programs for the  
15 purpose of qualifying local government personnel to carry out the  
16 provisions of this article. The department may make personnel  
17 available for participation in any program of the federal  
18 government, other states, interstate agencies, or local  
19 governments in furtherance of the purposes of this article.

20           (8) In order to provide for the essential long-term care of  
21 hazardous waste consistent with adequate protection of the public  
22 health and safety and the environment, the department, with the  
23 approval of the general assembly, may acquire by gift, purchase,  
24 transfer from another state department or agency, or other  
25 transfer any and all lands, buildings, and ground suitable for  
26 such purposes and may lease such properties to others for

1 disposal purposes. Any such acquisition shall be subject to the  
2 provisions of section 25-15-105 (2).

3 25-15-105. Requirements for hazardous waste treatment,  
4 storage, and disposal sites and facilities. (1) The operation  
5 of sites or facilities for the treatment, storage, or disposal of  
6 hazardous waste shall be unlawful unless a permit is granted by  
7 the department for such facilities and properties in accordance  
8 with rules and regulations promulgated by the board. Each permit  
9 may apply to all hazardous waste management operations at a site  
10 or to each storage, treatment, or disposal facility. Each permit  
11 shall provide for a specified term and shall be renewable  
12 pursuant to rules and regulations promulgated by the board.

13 (2) Any site proposed to contain disposed hazardous waste  
14 requiring long-term care shall not be eligible for a permit  
15 unless it is state-owned property or the application contains  
16 procedures, consistent with rules and regulations promulgated by  
17 the board, to transfer such property to the state or the federal  
18 government upon closure of disposal operations at the site. The  
19 department, upon the petition of the site owner prior to closure,  
20 may suspend the requirement of transfer to the state or the  
21 federal government for so long as there is a showing to the  
22 satisfaction of the department that the site owner is willing and  
23 able to maintain the site with oversight by the department and  
24 with adequate protection for the public health and safety and the  
25 environment. All hazardous waste received at a state-owned  
26 facility, upon permanent disposal therein, shall become the

1 property of the state and shall be in all respects administered  
2 and controlled by the state.

3 (3) (a) Any permit for the operation of facilities and  
4 sites for the storage, treatment, or disposal of hazardous waste  
5 shall provide for the payment to the department of a fee  
6 determined in accordance with rules and regulations promulgated  
7 by the board based upon the quantity and type of hazardous waste  
8 to be managed on or in the lands covered thereby. Such fee shall  
9 be credited to the hazardous waste service fund as provided for  
10 in section 25-15-106.

11 (b) If the facility is a disposal site, the permit shall  
12 provide for an additional fee to accumulate a trust fund as  
13 provided in section 25-15-107.

14 (c) The fees provided for in paragraphs (a) and (b) of this  
15 subsection (3) shall take into consideration the hazardous waste  
16 involved and whether it is to be treated, stored, or disposed of  
17 at the location.

18 (d) Any operation conducted at sites owned by the state  
19 shall be in accordance with a lease which shall provide for  
20 amounts to be paid based on the quantity of waste managed and  
21 shall also require an amount to be paid in lieu of taxes, which  
22 amount shall be paid to local governmental units, as compensation  
23 for loss of valuation, and which shall be adjusted annually to  
24 conform with current mill levies, assessment practices, and value  
25 of land and improvements.

1           (4) All fees provided for in this section shall be paid to  
2 the department in accordance with schedules established by the  
3 board. The department shall receipt for the same and shall  
4 transmit such payments to the state treasurer and take his  
5 receipt therefor.

6           (5) The department may require, as a condition to the  
7 issuance of any permit under this article, that the permit holder  
8 give reasonable security for the payment of the amount of all  
9 fees reasonably anticipated to be paid to the state during the  
10 full term of the permit, and the department may also require, as  
11 a condition to the issuance of any permit, that the permit holder  
12 post a bond or other security under such rules and regulations as  
13 the board may promulgate to cover any tortious act committed  
14 during the term of the permit.

15           (6) Prior to the issuance of any permit under subsection  
16 (1) of this section, the department shall give reasonable public  
17 notice, and may hold a public hearing on the application, in the  
18 area of the proposed site or facility.

19           25-15-106. Hazardous waste service fund created. There is  
20 created in the state treasury a hazardous waste service fund,  
21 which shall consist of fees collected pursuant to section  
22 25-15-105 (3) (a) to reimburse the state for its annual program  
23 expenses incurred in the maintenance, monitoring, and other  
24 supervision of the lands and facilities used for the storage,  
25 treatment, and disposal of hazardous waste. All such moneys  
26 shall be appropriated annually by the general assembly to the

1 department for the purposes of this section.

2 25-15-107. Hazardous waste trust fund created. There is  
3 created in the state treasury a hazardous waste trust fund, which  
4 shall consist of fees collected pursuant to section 25-15-105 (3)  
5 (b) for disposal site permits. The fund shall be projected to be  
6 of sufficient size that the total of all such fees collected  
7 during the operation of hazardous waste disposal sites shall be  
8 such that the annual interest or other earnings from the fund  
9 shall provide for state maintenance, monitoring, remedial action,  
10 or other supervision of the land or facility required for  
11 long-term care of such sites to protect public health and the  
12 environment. Such moneys shall be used only for care of the  
13 facilities from which they were collected and shall be payable in  
14 amounts to provide such activities or to accumulate, as the case  
15 may be.

16 25-15-108. Rules and regulations to be adopted. (1) The  
17 board shall formulate, adopt, and promulgate rules and  
18 regulations as provided in subsection (2) of this section  
19 relative to hazardous waste which shall include but not be  
20 limited to: Permits, fees, records, notification and reports of  
21 accidents, technical qualifications of site owner or operator  
22 personnel, handling and storage requirements, exemptions, bonds  
23 required to be furnished by this article, posting of areas, site  
24 surveys, monitoring of operations, public hearings, and site and  
25 facility requirements for storage, treatment, and disposal.

1           (2) Rules and regulations concerning hazardous waste shall  
2 be consistent with the rules and regulations of the United States  
3 environmental protection agency issued pursuant to the federal  
4 "Resource Conservation and Recovery Act of 1976", as amended;  
5 except that, in the event the board concludes on the basis of  
6 detailed findings that a deviation from such rules and  
7 regulations is necessary and consistent with the protection of  
8 the environment and the public health and safety, the board may  
9 adopt such substitute rules and regulations as may be indicated  
10 by such findings.

11           (3) In adopting, amending, and repealing such rules and  
12 regulations, the board shall comply with the provisions of  
13 article 4 of title 24, C.R.S. 1973.

14           (4) Any person who, on January 1, 1981, possesses a permit  
15 issued by the federal government for the storage, treatment, or  
16 disposal of hazardous waste shall be deemed to possess an  
17 identical permit issued by the department. Such permit shall  
18 remain in effect until the department issues a new permit  
19 pursuant to this article or until terminated by the department  
20 upon one hundred eighty days' written notice to the permit  
21 holder.

22           25-15-109. Hazardous waste disposal sites - designations of  
23 needs and acceptable areas - certificates of designations -  
24 permits. (1) The department shall designate by rules and  
25 regulations hazardous waste disposal needs in the state, time  
26 periods during which permit applications may be submitted, and



1 land areas that may be shown, upon appropriate further study, to  
2 be acceptable for the disposal of specified types of hazardous  
3 wastes. Such rules and regulations shall be promulgated pursuant  
4 to article 4 of title 24, C.R.S. 1973. Any person shall have the  
5 right to petition for the issuance, amendment, or repeal of any  
6 such rule or regulation as provided in section 24-4-103 (7),  
7 C.R.S. 1973; except that the department shall respond to any such  
8 petition within ninety days after the filing thereof by granting  
9 or denying the same.

10 (2) Prior to issuing any rules and regulations as provided  
11 in subsection (1) of this section, the department shall consider  
12 the department's studies of such factors as the location and  
13 types of hazardous wastes generated, the geology and hydrology of  
14 sites, local land use and population growth and density, the  
15 treatment and resource recovery options available, transportation  
16 systems, incident potential and resolution capabilities, and  
17 economic considerations.

18 (3) (a) Any person wishing to apply to the department for a  
19 permit to operate a hazardous waste disposal site shall first  
20 apply for and receive a certificate of designation for the  
21 proposed site location from the board of county commissioners, if  
22 the site is to be in an unincorporated area, or from the governing  
23 body of the municipality, if the site is to be in a municipality.  
24 The board of county commissioners or the governing body of the  
25 municipality, as the case may be, shall grant or deny any  
26 application for a certificate of designation within one hundred  
27 eighty days of the filing thereof.

1           (b) In considering an application for a certificate of  
2 designation, the board of county commissioners or the governing  
3 body of the municipality, as the case may be, shall take into  
4 account:

5           (I) The ability of the applicant to comply with the health  
6 standards and other such rules and regulations as may be  
7 prescribed by the board;

8           (II) The geological and hydrological characteristics of the  
9 site to retain hazardous wastes and provide long-term protection  
10 of the environment, especially the protection of ground and  
11 surface waters;

12           (III) The accessibility of the disposal site and facility  
13 to potential users; factors and capabilities of local, state, and  
14 federal agencies to minimize the risks and consequences of  
15 hazardous waste accidents;

16           (IV) Economic and other factors that would affect the  
17 viability of industry and its growth in this state;

18           (V) The effect that the proposed site and facility would  
19 have on the surrounding property, taking into consideration the  
20 types of processing to be used, population density and projected  
21 growth, and current and projected uses and values of surrounding  
22 property;

23           (VI) Recommendations by local health departments; and

24           (VII) The results of a public hearing on the proposed site  
25 and facility.

1           (c) A certificate of designation for a hazardous waste  
2 disposal site issued by a board of county commissioners or the  
3 governing body of a municipality shall not be effective until the  
4 department issues a permit for such site in accordance with the  
5 provisions of this section.

6           (4) During the period specified in any rules and  
7 regulations promulgated pursuant to subsection (1) of this  
8 section, any person may apply to the department for a permit to  
9 operate a hazardous waste disposal site within the area  
10 indicated. Such application shall contain such information on  
11 site design and operational procedures as may be required by the  
12 department by regulation and shall be accompanied by a copy of  
13 the certificate of designation for the proposed site location  
14 from the board of county commissioners or the governing body of  
15 the municipality, as the case may be. Such application shall  
16 also be accompanied by a fee established by the department to  
17 offset the reasonable costs of reviewing such application.

18           (5) The department shall consider all applications for a  
19 permit to operate a hazardous waste disposal site which are  
20 submitted during the period specified in any rules and  
21 regulations promulgated pursuant to subsection (1) of this  
22 section and shall issue a permit for any site or sites which,  
23 based upon consideration of the factors specified in subsection  
24 (2) of this section, are the best alternative or alternatives to  
25 satisfy the rules and regulations of the board. The department  
26 shall not be required to issue a permit if in its judgment no  
27 applicant for the area designated is sufficiently qualified.

1           (6) The issuance of a permit to operate a hazardous waste  
2 disposal site by the department shall not affect any requirement  
3 for a certificate of designation for the disposal of nonhazardous  
4 waste at the same site as provided in part 1 of article 20 of  
5 title 30, C.R.S. 1973.

6           25-15-110. Local control of facilities - authorization by  
7 department - allocation of fees. Upon application and a  
8 demonstration of adequate capability and resources, the  
9 department may enter into an agreement with a board of county  
10 commissioners, a city and county, or a municipality within whose  
11 jurisdiction is located one or more hazardous waste treatment,  
12 storage, or disposal facilities for such local government to  
13 inspect, monitor, and enforce state regulations for such  
14 facilities and to provide necessary services for such facilities  
15 such as fire protection, security, and road safety. The  
16 department shall make available to any such local government a  
17 reasonable portion of the fees deposited in the hazardous waste  
18 service fund for conducting such functions. The application by a  
19 local government for such authorization shall include such  
20 information as the department may require concerning the  
21 expertise available to or obtainable by the local government, the  
22 manner in which the overall public interest would be better  
23 served if the application is granted, the equipment, facilities,  
24 and other resources required, and the costs of providing such  
25 services. The department shall have the power to reassume any  
26 such function granted a local government if it appears to the

1 department that the appropriate expertise is unavailable or that  
2 the resources provided are not appropriately applied for the  
3 agreed purpose, or if the department and the local government  
4 mutually so agree.

5 25-15-111. Technical assistance - coordination of hazardous  
6 waste programs. The department shall provide technical advice to  
7 hazardous waste generators, to owners and operators of treatment  
8 plants, storage facilities, and disposal sites, and to counties  
9 and municipalities in which such facilities may be located in  
10 order to assure that appropriate measures are taken to protect  
11 the public health, safety, and welfare. The department shall  
12 also coordinate the hazardous waste program with all other  
13 programs within the department or with other agencies of federal,  
14 state, or local government which are concerned with hazardous  
15 waste.

16 25-15-112. Injunctions. If, in the judgment of the  
17 department, any person has engaged in or is engaging in any acts  
18 or practices which constitute a violation of any provision of  
19 this article or of any rule or regulation or order issued under  
20 this article, the attorney general shall, at the request of the  
21 department, make application to the district court for an order  
22 enjoining such acts or practices or for an order directing  
23 compliance with the provisions of this article and all rules,  
24 regulations, and orders issued under this article.

25 25-15-113. Prohibited acts. (1) On or after January 1,  
26 1982, no person shall treat, store, or dispose of any hazardous

1 waste without having been granted a permit therefor from the  
2 department.

3 (2) On or after January 1, 1982, no person shall  
4 substantially alter any hazardous waste treatment or disposal  
5 facility or site without first obtaining a permit from the  
6 department therefor.

7 25-15-114. Civil penalties. (1) Penalties shall be  
8 determined and collected by a court of competent jurisdiction  
9 upon action instituted by the department for the determination  
10 and collection of such penalty under this section and in  
11 accordance with the following provisions:

12 (a) Any person who violates any order which is not subject  
13 to a stay pending judicial review and which has been issued  
14 pursuant to this article shall be subject to a civil penalty of  
15 not more than \_\_\_\_\_ dollars per day for each day  
16 during which such violation occurs.

17 (b) On or after January 1, 1982, any person who violates  
18 the provisions of section 25-15-113 shall be subject to a civil  
19 penalty of not more than \_\_\_\_\_ dollars per day for  
20 each day during which such violation occurs.

21 25-15-115. Criminal offenses - penalties. On or after  
22 January 1, 1982, any person who willfully, recklessly, or with  
23 criminal negligence, as defined in section 18-1-501, C.R.S. 1973,  
24 disposes or causes to be disposed or otherwise handled any  
25 hazardous waste in violation of this article, any final order of  
26 the department not stayed by court order, or any applicable

1 regulation of the board so as to endanger the public health or  
2 substantially contaminate the environment is guilty of a  
3 misdemeanor and, upon conviction thereof, shall be punished by a  
4 fine of not more than \_\_\_\_\_ dollars for each day  
5 the violation occurs, or by imprisonment in the county jail for  
6 not more than \_\_\_\_\_ months, or by both such fine and  
7 imprisonment. Upon conviction of a second or subsequent offense  
8 which occurred within five years of the date of a previous  
9 offense, the offender shall be punished by a fine of not more  
10 than \_\_\_\_\_ dollars for each day the violation occurs, or  
11 by imprisonment in the county jail for not more than \_\_\_\_\_  
12 months, or by both such fine and imprisonment.

13 25-15-116. Disposition of fines and penalties. All  
14 receipts from penalties or fines collected under the provisions  
15 of sections 25-15-114 and 25-15-115 shall be credited to the  
16 general fund of the state.

17 25-15-117. Exemptions. (1) The provisions of this article  
18 shall not apply to the following:

19 (a) Any hazardous material in the possession of a hazardous  
20 waste generator being treated or handled as an integral part of a  
21 standard industrial process which includes steps to neutralize  
22 the material or otherwise render it less hazardous;

23 (b) Any hazardous waste controlled by a federal or state  
24 permit or by a local government ordinance or regulation which  
25 enforces such a federal or state permit and which is at least as  
26 stringent as the provisions of this article;

1           (c) The transportation of any hazardous material covered by  
2 article 2.1 of title 40, C.R.S. 1973;

3           (d) Mining overburden wastes and fly ash, bottom ash, and  
4 scrubber sludge resulting from the combustion of fuels, unless  
5 specifically listed in regulations promulgated by the United  
6 States environmental protection agency pursuant to section 3001  
7 of the federal "Resource Conservation and Recovery Act of 1976";

8           (e) Agricultural wastes, including manures and crop  
9 residues, which are returned to the soil as fertilizers or soil  
10 conditioners;

11           (f) Sewage sludge from publicly owned treatment works which  
12 is regulatd by section 405 (b) and (d) of the "Federal Water  
13 Pollution Control Act", as amended, commonly known as the clean  
14 water act;

15           (g) Hazardous waste in quantities specifically exempted by  
16 the department by rules and regulation.

17           25-15-118. Evaluation - hazardous waste control program.  
18 The department shall submit a report notifying the general  
19 assembly prior to January 1, 1983, if there are persons who  
20 desire to apply to the department for a permit to operate a  
21 hazardous waste disposal site and who are qualified for such a  
22 permit under the provisions of section 25-15-109 (5), but no  
23 board of county commissioners or governing body of a municipality  
24 will issue a certificate of designation to such persons. The  
25 general assembly shall review such report and take appropriate  
26 legislative action thereon.



1       SECTION 2. Effective date.   This act shall take effect  
2   January 1, 1981.

3       SECTION 3. Safety clause.   The general assembly hereby  
4   finds, determines, and declares that this act is necessary for  
5   the immediate preservation of the public peace, health, and  
6   safety.

BILL 64  
A BILL FOR AN ACT

1 CONCERNING TRANSPORTATION OF HAZARDOUS MATERIALS.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Expands the present authority of the public utilities commission to control intrastate transportation of hazardous material by motor vehicle and to also include intrastate transportation of hazardous materials by rail. Grants to the public utilities commission additional authority to control interstate transportation of hazardous material by motor vehicle and by rail. All such authority will apply only insofar as compatible with federal law and when not creating an undue burden on interstate commerce.

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

3 SECTION 1. 40-2.1-102, Colorado Revised Statutes 1973, as  
4 amended, is amended to read:

5 40-2.1-102. Legislative declaration. It is declared that  
6 the transportation of hazardous materials by motor vehicle AND BY  
7 RAIL constitutes a potential menace to the public health, safety,  
8 and welfare of the people of the state of Colorado. To that end,  
9 it is the purpose of this article to require the use of all

1 available practical methods to reduce and prevent accidents from  
2 the transportation of and to control the transportation of  
3 hazardous materials by motor vehicle ~~throughout-this-state~~ AND BY  
4 RAIL, OVER THE STREETS AND HIGHWAYS AND OVER THE RAIL SYSTEM OF  
5 COLORADO, AND SUCH CONTROL SHALL APPLY TO BOTH INTERSTATE AND  
6 INTRASTATE TRANSPORTATION, INSOFAR AS COMPATIBLE WITH FEDERAL LAW  
7 AND WHEN NOT CREATING AN UNDUE BURDEN ON INTERSTATE COMMERCE. It  
8 is further declared that the prevention of accidents resulting  
9 from and the control of transportation of hazardous materials by  
10 motor vehicle AND BY RAIL throughout each portion of the state  
11 are matters of statewide concern and are affected with a public  
12 interest and that the provisions of this article are enacted in  
13 the exercise of the police powers of this state for the purpose  
14 of protecting the health, peace, safety, and welfare of the  
15 people of this state.

16 SECTION 2. 40-2.1-103 (1), Colorado Revised Statutes 1973,  
17 as amended, is amended to read:

18 40-2.1-103. Commission to promulgate rules and regulations.

19 (1) The commission shall promulgate rules and regulations for  
20 the safe transportation of hazardous materials by motor vehicle  
21 AND BY RAIL, AND SUCH RULES AND REGULATIONS SHALL BE COMPATIBLE  
22 WITH FEDERAL LAW AND SHALL NOT CREATE AN UNDUE BURDEN ON  
23 INTERSTATE COMMERCE. Such rules and regulations shall be  
24 applicable to any person who transports or ships, or who causes  
25 to be transported or shipped, a hazardous material by motor  
26 vehicle OR BY RAIL in the ordinary course of business in

1 quantities covered by said rules and regulations. Such rules and  
2 regulations shall define hazardous materials and may govern any  
3 safety aspect of the transportation of hazardous materials which  
4 the commission deems necessary or appropriate, including but not  
5 limited to the packing, repacking, handling, labeling, marking,  
6 and placarding of hazardous materials and motor vehicles AND RAIL  
7 CARS carrying hazardous materials, the qualification of drivers  
8 of motor vehicles transporting hazardous materials, and the use  
9 of any package or container in the transportation of hazardous  
10 materials which is not manufactured, fabricated, marked, labeled,  
11 maintained, reconditioned, repaired, or tested in accordance with  
12 such rules and regulations.

13 SECTION 3. 40-2.1-105 (1), Colorado Revised Statutes 1973,  
14 as amended, is amended to read:

15 40-2.1-105. Immobilization of unsafe vehicles. (1) All  
16 officers of the Colorado state patrol and investigative personnel  
17 of the commission shall, INsofar AS COMPATIBLE WITH FEDERAL LAW  
18 AND WHEN NOT CREATING AN UNDUE BURDEN ON INTERSTATE COMMERCE,  
19 have the power to immobilize, impound, or otherwise direct the  
20 disposition of motor vehicles OR RAIL CARS transporting hazardous  
21 materials when the officer or investigator deems that the motor  
22 vehicle OR RAIL CAR or the operation thereof is unsafe and when  
23 such immobilization, impoundment, or disposition is appropriate  
24 under or required by rules and regulations promulgated by the  
25 commission pursuant to section 40-2.1-103.

26 SECTION 4. 42-4-228 (1), Colorado Revised Statutes 1973, as

1 amended, is amended to read:

2 42-4-228. Vehicles transporting explosives or hazardous  
3 materials. (1) Any person operating any vehicle transporting  
4 any explosive or hazardous material as cargo or part of a cargo  
5 upon a highway OR ON THE RAIL SYSTEM OF COLORADO, shall, INsofar  
6 AS COMPATIBLE WITH FEDERAL LAW AND WHEN NOT CREATING AN UNDUE  
7 BURDEN ON INTERSTATE COMMERCE, at all times comply with the  
8 provisions of this section. As used in this section, "explosive  
9 or hazardous material" means either any substance so defined  
10 pursuant to section 42-1-102 (26) or any substance so defined by  
11 the public utilities commission in its rules and regulations  
12 promulgated pursuant to section 40-2.1-103, C.R.S. 1973.

13 SECTION 5. Safety clause. The general assembly hereby  
14 finds, determines, and declares that this act is necessary for  
15 the immediate preservation of the public peace, health, and  
16 safety.

BILL 65

A BILL FOR AN ACT

1 CONCERNING HAZARDOUS MATERIAL INCIDENTS, AND PROVIDING FOR A  
2 STATEWIDE SYSTEM FOR THE PREVENTION THEREOF AND RESPONSE  
3 THERETO.

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Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Enacts a new article in title 25, C.R.S. 1973, to provide a statewide system for the prevention of and response to hazardous material incidents. Defines "hazardous material incident" and other important terms. Declares that the article is intended to augment all other programs and authorities involved in the prevention of and response to such incidents and that the article shall not affect the jurisdiction or responsibilities of law enforcement or fire-fighting personnel. Requires the state board of health to promulgate necessary rules and regulations, and designates the department of health to administer the article. Requires the department of health to work with other governmental agencies in the development of plans for the prevention of, response to, and resolution of hazardous material incidents. Requires the department of health to establish and maintain a data resource center to provide technical information and advice needed to respond to hazardous material incidents. Authorizes the department of health to enter and inspect private property under certain conditions for the purpose of determining dangerous conditions and to issue appropriate orders in emergencies involving hazardous material. Describes responsibilities for the prevention, containment, and cleanup of hazardous material incidents. Prohibits the transportation of extremely hazardous materials designated by the department of health unless notification of such transportation is provided to the department. Authorizes the department of health to establish a

program to receive hazardous material from individuals and provide for the proper storage or disposal of such material. Defines unlawful acts and prescribes criminal penalties for violations.

Makes miscellaneous amendments to the "Colorado Disaster Emergency Act of 1973" to emphasize the role of the division of disaster emergency services in the prevention of and response to emergencies involving hazardous materials.

Makes appropriations to the department of health and the division of disaster emergency services for the implementation of the act.

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

2 SECTION 1. Title 25, Colorado Revised Statutes 1973, as  
3 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

4 ARTICLE 16

5 Hazardous Material Incidents

6 25-16-101. Legislative declaration. The general assembly  
7 finds and declares that hazardous material incidents have become  
8 increasingly common and serious, and the provisions of this  
9 article are therefore needed to assure the preservation of the  
10 environment and the protection of the public health, safety, and  
11 welfare. In enacting this article, it is the intent of the  
12 general assembly to designate responsibilities for the prevention  
13 of, response to, and cleanup of hazardous material incidents. In  
14 addition, the general assembly intends that the provisions of  
15 this article supplement and augment all other programs and  
16 authorities involved in the prevention of and response to such  
17 incidents and that the department of health, in carrying out its  
18 responsibilities under this article, coordinate its activities to  
19 the maximum extent possible with those of other involved federal,

1 state, local, and private agencies.

2 25-16-102. Definitions. As used in this article, unless  
3 the context otherwise requires:

4 (1) "Board" means the state board of health created by  
5 section 25-1-103.

6 (2) "Department" means the department of health, created by  
7 section 25-1-102.

8 (3) "Extremely hazardous material" means any hazardous  
9 material which, if exposed to humans, would likely result in  
10 death, disabling personal injury, or serious illness because of  
11 its quantity, concentration, or chemical characteristics.

12 (4) "Hazardous material" means any material or combination  
13 of materials of a solid, liquid, contained gaseous, or semisolid  
14 form which, because of its quantity, concentration, natural  
15 persistence, environmental degradability, potential for  
16 assimilation in tissue, or toxicity, may cause or significantly  
17 contribute to an increase in mortality or an increase in illness,  
18 including physical abnormality, or which poses a substantial  
19 present or potential hazard to human health or the environment  
20 when improperly treated, stored, transported, disposed of, or  
21 otherwise managed.

22 (5) "Hazardous material incident" means any circumstance  
23 involving the spillage or leakage of hazardous material or any  
24 other contamination caused by hazardous material which threatens  
25 the environment or the health and safety of any individual other  
26 than individuals exposed to the risks associated with hazardous



1 material in the normal course of their employment.

2 (6) "Person" means any individual, public or private  
3 corporation, partnership, association, firm, trust, estate, the  
4 state, or any department, institution, or agency thereof, any  
5 municipal corporation, county, city and county, or other  
6 political subdivision of the state, or any other legal entity  
7 whatsoever which is recognized by law as the subject of rights  
8 and duties.

9 (7) "Storage", when used in connection with hazardous  
10 material, means containment, either on a temporary basis or for a  
11 period of years, in such a manner as not to constitute disposal.

12 (8) "Transportation", when used in connection with  
13 hazardous material, means the off-site movement of hazardous  
14 material to any intermediate point or any point of storage,  
15 treatment, or disposal.

16 25-16-103. Limitation. Nothing in this article shall be  
17 construed to affect the jurisdiction or responsibilities of law  
18 enforcement or fire-fighting forces, or of any personnel thereof,  
19 when on active duty.

20 25-16-104. Board to adopt rules and regulations. The board  
21 shall adopt all rules and regulations necessary to carry out the  
22 purposes of this article.

23 25-16-105. Powers and duties of the department. (1) The  
24 department shall have the following duties:

25 (a) To administer the provisions of this article in  
26 accordance with rules and regulations adopted by the board;

1           (b) To cooperate with involved local, state, and federal  
2 agencies in the development of plans for the prevention of,  
3 response to, and resolution of hazardous material incidents;

4           (c) To provide technical staff to train and advise local  
5 and state personnel to deal with hazardous material incidents;

6           (d) To establish and maintain a data resource center to  
7 provide public safety personnel with technical information and  
8 advice needed to respond to hazardous material incidents.

9           (2) The department has the following powers:

10          (a) To conduct or cause to be conducted studies and  
11 research with respect to the handling of hazardous materials and  
12 the prevention of and response to hazardous material incidents;

13          (b) By its duly authorized representatives, to enter and  
14 inspect any property, premises, or place in which hazardous  
15 material is reasonably believed to be located in such manner to  
16 present a threat to the public health and safety or the  
17 environment; except that if such entry and inspection is denied  
18 or not consented to and no emergency exists, the department is  
19 empowered to and shall obtain from the district court for the  
20 district in which such property, premises, or place is located a  
21 warrant to enter and inspect any such property, premises, or  
22 place prior to entry and inspection. The district courts of this  
23 state are empowered to issue such warrants upon a proper showing  
24 of the need for such entry and inspection. Any such action in a  
25 district court shall be given precedence over all other matters  
26 pending in such court. Any information relating to secret

1 processes or methods of manufacture or production obtained in the  
2 course of the inspection shall be kept confidential.

3 25-16-106. Responsibility for prevention of incidents -  
4 action required upon occurrence of incident. (1) Any person  
5 responsible for the storage, handling, or transportation of  
6 hazardous material shall make every reasonable effort to provide  
7 for the prevention of hazardous material incidents and a  
8 countermeasure plan to be used in the event of a hazardous  
9 material incident. Failure to so provide may, upon consideration  
10 of the circumstances under which a hazardous material incident  
11 occurs, be deemed negligence and the basis for legal action by  
12 any person suffering injury or damage thereby or by the  
13 department pursuant to sections 25-16-106 and 25-16-107.

14 (2) Upon the occurrence of a hazardous material incident,  
15 any person responsible for the facility or vehicle by which the  
16 incident occurs shall take immediate action to contain, remove,  
17 or nullify the effects of the hazardous material incident which  
18 threaten the environment or the public health and safety. Such  
19 person shall also immediately notify the appropriate authorities.

20 25-16-107. Hazardous material incidents endangering public  
21 health. (1) Whenever the department determines, after  
22 investigation, that any person is either engaging in any activity  
23 involving hazardous material which constitutes a clear, present,  
24 and immediate danger to the public health and safety or the  
25 environment or that any such activity, if permitted to continue  
26 unabated, will result in a condition of clear, present, and

1 immediate danger to the public health and safety or the  
2 environment, the department may:

3 (a) Issue a written cease and desist order to said person  
4 requiring immediate discontinuance of such activity, and, upon  
5 receipt of such order, such person shall immediately discontinue  
6 such activity; or

7 (b) Apply to any district court of this state for the  
8 district in which the said activity is occurring for a temporary  
9 restraining order, temporary injunction, or permanent injunction,  
10 as provided for in the Colorado rules of civil procedure. Any  
11 such action in a district court shall be given precedence over  
12 all other matters pending in such district court. The  
13 institution of such injunction proceedings by the department  
14 shall confer upon said district court exclusive jurisdiction to  
15 determine finally the subject matter of the proceeding; or

16 (c) Both issue such a cease and desist order and apply for  
17 any such restraining order or injunction.

18 (2) (a) Whenever the department determines, after  
19 investigation, that a hazardous material incident has occurred  
20 which constitutes a clear, present, and immediate danger to the  
21 public health and safety or the environment or that any activity  
22 involving hazardous material, if permitted to continue unabated,  
23 will result in a condition of clear, present, and immediate  
24 danger to the public health and safety or the environment and  
25 that the procedures available to the department under subsection  
26 (1) of this section will not adequately protect the public or the

1 environment, the department shall have the authority to issue  
2 such orders for the protection of the public health and safety or  
3 the environment as may be appropriate, including orders to lay an  
4 embargo upon or impound hazardous material in the possession of  
5 any person.

6 (b) Any person against whom an emergency order is issued  
7 pursuant to this subsection (2) shall be entitled to an immediate  
8 hearing as provided in section 24-4-105 (12), C.R.S. 1973.

9 25-16-108. Responsibility for cleanup - clean-up orders -  
10 restraining orders and injunctions - recovery of public funds  
11 expended. (1) In the event of a hazardous material incident,  
12 the person responsible for the facility or vehicle by which the  
13 incident occurs shall be responsible for the containment and  
14 cleanup of the effects of the hazardous material incident.

15 (2) The department may issue orders to any person to clean  
16 up any hazardous material which he, his employee, or agent has  
17 spilled or otherwise deposited as the result of a hazardous  
18 material incident. The department may also request the district  
19 attorney to proceed and take appropriate action under sections  
20 16-13-305 and 16-13-307 to 16-13-315 or section 18-4-511, C.R.S.  
21 1973.

22 (3) In the event that any person fails to comply with a  
23 clean-up order that is not subject to a stay pending  
24 administrative or judicial review, the department may apply to  
25 the district court for the district in which the hazardous  
26 material incident occurred for a temporary restraining order,

1 preliminary injunction, or permanent injunction to prevent any  
2 further or continued violation of such order. In any such  
3 action, the final findings of the department, based upon evidence  
4 in the record, shall be prima facie evidence of the facts found  
5 therein. The institution of such injunction proceeding by the  
6 department shall confer upon the district court exclusive  
7 jurisdiction to determine finally the subject matter of the  
8 proceeding.

9 (4) In the event that any person fails to comply with a  
10 clean-up order, or in the event no such order is practicable, the  
11 department may take whatever steps it deems necessary to provide  
12 for the cleanup of the hazardous material. If such cleanup  
13 involves the use of public funds, the department shall arrange  
14 for the recovery of such public funds from the persons  
15 responsible, including bringing suit in a court of appropriate  
16 jurisdiction.

17 25-16-109. Extremely hazardous material - notification of  
18 transportation required. The transportation within this state of  
19 any extremely hazardous material designated by the department  
20 pursuant to this section is prohibited unless notification of  
21 such transportation is provided to the department. The board, by  
22 rule and regulation, shall designate specific types and amounts  
23 of extremely hazardous material requiring such notification and  
24 shall specify the content and manner of such notification.

25 25-16-110. Disposal service. The department may establish  
26 a program to receive hazardous material from individuals and

1 provide for the proper storage or disposal of such material. The  
2 department may impose a reasonable fee for such service to  
3 recover the actual cost thereof.

4 25-16-111. Prohibited acts - penalties. (1) Any person  
5 who violates any provision of this article, any rule or  
6 regulation promulgated by the board pursuant to this article, or  
7 any emergency order, cease and desist order, or clean-up order  
8 issued by the department pursuant to this article which is final  
9 and not stayed by court order is guilty of a misdemeanor and,  
10 upon conviction thereof, shall be punished by a fine of not less  
11 than \_\_\_\_\_ dollars nor more than \_\_\_\_\_ dollars, or by  
12 imprisonment in the county jail for not more than \_\_\_\_\_ months,  
13 or by both such fine and imprisonment.

14 (2) Any person who willfully, recklessly, or with criminal  
15 negligence, as defined in section 18-1-501, C.R.S. 1973, causes  
16 or significantly contributes to the occurrence of a hazardous  
17 material incident is guilty of a misdemeanor and, upon conviction  
18 thereof, shall be punished by a fine of not less than \_\_\_\_\_  
19 dollars nor more than \_\_\_\_\_ dollars, or by imprisonment in  
20 the county jail for not more than \_\_\_\_\_ months, or by both such  
21 fine and imprisonment.

22 SECTION 2. 28-2-103 (1), Colorado Revised Statutes 1973, as  
23 amended, is amended, and the said 28-2-103 is further amended BY  
24 THE ADDITION OF A NEW SUBSECTION, to read:

25 28-2-103. Definitions. (1) "Disaster" means occurrence or  
26 imminent threat of widespread or severe damage, injury, or loss

1 of life or property resulting from any natural or man-made cause,  
2 including but not limited to fire, flood, earthquake, wind,  
3 storm, wave action, oil spill or other water contamination  
4 requiring emergency action to avert danger or damage, HAZARDOUS  
5 MATERIAL SPILLAGE OR LEAKAGE OR OTHER CONTAMINATION REQUIRING  
6 EMERGENCY ACTION TO AVERT DANGER OR DAMAGE, volcanic activity,  
7 epidemic, air pollution, blight, drought, infestation, explosion,  
8 civil disturbance, or hostile military or paramilitary action.

9 (1.5) "Hazardous material" means any material or  
10 combination of materials of a solid, liquid, contained gaseous,  
11 or semisolid form which, because of its quantity, concentration,  
12 natural persistence, environmental degradability, potential for  
13 assimilation in tissue, or toxicity may cause or significantly  
14 contribute to an increase in mortality or an increase in illness,  
15 including physical abnormality, or which poses a substantial  
16 present or potential hazard to human health or the environment  
17 when improperly treated, stored, transported, disposed of, or  
18 otherwise managed.

19 SECTION 3. 28-2-104 (3), Colorado Revised Statutes 1973, is  
20 amended to read:

21 28-2-104. The governor and disaster emergencies.

22 (3) There is hereby created a governor's disaster emergency  
23 council (referred to in this part 1 as the "council"), consisting  
24 of not less than ~~five~~ SEVEN nor more than nine members. The  
25 attorney general and the executive directors of the following  
26 departments shall be members: Administration, HEALTH, highways,



1 local affairs, military affairs, and natural resources. The  
2 additional members, if any, shall be appointed by the governor  
3 from among the executive directors of the other departments. The  
4 governor shall serve as chairman of the council, and a majority  
5 shall constitute a quorum. The council shall meet at the call of  
6 the governor and shall advise the governor and the director of  
7 the division of disaster emergency services on all matters  
8 pertaining to the declaration of disasters and the disaster  
9 response and recovery activities of the state government.  
10 However, nothing in the duties of the council shall be construed  
11 to limit the authority of the governor to act without the advice  
12 of the council when the situation calls for prompt and timely  
13 action when disaster threatens or exists.

14 SECTION 4. 28-2-105 (6), Colorado Revised Statutes 1973, as  
15 amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16 28-2-105. Division of disaster emergency services.  
17 (6) (e.5) Assure, in cooperation with involved local, state, and  
18 federal agencies, that regular training and educational programs  
19 are conducted for the purpose of preventing and reducing the  
20 impact of accidents involving hazardous materials.

21 SECTION 5. Appropriation. (1) There is hereby  
22 appropriated, out of any moneys in the state treasury not  
23 otherwise appropriated, to the department of health, for the  
24 fiscal year beginning July 1, 1980, the sum of \_\_\_\_\_ dollars  
25 (\$ ), or so much thereof as may be necessary, for the  
26 implementation of this act.

1           (2) There is hereby appropriated, out of any moneys in the  
2 state treasury not otherwise appropriated, to the division of  
3 disaster emergency services, for the fiscal year beginning July  
4 1, 1980, the sum of \_\_\_\_\_ dollars (\$     ), or so much  
5 thereof as may be necessary, for the implementation of this act.

6           SECTION 6. Effective date. This act shall take effect July  
7 1, 1980.

8           SECTION 7. Safety clause. The general assembly hereby  
9 finds, determines, and declares that this act is necessary for  
10 the immediate preservation of the public peace, health, and  
11 safety.