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Recommendations for 1976 Committees on: Medical Malpractice,  
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**0212-2 Report to the Colorado General Assembly: Recommendations for 1976  
Committees on: Medical Malpractice, Local Government, Health, Environment,  
Welfare, and Institutions; Transportation**

**Report to the Colorado General Assembly:  
RECOMMENDATIONS FOR 1976  
COMMITTEES ON:**

**Medical Malpractice**

**Local Government**

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

**Transportation**

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**VOLUME II**

**COLORADO LEGISLATIVE COUNCIL**

**RESEARCH PUBLICATION NO. 212**

**DECEMBER 1975**

LEGISLATIVE COUNCIL  
OF THE  
COLORADO GENERAL ASSEMBLY

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\* \* \* \* \*

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 requests, 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.

COLORADO LEGISLATIVE COUNCIL  
RECOMMENDATIONS FOR 1976

(Volume II)

Committees on:

Medical Malpractice

Local Government

Health, Environment, Welfare,  
and Institutions

Transportation

Legislative Council  
Report To The  
Colorado General Assembly

Research Publication No. 212  
December, 1975

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## LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL  
DENVER, COLORADO 80203  
892-3521  
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*Director*  
DAVID F. MORRISSEY  
*Assistant Director*

December 19, 1975

To Members of the Fiftieth Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1975. This year's report consolidates the individual reports of fifteen committees into three volumes. The reports of the Committees on Mineral Taxation and the Equal Rights Amendments are contained in two separate volumes.

The recommendations of the committees were reviewed by the Legislative Council on November 24 and December 19 and submitted to Governor Lamm for his consideration in designating subjects to be considered by the General Assembly. The Legislative Council submitted items to the Governor with favorable recommendation, without recommendation, and with the recommendation that certain of these items not be placed on the call.

Respectfully submitted,

/s/ Representative Phillip Massari  
Chairman  
Colorado Legislative Council

PM/mp

## FOREWORD

The recommendations of the Colorado Legislative Council for 1975 appear in three consolidated volumes and two separate volumes for the Committees on Mineral Taxation and the Equal Rights Amendments. Volume I contains the reports of the Committees on the Penitentiary, Agriculture, State Affairs, Business Affairs and Labor, and Education; Volume II, the reports of the Committees on Medical Malpractice, Local Government, Health, Environment, Welfare, and Institutions, and Transportation; and Volume III, the reports of the Committees on Denver Metro Water, Federal and State Lands, Finance, Judiciary, Property Tax Assessment Practices and School Finance, and Legislative Procedures.

This Volume II contains the reports, all recommended bills, constitutional amendments, and resolutions for the Committees on Medical Malpractice, Local Government, Health, Environment, Welfare, and Institutions, and Transportation. A minority report, with an accompanying bill, is included in the report of the Committee on Local Government.

All recommendations of these committees were submitted to the Governor by the Legislative Council with favorable recommendation, with the following exceptions: (1) A bill from the Committee on Medical Malpractice providing for the creation of a medical liability extraordinary loss fund and a bill relating to group homes for the developmentally disabled from the Committee on Health, Environment, Welfare, and Institutions were submitted without recommendation; and (2) A bill from the Committee on Local Government which would prohibit the formation of certain types of urban service districts was transmitted to the Governor with the recommendation that it not be placed on the call.

The Legislative Drafting Office assisted in the preparation of committee bills. Doug Brown and Gary Davis assisted the Committee on Medical Malpractice; Terry Walker and John Lansdowne, the Committee on Local Government; Mike Risner and Gary Davis, the Committee on Health, Environment, Welfare, and Institutions; and Vince Hogan and John Lansdowne, the Committee on Transportation.

December, 1975

Lyle C. Kyle  
Director

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LEGISLATIVE COUNCIL  
COMMITTEE ON MEDICAL MALPRACTICE

Members of the Committee

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Sen. Clarence Decker	Rep. Ron Elliott
Sen. William Hughes	Rep. David Sprague
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## COMMITTEE ON MEDICAL MALPRACTICE

House Joint Resolution No. 1046, 1975 session, included a study on medical malpractice liability to determine "...to what extent professional liability suits and rising professional liability insurance rates affect the delivery of health care to Colorado's citizens and to explore alternatives to current methods of reducing and resolving medical malpractice claims."

The Committee on Medical Malpractice conducted this study by holding a series of hearings with interested persons and representatives of organizations immediately involved with these problems. A wide spectrum of views were presented in these hearings and considerable data on various issues were collected by the committee. Draft bills were presented by several organizations, private citizens, and members of the committee. The committee's consideration of the medical malpractice problem and proposals for change focused on four major areas:

- I. Changes relating to the quality of medical care;
- II. Alternatives to malpractice litigation;
- III. Changes in the law of negligence relating to professional liability; and
- IV. Changes relating to the availability of insurance.

Some of the major findings of the committee relative to medical malpractice are indicative of the extent to which Colorado may be said to have a medical malpractice problem and the areas in which the problem has the most serious consequences. A summary of these findings follows.

### Cost of Insurance

Professional liability insurance for medical doctors has increased in recent years as illustrated by the following tabulations showing selected specialties of practice over the four years from 1971 to 1975:

<u>Area of Practice or Specialty</u>	<u>Class</u>	<u>1975 1/</u>	<u>1971 1/</u>	<u>Percent Increase</u>
General Practice:				
No surgery	I	\$ 430	\$ 325	32%
Minor surgery	II	730	575	27%
Minor surgery	III	1,570	1,125	40%
General Surgery	IV	2,490	1,650	51%
Anesthesiology	V	3,590	2,150	67%

Rates for malpractice insurance in Colorado rank in about the middle range of rates charged throughout the nation. Available information indicated that for Class I risks, seventeen states had rates lower than Colorado rates and 22 states had higher rates. Five states showed approximately the same rates. No report was available from six states. Rates for the highest risk physicians (Class V) show 21 states having lower rates, 22 having higher rates.

In regard to the actual cost of premiums, Colorado rates were closer to the states having the lowest rates than to the states with the highest rates. Premiums in a few states, notably California, Florida, Michigan, and New York, are substantially higher than most other states. To give two comparisons of rates with Colorado, one company in California showed rates of \$4,112 for Class I and \$15,808 for Class V; in Dade (Miami) and Broward (Ft. Lauderdale) counties, Florida rates are \$1,113 and \$8,243 for Classes I and V respectively. Respective rates in Colorado are \$430 and \$3,590 for these classes.

#### Availability of Coverage

Insurance for individual physicians is still available, with primarily three insurance companies underwriting medical malpractice policies in Colorado. These companies include the Hartford Insurance Group, the St. Paul Companies, and Empire Casualty Co. However, the malpractice insurance coverage provided by these underwriters presents some difficulties for the individual physician.

The Hartford Insurance Group offers coverage of up to \$1,000,000 per occurrence/\$3,000,000 aggregate per year which is available through a contractual agreement between the company and the

1/ Rates shown are from one of the insurance companies writing \$100,000/\$300,000 coverage in Colorado, which is generally considered the minimum coverage. Other medical specialties within each class had the same rates as the specialties listed.

Colorado Medical Society. A potential difficulty exists in that the present CMS-Hartford agreement will expire June 30, 1976. If not renewed, approximately 2,800 Colorado physicians under this agreement would need to find another insurance carrier.

The St. Paul Companies provide coverage of up to \$1,000,000/\$3,000,000 on a "claims-made" rather than an "occurrence" basis. The claims-made coverage means that insurance coverage would be purchased to only cover claims which were made (i.e., reported) during the policy year. Under insurance written on an occurrence basis, the insurance covers claims which were alleged to have occurred during the period in which the policy was in effect, even if a claim is reported after the policy expires. However, if a claims-made policy is not renewed, another policy would need to be purchased in order to cover claims made after the policy lapses. Policies offered by St. Paul are available only on renewal for doctors who presently obtain their insurance from St. Paul or to new doctors who jointly practice with a St. Paul policyholder.

Empire Casualty Co. of Denver provides the primary malpractice insurance coverage of \$100,000/\$300,000, amounts which some sources believe are not adequate for the present time. If a physician believes that the \$100,000/\$300,000 coverage is not sufficient, the physician would need to purchase excess coverage from another source.

#### The Number and Amount of Claims

Data received from the major companies writing basic coverage for medical doctors indicate that the number of claims filed and claims paid has increased in recent years. However, it should also be noted that the number of medical doctors insured in Colorado by these companies has also increased, although this rate of increase has been at a lesser rate than the number of claims filed. Data obtained by the committee on the number and amount of claims is not conclusive, except in indicating these trends.

#### The Problems for Hospitals

In discussing the problems which Colorado hospitals are facing in obtaining malpractice insurance, the special problems recently encountered by Colorado General and Denver General Hospitals might be discussed separately from the problems of other hospitals. These hospitals have had difficulty obtaining coverage in excess of \$100,000/\$300,000 at a cost considered acceptable by the hospitals. Both hospitals also project substantial increases in rates for this coverage for the next policy period.

The University of Colorado Medical Center was notified by the insurance company which provides the medical center's umbrella coverage of the company's decision to discontinue underwriting medical malpractice insurance as of October, 1975. The policy was reinstated for

the remainder of the one-year policy period ending June 30, 1976, after intervention of the office of the Governor and the insurance commissioner. The university has contacted over 50 insurance carriers to obtain rate comparisons. At present, it appears that Colorado General will be able to obtain excess coverage for the next policy year, but the costs may be dramatically higher.

The following table lists the total cost of both primary and excess coverage insurance for Colorado General, as paid by the state and other sources. Expenditures cited for Fiscal Year 1975, the current year, and estimates for the upcoming year are taken from the University of Colorado Medical Center 1976-1977 Request Budget, Appendix II, November 25, 1975.

<u>Policy Period</u>	<u>State Cost 1/</u>	<u>FPR 2/</u>	<u>AHH 3/</u>	<u>Total Premium Cost</u>
July 1974-75	\$ 19,423	\$108,111	\$ 22,204	\$ 149,738 [169,638]4/
July 1975-76	172,785	134,386	69,925	377,096
July 1976-77	859,989	735,232	404,779	2,000,000

Not only is the cost for the basic coverage expected to double in the 1976-1977 policy year, but the cost of excess coverage is expected to increase radically according to the insurance agent for CU's medical center. In previous years, the cost of excess coverage has been approximately 27 to 37 percent of the cost for the basic coverage. For the upcoming policy year, the University of Colorado's insurance agent estimates that the cost of the excess coverage will be roughly equivalent to the cost of the basic coverage. The university insures approximately 1,100 physicians, in addition to other health care specialists.

1/ The state costs include the cost of coverage for Colorado General staff and housestaff, and Colorado Psychiatric Hospital housestaff.

2/ FPR is the Faculty Practice Fund.

3/ AHH is the Affiliated Hospital Housestaff.

4/ In 1974-75 the premium of \$19,900 for malpractice umbrella coverage was charged to the physical plant insurance account. When this is added to the base coverage premium of \$149,738, the total 1974-75 malpractice premium becomes \$169,638.



In the past year, Denver General has provided individual physicians employed by the hospital with a maximum coverage of \$100,000 per occurrence, an amount considered inadequate particularly by physicians who practice in high risk specialties. Denver General was also faced with a substantial increase in the cost of malpractice insurance, from \$90,000 for the year ending September 30 to \$450,000 for the same coverage. Ultimately, Denver General was able to obtain coverage for its physicians with the Hartford Insurance Group, although physicians who previously were not members of the Denver Medical Society branch of the CMS were required to join in order to qualify for the CMS insurance program underwritten by the Hartford Group.

Other hospitals in the state have experienced lesser problems although new coverage has been difficult to obtain and rates are expected to escalate in the future. The major carrier of hospital coverage is St. Paul, with a number of other companies writing for relatively few hospitals. The rates charged depended on hospital size and the type of coverage needed for the institution. The Colorado Hospital Association has an agreement with the St. Paul Companies for a group hospital plan. This insurance is offered on an "occurrence" basis but it is expected that insurance will be written on a "claims-made" basis in the near future.

### Quality of Medical Care

Five bills are submitted which the committee believes would provide for changes to improve the quality of medical care. In Bill 23 the state board of medical examiners would be strengthened in its membership and in its ability to take disciplinary actions against medical doctors who have a history of malpractice cases against them. Bill 24 would extend immunity from suit for review committees and hospital boards in actions relating to removal of medical doctors from hospitals. Bill 25 would require that hospitals establish internal risk management programs as a means of reducing malpractice claims for hospitals. Bills 26 and 27 also would relate to hospitals by providing access to patient records and the establishment of a grievance mechanism for patients. The bills are discussed in greater detail below:

#### Board of Medical Examiners -- Bill 23

Membership on the board would be changed by the addition of two public members. All members would be appointed by the Governor from a list of nominees selected by an eleven-member nominating commission. This procedure is patterned after the judicial nomination commissions but, unlike judges, members appointed to the board would not run for election after their original appointment.

The bill would establish a procedure by which the board would receive more information concerning medical malpractice cases than it presently receives. Insurance companies would be required to report all cases in which claims involving medical malpractice have been settled and hospitals would be required to report disciplinary actions involving suspension or revocation of physician staff privileges. Professional review committees are already required to report recommendations for disciplinary action if the final action taken results in the disciplining of a physician.

The board would have discretion to start proceedings on the basis of the disciplinary actions taken by hospitals or professional review committees or on the basis of repeated malpractice settlements or judgments against medical doctors. These proceedings would result in additional expenses for investigations and costs for hearings by the board estimated at approximately \$80,000 annually. For this reason the schedule of license fees is recommended to be increased from five to ten dollars for license renewal for residents; ten to twenty dollars for nonresident renewals; \$35 to \$50 for board exam; and \$75 to \$85 for national board exam. It is estimated that the additional costs to the board would be off-set by the increase in revenue from fees.

The committee further recommends that the administrative arrangement of the board be changed from a type 1 to a type 2 transfer whereby the board would be under the supervision of the executive director of the Department of Regulatory Agencies. Since the board would be directly responsible to the executive director of the department, the director could compel the board to take action on any matters presented to it, thus attempting to assure that the board would act with greater vigor than it has in the past.

In another provision of the bill, the board would be empowered to adopt continuing medical education requirements for relicensing. Also, a physician who examines another physician at the request of the board would be protected by the granting of immunity from damage suits which might otherwise be filed by the physician who is being examined, if the examination were conducted and the findings were made in good faith.

#### Professional Review Committees -- Bill 24

While the previous bill would extend immunity for individuals who participate in investigations for the board, this bill would extend immunity to the corporate boards of the hospitals and to individual members of the boards for disciplinary actions taken in good faith. Judicial review of actions by a board of trustees would not be precluded, however.

Section 1 would establish a method whereby findings, recommendations, and actions taken by a professional review committee would be submitted to the Board of Medical Examiners. Review committees

would not be required to meet publicly or to have their records open to public inspection.

#### Hospital Internal Risk Management Programs -- Bill 25

Internal risk management programs would be required in each hospital having in excess of 50 beds under Bill 25. Purposes of the program would be to investigate and analyze accidents which cause injury to patients, to develop procedures which would minimize risks to patients, and to analyze grievances relating to patient care and the quality of medical services.

This bill was based on a Florida statute which mandated this approach for hospitals of 300 beds and over. Information received from that state indicated that the program would be beneficial for hospitals of smaller size and that the additional expenses for this program, which were considered minimal, were justified in the light of the high cost of malpractice insurance. Success of a program, of course, cannot rest with a statute but must be in association with an administrative commitment to the program. A number of hospitals in Colorado presently have these programs and risk management specialists are employed by insurance companies for consultation with and inspection of hospitals. The bill is recommended as a means of assuring that all hospitals of over 50 beds establish some system controlling risks at their institutions.

#### Patient Records -- Bill 26

This bill would provide that records of patients in hospitals and records in doctors' offices be available to patients for inspection and copying. The hospital or the individual health care provider may set reasonable time periods for review of records and may require that notice be given by the patient before the records are provided. Charges may be made to cover additional expenses involved in the copying of the records. Excepted from the act would be psychological and psychiatric records, from which a summary may be made, and records of minors who seek diagnosis or treatment of venereal diseases or treatment for drug addiction or drug usage without knowledge or consent of their parents or guardians.

Patient records were considered to be a matter of such concern to the patient that access to the records should not be denied, except for the extraordinary circumstances noted in the bill. Additional suits for medical malpractice may result from patients being given a statutory right to review records. On the other hand, suits may also be avoided for the reason that some cases have been filed as the only available procedure for obtaining the records for the patients. Medical records have been withheld in some institutions and by some health care providers and this bill, in the committee's opinion, will be beneficial by providing a uniform policy throughout the state.

## Patients' Rights -- Bill 27

An area of increasing interest throughout the country concerns the rights of patients while they are hospitalized. The concern for patients' rights is an emerging area and, up to this time, has been based largely on case law rather than statutory law. One problem with legislation which attempts to specify patients' rights is that the rights which may be appropriate for one type of hospital may not be appropriate for a totally different type of institution. Bill 27 would approach the subject of patients' rights in the following three respects:

(a) As part of the licensing procedures, hospitals of over 50 beds would be required to submit a plan to the Department of Health for a mechanism for the handling of grievances of patients;

(b) This mechanism would require appointment of a patient representative who would serve as liaison between the patient and the institution. Some requirements for the liaison position are specified in the bill, such as the posting of information as to how this officer could be reached; and

(c) A policy statement concerning the obligations of the institution to the patients would be developed by each hospital and would be subject to review by the state Department of Health. This statement would need to include, among other topics, concerns of patients such as informed consent, admission procedures, privacy of patients, billing procedures, and the availability of medical records. The statement would be subject to approval of the department and would be posted and made available to each patient.

## Alternatives to Malpractice Litigation

No recommendations concerning alternative procedures to the judicial system are submitted for legislative consideration, although consideration was given to this topic. One approach considered was the establishment of a medical malpractice claims commission which would have had the responsibility of reviewing and making findings in regard to access of medical malpractice before they could be taken to the court system. Discussion was also held on the possibility of adopting a statute similar to the workmen's compensation statute which would involve the use of a hearing officer in an administrative hearing prior to the filing of a court action.

Legislation is not submitted for the reason that Colorado does not have the number of medical malpractice cases that would warrant the establishment of extraordinary procedures for screening, hearings, or arbitration prior to action in the courts. In addition, a joint medical society-bar association committee does review cases voluntarily submitted and functions as a screen which prevents some unwarranted cases from being filed.

Changes in the Law of Negligence  
Relating to Professional Liability

Bills submitted under this topic concern three topics -- informed consent, the statute of limitations, and the method of payment of future medical expenses that may be used following judgment in favor of a plaintiff. Other states have enacted legislation on more subjects and in a more drastic manner in regard to the law of negligence than are recommended for Colorado at this time. For example, legislation in some states has specified the amount or percentage which may be allowed attorneys for contingency fees and the maximum amount of damage awards has been specified by legislation in a number of states. These approaches, plus other modifications of the law of negligence in other states, were not considered advisable in Colorado in view of the state's generally low damage awards and favorable experience in settlement cases.

Informed Consent -- Bill 28

The bill does not define "informed consent" but does describe what is meant by the "lack of informed consent". This term means the failure of a health care provider to disclose to the patient alternatives to the procedure contemplated and the reasonably foreseeable risks and benefits involved which a reasonable health care provider, under similar circumstances, would disclose. In addition, such disclosure is to be in a manner that would permit a patient to make a knowledgeable evaluation. The test for recovery of damages based on a lack of informed consent, is that a reasonably prudent person, in the patient's position, would not have undergone the treatment or diagnosis if he had been fully informed.

Bill 28 would limit the right to recovery to non-emergency treatment, procedure, or surgery and to diagnostic procedures which involve invasion or disruption of the integrity of the body. This exemption would limit recovery for emergency treatment but would include treatment or diagnosis involving the administration of drugs.

Three defenses are included for the alleged failure to obtain informed consent:

(a) The patient stated in writing that he would undergo the treatment procedure or diagnosis regardless of the risks;

(b) The patient stated in writing that he did not want to be informed;

(c) Consent by or for the patient was not reasonably possible.

## Statute of Limitations -- Bill 29

The present statute of limitations for filing medical malpractice actions, except for discovery of a foreign object, provides that cases must be filed within six years after the act or omission. Bill 29 would reduce this period to five years. Minor persons now have until age 21 to file an action involving medical malpractice and this provision would be amended to the age of eighteen. No change would be made in the two-year period for filing following discovery of a foreign object.

Another amendment to the present statute of limitations would provide that the statute would run while the person is in another state but would not run if he is out of the country. The committee thought that modern communications and transportation were such that it is not imposing a hardship on persons outside of Colorado, but still in the United States, to file within the same time as Colorado residents. Persons who reside in another country may have special difficulties in meeting the statute of limitations and the statute would not be changed in regard to persons outside the country.

## Payment of Future Medical Expenses -- Bill 30

If a judgment is entered in favor of a plaintiff, Bill 30 would provide that the court could order the payment of medical expenses as they arise, for as long a period as the plaintiff requires treatment and without regard to the amount required. An escrow fund or trust would be established under an order to pay the expenses as they arise. If there were funds remaining in such a fund at the time of the plaintiff's death, they would then be refunded to the health care provider or his insurance carrier. This provision would mean that plaintiff's estate would not receive the remaining funds but, on the other hand, the plaintiff would be relieved of concern that the lump-sum award for medical expenses would not be sufficient to provide for medical expenses throughout his life.

## Availability of Insurance

One of the reasons that Colorado is said to have a problem, but not a crisis, of professional liability insurance is that insurance coverage is still available, although the extent of competition is limited. A major concern of the committee related to questions of what the state could do if the companies now writing this insurance should decide to withdraw from the field or if the rates become so high that significant numbers of medical doctors are forced out of practice of some specialties or if hospitals could not continue to practice or to remain open. It should be noted that representatives of companies which now offer the major portion of this insurance in Colorado have indicated their intent to continue writing in this state.

## Joint Underwriting Association -- Bill 31

The committee recommends enactment of a JUA on a standby basis to provide a method of furnishing coverage if one or two situations arise. The JUA would be effectuated on a finding of the insurance commissioner that either: (a) medical malpractice insurance is not available; or (b) that the premiums for the coverage are unreasonably high. Upon making such a finding, the commissioner would consult with the companies writing casualty insurance and then would adopt a plan to create a JUA on a temporary, three-year basis.

A ten-member board would be appointed by the Governor, consisting of five representatives of participating insurance companies, an attorney, a physician, a hospital administrator, and the insurance commissioner or his representative who would act as chairman.

The JUA plan would include a system for the classification of risks and rates for different areas of practice; a rating plan based on prior claims; and provisions for different rates for persons who are retired or are in partial practice, and rates for the estates of deceased insureds. Insurance protection for hospitals which are cancelled after the effective date of the act and not able to secure coverage would also need to be included. Whether the plan would offer excess coverage over the basic coverage would be a decision of the board of directors.

Financing of the plan would be by the health care providers in accordance with the rate classifications and schedule set in the plan. Any underwriting deficits at the end of a year would be recovered in one or two ways. First, each policy holder would pay a premium contingency assessment of not over one-third of the annual premium. Second, if this amount collected is not sufficient, the insurance companies participating in the plan would pay an amount in proportion to the net direct premiums written during the preceding year.

The bill also contains provisions relating to the offering of policy and claims services through the participating insurance companies. Another section would provide for the continuation of coverage for claims occurring during the time the plan was in effect but arising after the termination of the plan.

## Medical Liability Extraordinary Loss Fund -- Bill 32

The purpose of this bill is to create a fund from which awards for extraordinary losses or damages, i.e., amounts of over \$100,000, would be paid. The fund would have the effect of replacing the present malpractice insurance system for claims in excess of \$100,000 per claim and \$300,000 aggregate per year, providing instead a state-administered fund for this coverage. The bill is based on a Pennsylvania statute which created a "medical professional liability catastrophe loss fund", which fund was to provide excess coverage for that state's JUA.

Along with the payment claims or judgments in the excess coverage area, the bill would also be the source for claim payments against health care providers which are filed later than the statutory six-year period. This provision would assist insurance companies by eliminating the "long tail" claims. (The term refers to claims which are filed many years after the incident but, for some reason, were claims not subject to the six-year statute of limitations.)

The actual number of claims filed after the ordinary period of the statute of limitations is not great but does present problems of predicting losses for insurance companies in that the company's books for claims in a given year cannot be closed for as long as 20-25 years. Minors, for example, presently are exempt from the statute for 21 years and this exemption can result in cases being brought as long as 23 years after the incident. Another factor resulting in "long tail" claims is the provision which allows the bringing of an action relating to foreign bodies left in a patient within two years of discovery, whether the state of limitations was in effect or had run out. The bill provides that claims over six years would be handled by the extraordinary loss fund.

Funding for the extraordinary loss fund would be through an annual surcharge on all health care providers. This surcharge could not exceed 30 percent of the cost of the provider's malpractice insurance for the first \$100,000/\$300,000 coverage or \$300, whichever is greater. Administration of the fund would be the responsibility of the Commissioner of Insurance.

The limitation on the size of the fund would be \$7,000,000. If the fund were to reach that approximate level, the annual surcharge would be reduced and, if the fund would be exhausted by the full payment of claims in any one year, the amount to be paid each claimant would be prorated with the unpaid amount to be paid the next year. The only sources of revenue for the fund would be the annual surcharge on health care providers and income from investment or reinvestment of moneys in the fund.

The maximum liability of the fund would be \$900,000 per incident or \$2,900,000 aggregate per year. The first \$100,000 per claim would be paid from the basic coverage, so the total limit of liability would be \$1,000,000/\$3,000,000.

#### Cancellation or Nonrenewal of Policies -- Bill 33

The purpose of this bill is to assure that a person or institution carrying medical malpractice insurance will have adequate notice of cancellation or nonrenewal with sufficient time to find other coverage. Cancellation of the insurance, for reasons of losses incurred, could occur only at the end of the period for which the policy is written and 60 days notice would be required. Both the insured and the insurance commissioner would receive the notice of cancellation.



As for notice of nonrenewal, the insured would be so informed within 30 days after the company receives the insured's application for renewal.

#### Captive Insurance Law -- Bill 34

The "Colorado Captive Insurance Company Act" was enacted in Colorado in 1972 in order to provide an alternative to the regular insurance market to enable corporations and commercial associations to form their own insurance companies. The need for the captive approach was found to exist in certain areas where insurance companies were withdrawing from the market or where the costs of coverage were considered to be too high. In other words, a situation not unlike the medical malpractice insurance situation existed for some industries at the time the captive insurance statute was enacted. The committee concluded that the captive company statute, if amended, might serve to provide a mechanism for the writing of malpractice insurance, perhaps through professional associations for individuals or through groups of health care providers, such as hospitals, who are in a common association.

There are two types of "captive" insurance companies that may be organized under Colorado statutes. "Pure" captive companies insure and reinsure the risks, hazards, and liabilities of parent companies and of subsidiary, associated, and affiliated companies. "Association" captive companies may be organized to insure and reinsure risks, hazards, and liabilities of member organizations of an association or group of companies. Bill 34 would extend the article under which captive companies are created to provide that captive companies may write personal insurance to provide coverage for professional liability or errors and omissions when combined with comprehensive general liability coverage.

#### Insurance Rate Making and Disclosure of Reported Losses -- Bill 35

Bill 35 would amend the state's general statutes pertaining to property and casualty insurance to define, and thus differentiate between, the following terms:

Losses paid -- moneys actually paid in settlement of an insurance claim before or after judgment.

Losses incurred -- the amount of money set aside for payment after a formal claim is made on the insurance company.

Losses anticipated -- the amount of money the company places in reserve for potential payment of a loss before a formal claim is made. The bill would require that insurers and rating organizations submit quarterly reports to their insurance commissioner of losses paid and to provide information that would allow comparison of the actual losses paid with the losses incurred and losses anticipated.

The insurance commissioner, in his evaluation of rates filed, is not to resort to experience outside of the state until it is found that Colorado's experience in a given line is insufficient. If it is necessary to go outside of the state for rating experience, the commissioner is to use the experience of states which have social, economic, geographic, and population characteristics similar to Colorado.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 23

A BILL FOR AN ACT

1 CONCERNING THE BOARD OF MEDICAL EXAMINERS, AND MAKING AN  
2 APPROPRIATION THEREFOR.

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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.)

3 Adds two public members to the board of medical examiners;  
4 the public members and all future members are to be appointed by  
the governor from nominees whose names are to be submitted by a  
special eleven-member nominating commission modeled after  
judicial nominating commissions; increases physician's licensing  
and renewal fees; empowers the board to adopt continuing  
education requirements and to commence disciplinary proceedings  
upon being informed of revocation of a doctor's privileges by a  
hospital, professional review commission disciplinary actions, or  
repeated malpractice settlements or judgments and amends other  
laws to require that said information is submitted to the board;  
under certain circumstances, protects a physician who examines  
another physician at the request of the board from a suit for  
damages by the examined physician; makes the board of medical  
examiners and the chiropody board the subjects of a type 2  
5 transfer thus transferring their powers, duties, and functions to  
6 the executive director of the department of regulatory agencies.

---

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

7 SECTION 1. 12-36-103 (1) and (2), Colorado Revised Statutes  
8 1973, are amended, and the said 12-36-103 is further amended BY  
9 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:  
10 12-36-103. State board of medical examiners - immunity.

1 (1) There is hereby created the Colorado state board of medical  
2 examiners, referred to in this article as the "board", which  
3 shall consist of nine PHYSICIAN members AND TWO MEMBERS FROM THE  
4 PUBLIC AT LARGE to be appointed by the governor and to have the  
5 qualifications provided in this article. On or after July 1,  
6 1951, the state board of medical examiners as constituted under  
7 the law of this state immediately prior thereto is hereby  
8 abolished but the members thereof shall constitute the initial  
9 board under this article and the respective terms of such members  
10 shall extend through and expire on the third day of May of the  
11 year in which their respective terms, as determined by their  
12 appointments under such prior law, would have expired. In 1953  
13 and in each second year thereafter, the governor shall appoint  
14 three PHYSICIAN members for terms beginning May fourth 4 of said  
15 year and expiring on May third 3 of the sixth year thereafter.  
16 THE MEMBERS FROM THE PUBLIC AT LARGE SHALL BE APPOINTED AS  
17 PROVIDED IN SUBSECTION (2.2) OF THIS SECTION.

18 (2) The board shall be comprised at all times of seven  
19 members having the degree of doctor of medicine, and two members  
20 having the degree of doctor of osteopathy, all of whom shall have  
21 been licensed and actively engaged in the practice of their  
22 professions in this state for at least three years next preceding  
23 their appointments and shall have been residents of this state  
24 for at least five years next preceding their appointments, AND  
25 TWO MEMBERS OF THE PUBLIC AT LARGE. In making appointments to  
26 the board OR IN FILLING VACANCIES, the governor shall give-due  
27 ~~consideration-to-recommendations-submitted-by-the-Colorado--state~~

1 ~~medical--society--with-respect-to-appointments-to-each-office;-if~~  
2 ~~any;-to-be-filled-by-a-physician-holding-the-degree-of-doctor--of~~  
3 ~~medicine---and--to--recommendations--submitted--by--the--Colorado~~  
4 ~~osteopathic-association-with--respect--to--appointments--to--each~~  
5 ~~office;-if-any;-to-be-filled-by-a-physician-holding-the-degree-of~~  
6 ~~doctor--of--osteopathy~~ CHOOSE FROM A LIST OF THREE NOMINEES TO BE  
7 CERTIFIED TO HIM BY THE BOARD OF MEDICAL EXAMINERS NOMINATING  
8 COMMISSION CREATED BY SECTION 12-36-103.5. IN CASE THERE IS MORE  
9 THAN ONE VACANCY ON THE BOARD, THE LIST SHALL CONTAIN NOT LESS  
10 THAN TWO MORE NOMINEES THAN THERE ARE VACANCIES TO BE FILLED.  
11 THE LIST SHALL BE SUBMITTED BY THE NOMINATING COMMISSION NOT  
12 LATER THAN SIXTY DAYS PRIOR TO EXPIRATION OF A TERM NOR LATER  
13 THAN SIXTY DAYS AFTER A VACANCY OCCURS. THE GOVERNOR SHALL MAKE  
14 THE APPOINTMENT, OR ALL OF THE APPOINTMENTS IN CASE OF  
15 MULTIPLE-TERM EXPIRATIONS OR VACANCIES, FROM SUCH LIST WITHIN  
16 FIFTEEN DAYS AFTER THE DAY THE LIST IS SUBMITTED TO HIM.

17 (2.2) On or before September 1, 1976, the board of medical  
18 examiners nominating commission shall submit an appropriate list  
19 of nominees to become the public members of the board to the  
20 governor and the governor shall make his appointments from said  
21 list within fifteen days after the day the list is submitted to  
22 him. One appointment shall be for a term ending May 3, 1979, and  
23 the other for a term ending May 3, 1981. Thereafter, public  
24 member appointments shall be for six-year terms.

25 (2.5) The meetings of the commission are exempt from any  
26 requirement of law that they be public, and the records of the  
27 commission relating to the nomination process are exempt from any

1 requirement of law that they be open to the public.

2 (2.8) A member of the board may apply to the nominating  
3 commission for nomination for reappointment, and such board  
4 member shall be considered by the commission in the same manner  
5 as other nominees.

6 SECTION 2. Article 36 of title 12, Colorado Revised Statute  
7 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to  
8 read:

9 12-36-103.5. Board of medical examiners nominating  
10 commission. There is hereby created the board of medical  
11 examiners nominating commission which shall be comprised of  
12 eleven members, one member of the public at large and one  
13 physician member from each congressional district, both of whom  
14 reside in said district, and one additional member of the public  
15 at large, who shall be the chairman. Physician members shall  
16 have been licensed and actively engaged in the practice of the  
17 profession for at least three years prior to appointment. Three  
18 of the physician members shall be doctors of medicine and the  
19 remaining physician members shall be doctors of osteopathy. No  
20 more than six of the commission members shall be members of the  
21 same political party. Four members shall be appointed for terms  
22 ending December 31, 1976, four for terms ending December 31,  
23 1978, and three for terms ending December 31, 1980. Members of  
24 the commission shall be appointed by the governor after giving  
25 due consideration to recommendations of the Colorado medical  
26 society and Colorado osteopathic association.

27 SECTION 3. 12-36-112, Colorado Revised Statutes 1973, is

1 amended to read:

2 12-36-112. License fee. An applicant for a license to  
3 practice medicine to be issued on the basis of an examination by  
4 the board shall pay a fee of ~~thirty-five~~ FIFTY dollars, and an  
5 applicant for such a license to be issued on the basis of a  
6 certificate from the national board of medical examiners or the  
7 national board of examiners for osteopathic physicians and  
8 surgeons, or on the basis of a license or certificate from  
9 another duly constituted examining board, shall pay a fee of  
10 ~~seventy-five~~ EIGHTY-FIVE dollars.

11 SECTION 4. 12-36-118 (1), Colorado Revised Statutes 1973,  
12 as amended, is amended, and the said 12-36-118 is further amended  
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 12-36-118. Revocation or suspension of license - probation.  
15 (1) (a) The board, whenever it has been brought to its attention  
16 by the filing with the board of a sworn complaint of any person  
17 or otherwise that there is reasonable cause to believe that any  
18 person having a license to practice medicine in this state has  
19 been guilty of unprofessional conduct as defined in this article,  
20 has practiced medicine while his license was suspended, or, while  
21 under probation, has violated the terms thereof shall cause an  
22 investigation to be made to determine the probability of the  
23 commission of any of such offenses. If the board finds such  
24 probability great, the secretary-treasurer shall mail to such  
25 person, at his last address of record with the board, a  
26 specification of the charges against him, together with a written  
27 notice of the time and place of a hearing thereon, advising him

1 that he may be present in person, and by counsel if he so  
2 desires, to offer evidence and be heard in his defense. The time  
3 fixed for such hearing shall be not less than thirty days after  
4 the date of mailing the notice.

5 (b) IN ITS DISCRETION, THE BOARD MAY COMMENCE PROCEEDINGS  
6 UNDER THIS SECTION ON THE BASIS OF ALLEGED UNPROFESSIONAL CONDUCT  
7 WHEN THE BOARD IS INFORMED OF:

8 (I) DISCIPLINARY ACTIONS TAKEN BY HOSPITALS TO SUSPEND OR  
9 REVOKE THE PRIVILEGES OF A PERSON LICENSED TO PRACTICE MEDICINE  
10 AND REPORTED PURSUANT TO SECTION 25-3-107, C.R.S. 1973;

11 (II) DISCIPLINARY ACTIONS TAKEN BY A PROFESSIONAL REVIEW  
12 COMMITTEE ESTABLISHED PURSUANT TO ARTICLE 43.5 OF THIS TITLE  
13 AGAINST A PERSON LICENSED TO PRACTICE MEDICINE;

14 (III) REPEATED MEDICAL MALPRACTICE SETTLEMENTS OR JUDGMENTS  
15 AGAINST A PERSON LICENSED TO PRACTICE MEDICINE REPORTED TO THE  
16 BOARD PURSUANT TO SECTION 10-1-124, C.R.S. 1973.

17 (10) A person licensed to practice medicine who, at the  
18 request of the board, examines another person licensed to  
19 practice medicine shall be immune from suit for damages by the  
20 person examined if the examining person conducted the examination  
21 and made his findings or diagnosis in good faith.

22 SECTION 5. 12-36-123 (1), Colorado Revised Statutes 1973,  
23 is amended to read:

24 12-36-123. List of licentiates - registration - fee - when  
25 payable. (1) (a) During March of each year the board shall  
26 cause its secretary-treasurer to publish and mail to each holder  
27 of an unsuspended and unrevoked license to practice medicine,



1    podiatry, or midwifery in this state, at his last known address,  
2    a complete list of the class of licentiates to which the  
3    addressee belongs, corrected to the first of March of the current  
4    year, including the name, date, and number of the license and the  
5    business address of each licentiate entitled to practice. Every  
6    such licentiate, before March ~~first~~ 1 of each year, shall pay to  
7    the secretary-treasurer an annual registration fee of ~~five~~ TEN  
8    dollars if he is a legal resident of Colorado and of ~~ten~~ TWENTY  
9    dollars if he is not a legal resident of Colorado and obtain an  
10    annual registration certificate for the current calendar year.

11        (b) A LICENTiate DESIRING TO OBTAIN AN ANNUAL REGISTRATION  
12    CERTIFICATE SHALL SUBMIT THE INFORMATION NECESSARY TO SHOW THAT  
13    HE HAS FULFILLED THE BOARD'S CONTINUING MEDICAL EDUCATION  
14    REQUIREMENTS.

15        SECTION 6. Article 1 of title 10, Colorado Revised Statutes  
16    1973, is amended BY THE ADDITION OF A NEW SECTION to read:

17        10-1-124.    Reporting of medical malpractice claims. (1)  
18    Each insurance company licensed to do business in this state and  
19    engaged in the writing of medical malpractice insurance for  
20    licensed practitioners shall send to the state board of medical  
21    examiners, in the form prescribed by the insurance commissioner,  
22    information relating to each medical malpractice claim against a  
23    licensed practitioner which is settled or in which judgment is  
24    rendered against the insured.

25        (2) The insurance company shall provide such information as  
26    is deemed necessary by the board of medical examiners to conduct  
27    a further investigation and hearing.

1 SECTION 7. 24-1-122 (4), Colorado Revised Statutes 1973, as  
2 amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3 24-1-122. Department of regulatory agencies - creation.

4 (4) (d) Colorado state board of medical examiners, created by  
5 article 36 of title 12, C.R.S. 1973; and the Colorado chiropody  
6 board, created by article 32 of title 12, C.R.S. 1973;

7 SECTION 8. Part 1 of article 3 of title 25, Colorado  
8 Revised Statutes 1973, is amended BY THE ADDITION OF A NEW  
9 SECTION to read:

10 25-3-107. Disciplinary actions reported to state board of

11 medical examiners. (1) Any disciplinary action to suspend or  
12 revoke the privileges of a licensed osteopath or medical doctor  
13 which is taken by the governing board of a hospital required to  
14 be licensed pursuant to this part 1 or required to obtain a  
15 certificate of compliance pursuant to section 25-1-107 (1) (1)  
16 (II), which action is not based on the recommendation of a  
17 professional review committee, shall be reported to the Colorado  
18 state board of medical examiners.

19 (2) Said hospital shall provide such information as is  
20 deemed necessary by the Colorado state board of medical examiners  
21 to conduct a further investigation and hearing.

22 SECTION 9. Repeal. 24-1-122 (3) (m), Colorado Revised  
23 Statutes 1973, is repealed.

24 SECTION 10. Appropriation. (1) There is hereby  
25 appropriated, out of any moneys in the state treasury not  
26 otherwise appropriate, for the fiscal year commencing July 1,  
27 1976:

1 (a) To the department of regulatory agencies, the sum of  
2 fifty-four thousand six hundred fifty dollars (\$54,650), or so  
3 much thereof as may be necessary, for the implementation of this  
4 act, for allocation as follows:

5 (I) Thirty-eight thousand seven hundred fifty dollars  
6 (\$38,750), to the office of executive director;

7 (II) Fifteen thousand nine hundred dollars (\$15,900), to  
8 the Colorado state board of medical examiners.

9 (b) To the office of the attorney general, the sum of  
10 twenty-five thousand dollars (\$25,000), or so much thereof as may  
11 be necessary, for the implementation of this act.

12 SECTION 11. Effective date. This act shall take effect  
13 July 1, 1976.

14 SECTION 12. Safety clause. The general assembly hereby  
15 finds, determines, and declares that this act is necessary for  
16 the immediate preservation of the public peace, health, and  
17 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 24

A BILL FOR AN ACT

1 CONCERNING PROFESSIONAL REVIEW COMMITTEES, AND RELATING TO THE  
2 PROCEEDINGS, RECORDS, AND RECOMMENDATIONS THEREOF.

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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.)

Provides that proceedings of a professional review committee are exempt from laws requiring public conduct of such proceedings and that the minutes or records are exempt from public record laws; provides that the records of such a committee are not subject to subpoena except by a physician seeking judicial review of an action of a committee or a hospital board, but that a summary of said records may be provided to the state board of medical examiners. A hospital board or its individual members are immune from suit for damages for good faith actions based upon the recommendations of a professional review committee.

---

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

4 SECTION 1. 12-43.5-102 (3), Colorado Revised Statutes 1973,  
5 as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW  
6 PARAGRAPHS to read:

7 12-43.5-102. Establishment of review committee - function.

8 (3) (e) The records of a review committee shall not be subject  
9 to subpoena in any civil suit against the physician, but, at the  
10 request of the state board of medical examiners, the board shall

1 be provided a summary of the findings, recommendations, and  
2 disposition of actions taken by a review committee. Said board  
3 may also request, and shall receive, a summary of the actions of  
4 the hospital board of trustees in regard to recommendations of a  
5 review committee. The records of a review committee or a  
6 hospital board may be subpoenaed in a suit brought by the  
7 physician seeking judicial review of any action of the review  
8 committee or a hospital board.

9 (f) Investigations, examinations, hearings, meetings, or  
10 any other proceedings of a professional review committee  
11 conducted pursuant to the provisions of this article shall be  
12 exempt from the provisions of any law requiring that proceedings  
13 of the committee be conducted publicly or that the minutes or  
14 records of the committee with respect to action of the committee  
15 taken pursuant to the provisions of this article be open to  
16 public inspection.

17 SECTION 2. 12-43.5-103, Colorado Revised Statutes 1973, as  
18 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19 12-43.5-103. Immunity from liability. (3) The board of  
20 trustees of a hospital and the individual members of a board of  
21 trustees shall be immune from suit for damages in a civil action  
22 brought by a physician who is the subject of action taken in good  
23 faith by such board if the action is based upon recommendations  
24 of the review committee; but nothing in this subsection (3) shall  
25 preclude judicial review of the action of a board of trustees.

26 SECTION 3. Safety clause. The general assembly hereby  
27 finds, determines, and declares that this act is necessary for

1 the immediate preservation of the public peace, health, and  
2 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 25

A BILL FOR AN ACT

1 CONCERNING HOSPITAL INTERNAL RISK MANAGEMENT.

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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.)

Provides that a hospital having in excess of a specific number of beds is to establish an internal risk management program dealing with investigation and analysis of incidents causing injury to patients, measures to minimize risk, and analyses of patient grievances.

---

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

3 SECTION 1. Part 1 of article 3 of title 25, Colorado  
4 Revised Statutes 1973, is amended BY THE ADDITION OF A NEW  
5 SECTION to read:

6 25-3-107. Internal risk management program. (1) Every  
7 hospital required to be certified pursuant to section 25-1-107  
8 (1) (1) (II) or licensed pursuant to this part 1, having in  
9 excess of fifty beds, as a part of its administrative functions,  
10 shall establish an internal risk management program, which shall  
11 include the following components:

12 (a) The investigation and analysis of the frequency and

1 causes of general categories and specific types of adverse  
2 incidents causing injury to patients;

3 (b) The development of appropriate measures through the  
4 cooperative efforts of all personnel to minimize the risk of  
5 injuries and adverse incidents to patients;

6 (c) The analysis of patient grievances which relate to  
7 patient care and the quality of medical services.

8 (2) The internal risk management program shall be carried  
9 out by a person on the administrative staff of a hospital as part  
10 of his administrative duties, or by a committee of the hospital  
11 board of trustees or directors, or by the medical staff in a  
12 manner deemed appropriate.

13 (3) The internal risk management programs adopted by  
14 hospitals shall be subject to review by the department of health  
15 during its hospital inspections.

16 SECTION 2. Safety clause. The general assembly hereby  
17 finds, determines, and declares that this act is necessary for  
18 the immediate preservation of the public peace, health, and  
19 safety.



COMMITTEE ON MEDICAL MALPRACTICE

BILL 26

A BILL FOR AN ACT

1 CONCERNING ACCESS TO PATIENT RECORDS.

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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.)

Provides that, with certain exceptions, patient records in the custody of individual or institutional health care providers shall be available to the patient or his designated representative for inspection and copying at reasonable times and upon reasonable notice.

---

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

3 SECTION 1. Article 1 of title 25, Colorado Revised Statutes  
4 1973, as amended, is amended BY THE ADDITION OF A NEW PART to  
5 read:

6 PART 8

7 PATIENT RECORDS

8 25-1-801. Patient records in custody of hospitals. (1) (a)  
9 Every patient record in the custody of a hospital or related  
10 facility or institution required to be certified pursuant to  
11 section 25-1-107 (1) (1) (II) or licensed under part 1 of article  
12 3 of this title, except records pertaining to psychiatric or  
13 psychological problems, shall be available for inspection to the

1 patient or his designated representative at reasonable times and  
2 upon reasonable notice. A summary of records pertaining to a  
3 patient's psychiatric or psychological problems may, upon  
4 request, be made available to the patient or his designated  
5 representative following termination of the treatment program.

6 (b) Following the patient's discharge from the hospital or  
7 related facility or institution, copies of said records,  
8 including x-rays, shall be furnished upon payment of the  
9 reasonable cost of copying.

10 (c) The hospital or related facility or institution shall  
11 post in conspicuous public places on the premises a statement of  
12 the requirements set forth in paragraphs (a) and (b) of this  
13 subsection (1) and shall make available a copy of said statement  
14 to each patient upon admission.

15 (d) Nothing in this section shall be construed to require a  
16 person responsible for the diagnosis or treatment of venereal  
17 diseases or addiction to or use of drugs in the case of minors  
18 pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S. 1973, to  
19 release patient records of such diagnosis or treatment to a  
20 parent, guardian, or person other than the minor or his  
21 designated representative.

22 25-1-802. Patient records in custody of individual health  
23 care providers. (1) (a) Every patient record in the custody of  
24 a chiropodist or podiatrist, chiropractor, dentist, doctor of  
25 medicine, doctor of osteopathy, nurse, optometrist, or physical  
26 therapist required to be licensed under title 12, C.R.S. 1973,  
27 except records pertaining to psychiatric or psychological

1 problems, shall be available for inspection to the patient or his  
2 designated representative at reasonable times and upon reasonable  
3 notice. A summary of records pertaining to a patient's  
4 psychiatric or psychological problems may, upon request, be made  
5 available to the patient or his designated representative  
6 following termination of the treatment program.

7 (b) A copy of such records, including x-rays, shall be made  
8 available to the patient or his designated representative upon  
9 payment of the reasonable cost of copying.

10 (2) Nothing in this section shall be construed to require a  
11 person responsible for the diagnosis or treatment of venereal  
12 diseases or addiction to or use of drugs in the case of minors  
13 pursuant to sections 25-4-402 (4) and 13-22-102, C.R.S. 1973, to  
14 release patient records of such diagnosis or treatment to a  
15 parent, guardian, or person other than the minor or his  
16 designated representative.

17 (3) For purposes of this section, "patient record" does not  
18 include doctors' notes written prior to July 1, 1976, but does  
19 include doctors' notes written on or after said date.

20 SECTION 2. Safety clause. The general assembly hereby  
21 finds, determines, and declares that this act is necessary for  
22 the immediate preservation of the public peace, health, and  
23 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 27

A BILL FOR AN ACT

1 CONCERNING CERTAIN HEALTH CARE FACILITIES, AND RELATING TO A  
2 PATIENT GRIEVANCE MECHANISM, PATIENT REPRESENTATIVE, AND  
3 INSTITUTIONAL OBLIGATIONS TO THE PATIENT.

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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.)

Requires each health care facility with more than a specified number of beds to submit to the department of health a plan for a patient grievance mechanism and a policy statement with respect to the institution's obligations to the patient. The plan and policy statement must be approved by the department prior to issuance of a license to the health care facility.

---

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

5 SECTION 1. Part 1 of article 1 of title 25, Colorado  
6 Revised Statutes 1973, as amended, is amended BY THE ADDITION OF  
7 A NEW SECTION to read:

8 25-1-121. Patient grievance mechanism and institution's  
9 obligations to the patient. (1) As used in this section,  
10 "institution" means every hospital or related facility or  
11 institution having in excess of fifty beds and required to be  
12 licensed under part 1 of article 3 of this title or required to

1 be certified pursuant to section 25-1-107 (1) (1) (II).

2 (2) The department shall require every institution to  
3 submit to the department a plan for a patient grievance mechanism  
4 and a policy statement with respect to the obligations of the  
5 institution to patients using the facilities of such institution.  
6 The plan and policy statement must meet with the approval of the  
7 department prior to certification of compliance or issuance or  
8 renewal of a license.

9 (3) A patient grievance mechanism plan shall include, but  
10 not be limited to:

11 (a) A provision for a patient representative to serve as a  
12 liaison between the patient and the institution;

13 (b) A description of the qualifications of the patient  
14 representative;

15 (c) An outline of the job description of the patient  
16 representative;

17 (d) A description of the amount of decision-making  
18 authority given to the patient representative;

19 (e) A requirement for posting of the patient  
20 representative's telephone number in each room.

21 (4) The policy statement with respect to the obligations of  
22 the institution to patients using facilities of such an  
23 institution shall be posted conspicuously in a public place on  
24 its premises and made available to each patient upon admission.  
25 Such policy statement shall include, but need not be limited to,  
26 a clarification of informed consent, admission procedures, staff  
27 identification, privacy, medical records, billing procedures, and

1 research, experimental or educational projects relating to the  
2 patient's own case.

3 SECTION 2. 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.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 28

A BILL FOR AN ACT

1 CONCERNING INFORMED CONSENT TO HEALTH CARE PROCEDURES.

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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.)

States the basis for the right to recover in a medical malpractice action based on lack of informed consent, and describes increases in which the right does not apply and the defenses to such an action.

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

3 SECTION 1. Article 20 of title 13, Colorado Revised  
4 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW  
5 PART to read:

6 PART 3

7 INFORMED CONSENT TO HEALTH CARE PROCEDURES

8 13-20-301. Definitions. As used in this part 3, unless the  
9 context otherwise requires:

10 (1) "Health care provider" means any:

11 (a) Licensed or certified hospital, health care facility,  
12 dispensary, or other institution for the treatment or care of the  
13 sick or injured; or

1 (b) Person licensed in this state or any other state to  
2 practice medicine, chiropractic, nursing, physical therapy,  
3 chiropody, dentistry, pharmacy, optometry, or other healing arts.

4 (2) "Lack of informed consent" means the failure of a  
5 health care provider to disclose to the patient such alternatives  
6 and reasonably foreseeable risks and benefits involved as a  
7 reasonable health care provider under similar circumstances would  
8 have disclosed, in a manner permitting the patient to make a  
9 knowledgeable evaluation.

10 (3) "Medical malpractice claim" means any claim against a  
11 health care provider which is based upon an allegation that a  
12 claimant sustained damages, either to his person or to his  
13 property, as the result of medical malpractice on the part of a  
14 health care provider.

15 13-20-302. Informed consent to health care procedures. (1)  
16 To recover for medical malpractice based on a lack of informed  
17 consent, it must be established that a reasonably prudent person  
18 in the patient's position would not have undergone the treatment  
19 or diagnosis if he had been fully informed.

20 (2) The right to recover for a medical malpractice claim  
21 based on lack of informed consent is limited to those cases  
22 involving either:

23 (a) Nonemergency treatment, procedure, or surgery; or

24 (b) A diagnostic procedure which involved invasion or  
25 disruption of the integrity of the body.

26 (3) It shall be a defense to any action for medical  
27 malpractice based upon an alleged failure to obtain such an



1 informed consent that:

2 (a) The patient assured the health care provider in his own  
3 writing and not on a prepared form that he would undergo the  
4 treatment procedure or diagnosis regardless of the risk involved,  
5 or the patient indicated to the health care provider in his own  
6 writing and not on a prepared form that he did not want to be  
7 informed of the matters to which he would be entitled to be  
8 informed; or

9 (b) Consent by or on behalf of the patient was not  
10 reasonably possible.

11 SECTION 2. Safety clause. The general assembly hereby  
12 finds, determines, and declares that this act is necessary for  
13 the immediate preservation of the public peace, health, and  
14 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 29

A BILL FOR AN ACT

1 CONCERNING LIMITATION OF ACTIONS, AND PERTAINING TO THE PERIOD  
2 DURING WHICH A PERSON MAY MAINTAIN AN ACTION FOR MEDICAL  
3 MALPRACTICE.

---

Bill Summary

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

Shortens the period during which a person, not under a disability or suffering from an unauthorized foreign object, may maintain a medical malpractice action. Provides that absence from the United States will toll a statute of limitations, but absence from the state will not. Clarifies that a person under the age of eighteen is considered under a disability for purposes of limitation of actions.

---

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

5 SECTION 1. 13-80-105, Colorado Revised Statutes 1973, is  
6 amended to read:

7 13-80-105. Actions barred in two years. (1) No person  
8 shall be permitted to maintain an action, whether such action  
9 sounds in tort or contract, to recover damages from a licensed or  
10 certified hospital, health care facility, dispensary, or other  
11 institution for the treatment or care of the sick or injured due  
12 to alleged negligence or breach of contract in providing care or

1 TO RECOVER DAMAGES from any person licensed in this state or any  
2 other state to practice medicine, chiropractic, nursing, physical  
3 therapy, chiropody, veterinary medicine, midwifery, dentistry,  
4 pharmacy, optometry, or other healing arts on account of the  
5 alleged negligence or breach of contract of such person in the  
6 practice of the profession for which he is licensed or on account  
7 of his failure to possess or exercise that degree of skill which  
8 he actually or impliedly represented, promised, or agreed that he  
9 did possess and would exercise, unless such action is instituted  
10 within two years after the person bringing the action either  
11 discovered, or in the exercise of reasonable diligence and  
12 concern should have discovered, the seriousness and character of  
13 his injuries and the negligence or breach of contract which gave  
14 rise to such action. In no event may such action be instituted  
15 more than ~~six~~ FIVE years after the act or omission which gave  
16 rise thereto, except where the action arose out of the leaving of  
17 an unauthorized foreign object within the body of such person.

18 SECTION 2. 13-80-126, Colorado Revised Statutes 1973, is  
19 amended to read:

20 13-80-126. Absence or concealment of debtor. If, when a  
21 cause of action accrues against a person, he is out of the state  
22 UNITED STATES or has ~~absconded-or~~ concealed himself, the period  
23 limited for the commencement of the action by any statute of  
24 limitations shall not begin to run until he comes into the state  
25 UNITED STATES or ~~while~~ UNTIL he is NO LONGER so ~~absconded-or~~  
26 concealed. If, after the cause of action accrues, he departs  
27 from the state UNITED STATES or ~~absconds-or~~ conceals himself, the

1 time of his absence or concealment shall not be computed as a  
2 part of the period within which the action must be brought.

3 SECTION 3. 13-81-101 (3), Colorado Revised Statutes 1973,  
4 is amended to read:

5 13-81-101. Definitions. (3) "Person under disability"  
6 means a minor UNDER EIGHTEEN YEARS OF AGE, A mental incompetent,  
7 or ~~any~~ A person under any other legal disability.

8 SECTION 4. 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.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 30

A BILL FOR AN ACT

1 CONCERNING THE METHOD OF PAYMENT OF FUTURE MEDICAL EXPENSE IN  
2 MEDICAL MALPRACTICE ACTIONS.

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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.)

Provides that, in a medical malpractice action, a court may order that a judgment for future medical expense be paid from a trust fund as the expense arises, payment to continue for as long as related future medical expense is incurred, but that any balance remaining in the trust fund at the time of the plaintiff's death be returned to the health care provider or the insurance carrier thereof.

---

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

4 SECTION 1. Article 20 of title 13, Colorado Revised  
5 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW  
6 PART to read:

7 PART 3

8 PAYMENT OF FUTURE MEDICAL EXPENSE

9 13-20-301. Definitions. As used in this part 3, unless the  
10 context otherwise requires:

11 (1) "health care provider" means any:

12 (a) Licensed or certified hospital, health care facility,

1 dispensary, or other institution for the treatment or care of the  
2 sick or injured; or

3 (b) Person licensed in this state or any other state to  
4 practice medicine, chiropractic, nursing, physical therapy,  
5 chiropody, dentistry, pharmacy, optometry, or other healing arts.

6 (2) "Medical malpractice claim" means any claim against a  
7 health care provider which is based upon an allegation that a  
8 claimant sustained damages, either to his person or to his  
9 property, as the result of medical malpractice on the part of a  
10 health care provider.

11 13-20-302. Payment of future medical expense as expense  
12 arises. (1) If, in a civil action based on a medical  
13 malpractice claim, a judgment including payment for future  
14 medical expenses is entered against a health care provider, the  
15 health care provider may petition the court for an order allowing  
16 the health care provider or the insurance carrier thereof to pay  
17 such expenses as they arise. If the court finds it to be in the  
18 best interests of all parties, it shall enter an order providing  
19 for payment of expenses as they arise. If such an order is  
20 entered, the health care provider shall continue the payments for  
21 as long as the plaintiff requires treatment, regardless of the  
22 amount required.

23 (2) The order shall contain such provisions for the deposit  
24 of moneys in an escrow or trust fund as the court may deem  
25 necessary under the circumstances. If, at the time of the  
26 plaintiff's death, any balance remains in the escrow or trust  
27 fund, such amount shall be refunded to the health care provider

1 or the insurance carrier thereof.

2 SECTION 2. Safety clause. The general assembly hereby  
3 finds, determines, and declares that this act is necessary for  
4 the immediate preservation of the public peace, health, and  
5 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 31

A BILL FOR AN ACT

1 CONCERNING THE CREATION OF A JOINT UNDERWRITING ASSOCIATION TO  
2 PROVIDE PROFESSIONAL LIABILITY INSURANCE FOR HEALTH CARE  
3 PROVIDERS.

---

Bill Summary

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

Upon the insurance commissioner's determination that medical malpractice insurance is unavailable or the premiums therefor are unreasonably high, the division of insurance, after consultation with casualty insurers doing business in the state, is to adopt a three-year temporary joint underwriting plan. The plan is to provide for a joint underwriting association which is to be governed by a ten-member board of directors and is to provide a method under which all said casualty insurers, operating on a risk-sharing basis, can offer medical malpractice insurance for individual and institutional health care providers.

---

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

5 SECTION 1. Article 4 of title 10, Colorado Revised Statutes  
6 1973, as amended, is amended BY THE ADDITION OF A NEW PART to  
7 read:

8 PART 8

9 MEDICAL MALPRACTICE INSURANCE - JOINT

10 UNDERWRITING ASSOCIATION

11 10-4-801. Definitions. As used in this part 8, unless the



1 context otherwise requires:

2 (1) "Association" means the joint underwriting association  
3 created pursuant to this part 8.

4 (2) "Board" means the board of directors of the association  
5 created by this article.

6 (3) "Casualty insurance" means casualty insurance on risks  
7 or operation in this state, including, but not limited to,  
8 fidelity, surety, and guaranty bonds and all forms of motor  
9 vehicle insurance, except:

10 (a) Reinsurance, other than joint reinsurance to the extent  
11 stated in section 10-4-312;

12 (b) Accident and health insurance;

13 (c) Insurance against loss of or damage to aircraft or  
14 against liability arising out of the ownership, maintenance, or  
15 use of aircraft; and

16 (d) Marine or inland marine insurance.

17 (4) "Health care provider" means any:

18 (a) Licensed or certified hospital, health care facility,  
19 dispensary, or other institution for the treatment or care of the  
20 sick or injured; or

21 (b) Person licensed in this state or any other state to  
22 practice medicine, osteopathy, chiropractic, nursing, physical  
23 therapy, podiatry, dentistry, pharmacy, optometry, or other  
24 healing arts.

25 (5) "Net direct premiums" means premiums collected for  
26 casualty coverage, including premiums for casualty coverage  
27 issued under package policies.

1           (6) "Plan" means the temporary joint underwriting plan  
2 developed by the division of insurance pursuant to this part 8.

3           10-4-802. Finding by commissioner - division to develop  
4 plan. (1) (a) The plan provided for by this part 8 shall not be  
5 implemented until the insurance commissioner finds that medical  
6 malpractice insurance is not available, or that it is probable  
7 that it will not be available in the near future from private  
8 insurers, or that premiums are unreasonably high and cause or  
9 threaten to cause a significant impediment to needed health care  
10 for the residents of the state.

11           (b) Upon request of any health care provider, the insurance  
12 commissioner shall, or upon his own motion may, hold a hearing to  
13 determine if the conditions described in paragraph (a) of this  
14 subsection (1) exist.

15           (2) (a) The division of insurance shall, after consultation  
16 with insurers as set forth in paragraph (b) of this subsection  
17 (2), adopt a temporary joint underwriting plan as set forth in  
18 paragraph (d) of this subsection (2).

19           (b) Entities licensed by this state to issue casualty  
20 insurance pursuant to this article shall participate in the plan  
21 and shall be members of the temporary joint underwriting  
22 association.

23           (c) The joint underwriting association shall operate  
24 subject to the supervision and approval of a board of directors  
25 appointed by and serving at the pleasure of the governor,  
26 consisting of representatives of five of the insurers  
27 participating in the association, an attorney licensed to

1 practice in this state, a physician licensed to practice in this  
2 state, a hospital administrator, a member of the public at large,  
3 and the insurance commissioner or his designated representative  
4 employed by the division of insurance. The insurance  
5 commissioner or his representative shall be the chairman of the  
6 board.

7 (d) The temporary joint underwriting plan shall function  
8 for a period not exceeding three years from the date of its  
9 adoption by the division of insurance and, if still in existence  
10 at the end of such three-year period, it shall automatically  
11 terminate, unless its continued existence is provided for by  
12 action of the general assembly. The plan shall provide  
13 professional liability or malpractice coverage in a standard  
14 policy form for all health care providers. The plan shall  
15 include, but need not be limited to, the following:

16 (I) Rules for the classification of risks and rates which  
17 reflect past and prospective loss and expense experience in  
18 different areas of practice in the state;

19 (II) A rating plan which recognizes the prior claims  
20 experience of insureds in the state;

21 (III) Provisions as to rates for insureds who are retired  
22 or semi-retired, part-time professionals, or rates for the estate  
23 of a deceased insured;

24 (IV) Protection in an amount to be determined by the  
25 insurance commissioner for those hospitals whose policies are  
26 cancelled after the effective date of this part 8 which are not  
27 able to otherwise secure coverage in the standard market. The

1 plan shall provide for continuous coverage at the limits  
2 available in the plan from the date of cancellation; and

3 (V) Rules to implement the orderly dissolution of the plan  
4 at its termination.

5 (e) The board shall require, at its discretion, that  
6 insurers participating in the association offer excess coverage.

7 10-4-803. Premium contingency assessment. (1) In the  
8 event an underwriting deficit exists at the end of any year the  
9 plan is in effect, each policyholder shall pay to the association  
10 a premium contingency assessment not to exceed one-third of the  
11 annual premium payment paid by such policyholder to the  
12 association. The association shall cancel the policy of any  
13 policyholder who fails to pay the premium contingency assessment.

14 (2) Any deficit sustained under the plan shall first be  
15 recovered through the premium contingency assessment.  
16 Concurrently, the rates for insureds shall be adjusted for the  
17 next year so as to be actuarially sound.

18 (3) If there is any remaining deficit under the plan after  
19 maximum collection of the premium contingency assessment, such  
20 deficit shall be recovered from the companies participating in  
21 the plan in the proportion that the net direct premiums of each  
22 such member written during the preceding calendar year bears to  
23 the aggregate net direct premiums written in this state by all  
24 members of the association.

25 10-4-804. Policy service. The plan shall provide for one  
26 or more insurers to provide policy service through licensed  
27 resident agents and claims service on behalf of all other

1 insurers participating in the plan.

2 10-4-805. Continuing coverage for claims from incidents  
3 occurring during the existence of the plan. The division of  
4 insurance, prior to termination of the plan, shall determine  
5 whether a need exists for continuing coverage for those who have  
6 been insured by the plan, as to claims solely for incidents which  
7 occurred during the existence of the plan. If such need is  
8 found, the division of insurance shall establish a plan for the  
9 purchase of such coverage for a reasonable time prior to  
10 termination of the plan.

11 SECTION 2. Safety clause. The general assembly hereby  
12 finds, determines, and declares that this act is necessary for  
13 the immediate preservation of the public peace, health, and  
14 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 32

A BILL FOR AN ACT

1 CREATING A MEDICAL LIABILITY EXTRAORDINARY LOSS FUND.

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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.)

Provides for creation of a fund which would pay: (1) The excess of medical malpractice judgments or settlements against a health care provider over the provider's basic insurance coverage; (2) judgments or settlements in actions which, for reasons such as disability of the patient - plaintiff or presence of an unauthorized foreign object, are brought more than six years after the health care provider's act or omission. The insurance commissioner shall collect an annual surcharge not to exceed thirty percent of the health care provider's insurance premium or three hundred dollars, whichever is greater, in order to maintain the fund of approximately seven million dollars. The insurance commissioner is given powers to administer, protect, and defend the fund and is required to report annually to the general assembly on the status of the fund.

---

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

3 SECTION 1. Article 4 of title 10, Colorado Revised Statutes  
4 1973, as amended, is amended BY THE ADDITION OF A NEW PART to  
5 read:

6 PART 8

7 MEDICAL LIABILITY EXTRAORDINARY

8 LOSS FUND

1           10-4-801. Definitions. As used in this part 8, unless the  
2 context otherwise requires:

3           (1) "Commissioner" means the commissioner of insurance.

4           (2) "Fund" means the medical liability extraordinary loss  
5 fund created pursuant to this part 8.

6           (3) "Health care provider" means any:

7           (a) Licensed or certified hospital, health care facility,  
8 dispensary, or other institution for the treatment or care of the  
9 sick or injured; or

10          (b) Person licensed in this state to practice medicine,  
11 osteopathy, chiropractic, nursing, physical therapy, podiatry,  
12 dentistry, pharmacy, optometry, or other healing arts.

13          10-4-802. Basic coverage - fund created - purpose. (1)

14 Every health care provider shall insure his liability by  
15 purchasing professional liability insurance in the amount of one  
16 hundred thousand dollars per occurrence and three hundred  
17 thousand dollars per annual aggregate, known in this part 8 as  
18 "basic coverage insurance".

19          (2) No insurer providing professional liability insurance  
20 to a health care provider pursuant to the provisions of  
21 subsection (1) of this section shall be liable for payment of any  
22 claim against a health care provider for any loss or damages  
23 awarded in a professional liability action in excess of one  
24 hundred thousand dollars per occurrence and three hundred  
25 thousand dollars per annual aggregate.

26          (3) (a) There is hereby created a medical liability  
27 extraordinary loss fund for the purpose of paying that portion of

1 any award for loss or damages against a health care provider as a  
2 consequence of any medical malpractice action which exceeds one  
3 hundred thousand dollars. The limit of liability of the fund  
4 shall be nine hundred thousand dollars for each occurrence and  
5 two million seven hundred thousand dollars per annual aggregate.

6 (b) In the event of filing of a claim against any health  
7 care provider more than six years after the act or omission, the  
8 claim or judgment or settlement relating thereto shall be paid by  
9 the fund. If such claim is made after six years because of the  
10 wilfull concealment by the health care provider, the fund shall  
11 have the right of indemnity from such health care provider.

12 10-4-803. Annual surcharge to be levied. (1) The fund  
13 shall be funded by the levying of an annual surcharge on all  
14 health care providers. The surcharge shall be determined by the  
15 commissioner based upon actuarial principles and subject to the  
16 prior approval of the commissioner. The surcharge shall not  
17 exceed thirty percent of the cost to each health care provider  
18 for maintenance of professional liability insurance or three  
19 hundred dollars, whichever is greater. The fund and all income  
20 from the fund shall be held in trust, deposited in a segregated  
21 account, and invested and reinvested by the commissioner and  
22 shall not become a part of the general fund of the state. If the  
23 total fund exceeds the sum of seven million dollars at the enc of  
24 any calendar year after the payment of all claims and expenses,  
25 including the related expenses of operation of the office of the  
26 commissioner, the commissioner shall reduce the surcharge  
27 provided in this subsection (1) in order to maintain the fund at



1 an approximate level of seven million dollars. All claims shall  
2 be computed on December 31 of the year in which the claim becomes  
3 final. All such claims shall be paid within two weeks  
4 thereafter. If the fund would be exhausted by the payment in  
5 full of all claims allowed during any calendar year, then the  
6 amount paid to each claimant shall be prorated. Any amounts due  
7 and unpaid shall be paid in the following calendar year. The  
8 annual surcharge on health care providers and any income realized  
9 by investment or reinvestment shall constitute the sole and  
10 exclusive sources of funding for the fund. No claims or expenses  
11 against the fund shall be deemed to constitute a debt of the  
12 state or a charge against the general fund of the state. The  
13 commissioner shall issue rules and regulations consistent with  
14 this section regarding the establishment of the fund and the  
15 levying, payment, and collection of the surcharges.

16 (2) The failure of any health care provider to comply with  
17 this section or any of the rules and regulations issued by the  
18 commissioner shall result in the suspension or revocation of the  
19 health care provider's license by the licensure board.

20 10-4-804. Commissioner - powers to protect the fund. (1)  
21 The fund shall be administered by the commissioner.

22 (2) The basic coverage insurance carrier shall promptly  
23 notify the commissioner of any case where it reasonably believes  
24 that the value of the claim exceeds the basic insurer's coverage.  
25 Failure to so notify the commissioner shall make the basic  
26 coverage insurance carrier responsible for the payment of the  
27 entire award or verdict, if the fund has been prejudiced by the

1 failure of notice.

2 (3) The basic coverage insurance carrier shall at all times  
3 be responsible to provide a defense for the insured health care  
4 provider. In such instances where the commissioner has been  
5 notified in accordance with subsection (2) of this section, the  
6 commissioner may, at his option, join in the defense and be  
7 represented by counsel.

8 (4) In the event that the basic coverage insurance carrier  
9 enters into a settlement with the claimant to the full extent of  
10 its liability as provided in this part 8, it may obtain a release  
11 from the claimant to the extent of its payment, which payment  
12 shall have no effect upon any excess claim against the fund.

13 (5) The commissioner is authorized to defend, litigate,  
14 settle, or compromise any claim in excess of the basic coverage  
15 provided for in this part 8.

16 (6) Nothing in this part 8 shall preclude the commissioner  
17 from adjusting or paying for the adjustment of claims.

18 10-4-805. Determination of adequacy of surcharge.  
19 Determination of the adequacy of the surcharge is to be based on  
20 the reasonably anticipated payment of claims and other expenses  
21 of the fund during the period for which the surcharge is made.  
22 The surcharge shall be assessed against each health care provider  
23 qualifying as such at the time the surcharge is made.

24 10-4-806. Power to adopt rules and regulations. The  
25 commissioner may adopt rules and regulations not inconsistent  
26 with the intent of this part 8 to carry out the objectives of

1 this part 8.

2 10-4-807. Status of the fund - studies. (1) The status of  
3 the fund shall be reported by the commissioner to the general  
4 assembly annually and shall include the total amount of premium  
5 dollars collected, the total amount of claims paid and expenses  
6 incurred therewith, the total amount of reserve set aside for  
7 future claims, the nature and substance of each claim, the date  
8 and place in which each claim arose, the amounts paid, if any,  
9 and the disposition of each claim disposed of by judgment of  
10 court, settlement, or otherwise, and such additional information  
11 as the general assembly shall require.

12 (2) The commissioner shall conduct studies and review  
13 member records for the purpose of determining the causes of  
14 patient compensation claims and shall make recommendations for  
15 legislative, regulatory, and other changes necessary to reduce  
16 the frequency and severity of such claims.

17 SECTION 2. Safety clause. The general assembly hereby  
18 finds, determines, and declares that this act is necessary for  
19 the immediate preservation of the public peace, health, and  
20 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 33

A BILL FOR AN ACT

1 CONCERNING THE TERMINATION OF MEDICAL MALPRACTICE INSURANCE  
2 POLICIES, AND LIMITING THE REASONS FOR CANCELLATION OF SAID  
3 POLICIES BEFORE THE END OF THE POLICY PERIOD.

---

Bill Summary

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

Prohibits cancellation of a policy of medical malpractice insurance before the end of the policy period, for reason of losses incurred. Makes special provisions for notice of cancellation and nonrenewal of such policies.

---

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

5 SECTION 1. Article 1 of title 10, Colorado Revised Statutes  
6 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

7 10-1-124. Cancellation of medical malpractice policies.

8 Notwithstanding any contractual provision or provision of law to  
9 the contrary, no policy of medical malpractice insurance may be  
10 cancelled before the end of the period for which the policy is  
11 written, by reason of losses incurred. Cancellation for any  
12 reason may be effected only after at least sixty days written  
13 notice is given the insured and the insurance commissioner by the

1 insurer. Notice of nonrenewal of such a policy shall be given by  
2 the insurer to the insured within thirty days after the insurer  
3 receives the insured's application for renewal.

4 SECTION 2. Safety clause. The general assembly hereby  
5 finds, determines, and declares that this act is necessary for  
6 the immediate preservation of the public peace, health, and  
7 safety.

COMMITTEE ON MEDICAL MALPRACTICE

BILL 34

A BILL FOR AN ACT

1 CONCERNING CAPTIVE INSURANCE COMPANIES, AND AUTHORIZING SAID  
2 COMPANIES TO MAKE INSURANCE AND REINSURANCE FOR PROFESSIONAL  
3 LIABILITY OR ERRORS OR OMISSIONS COMBINED WITH COMPREHENSIVE  
4 GENERAL LIABILITY.

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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.)

Authorizes captive insurance companies to make insurance and reinsurance for professional liability or errors and omissions combined with comprehensive general liability; exempts captive insurance companies providing said insurance from other requirements generally applicable to captive insurance companies.

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

6 SECTION 1. 10-6-104 (2), Colorado Revised Statutes 1973, is  
7 amended to read:

8 10-6-104. Scope of article. (2) No captive insurance  
9 company may make insurance, EXCEPT FOR PROFESSIONAL LIABILITY OR  
10 ERRORS AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL  
11 LIABILITY, providing personal insurance coverage for individuals,  
12 except where the individual is a parent. as-defined-in-section  
13 10-6-105-(8).

1 SECTION 2. 10-6-105 (1) and (2) (a), Colorado Revised  
2 Statutes 1973, are amended to read:

3 10-6-105. Purpose - admission. (1) Any captive insurance  
4 company when permitted by its articles of incorporation or  
5 charter may apply to the commissioner for a certificate of  
6 authority to engage in insurance business in the state of  
7 Colorado to make insurance and reinsurance TO PROTECT AGAINST  
8 PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS COMBINED WITH  
9 COMPREHENSIVE GENERAL LIABILITY, AND as provided in section  
10 10-3-102 (1) (a) and in all subparagraphs of section 10-3-102 (1)  
11 (c) except subparagraphs (I) and (II) thereof, as limited by  
12 section 10-6-104.

13 (2) (a) Any pure captive insurance company applying for a  
14 certificate of authority to engage in the insurance business in  
15 the state of Colorado must demonstrate to the satisfaction of the  
16 commissioner that adequate insurance markets in the United States  
17 are not available to cover the risks, hazards, and liabilities of  
18 the parent and companies to be insured or that such needed  
19 coverage is only available at excessive rates or with  
20 unreasonable deductibles and that the total insurance coverage  
21 necessary to insure all risks, hazards, and liabilities of the  
22 parent and companies to be insured would develop, in the  
23 aggregate, gross annual premiums of at least five hundred  
24 thousand dollars; EXCEPT THAT A PURE CAPTIVE INSURANCE COMPANY  
25 MAY BE ORGANIZED TO UNDERWRITE PROFESSIONAL LIABILITY OR ERRORS  
26 AND OMISSIONS COMBINED WITH COMPREHENSIVE GENERAL LIABILITY  
27 INSURANCE WITHOUT REGARD TO THIS PARAGRAPH (a).

1 SECTION 3. 10-6-113 (2), Colorado Revised Statutes 1973, is  
2 amended to read:

3 10-6-113. Authority to do business. (2) No certificate of  
4 authority to transact any kind of insurance business in this  
5 state, EXCEPT PROFESSIONAL LIABILITY OR ERRORS AND OMISSIONS  
6 COMBINED WITH COMPREHENSIVE GENERAL LIABILITY INSURANCE, shall be  
7 issued or renewed to any company which is owned, or financially  
8 controlled in whole or in part, by another state of the United  
9 States, a foreign government, or any political subdivision,  
10 instrumentality, or agency of the United States or any state.

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



COMMITTEE ON MEDICAL MALPRACTICE

BILL 35

A BILL FOR AN ACT

1 CONCERNING THE DUTIES OF THE COMMISSIONER, INSURERS, AND RATING  
2 ORGANIZATIONS RELATING TO INSURANCE RATE-MAKING.

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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.)

Amends insurance statutes to differentiate between "losses paid", meaning losses actually paid in settling a claim before or after judgment, "losses incurred", meaning the amount set aside for payment after a formal claim is made, and "losses anticipated", meaning the amount set aside for payment before a formal claim is made. Provides that, in evaluating insurance rates, the insurance commissioner shall not resort to experience outside the state until he makes a formal finding that the Colorado experience is insufficient. If required to go outside the state for experience, he must go to states with social, economic, geographic, and population make-up which is similar to Colorado's. Requires insurers and rating organizations to make quarterly reports of losses paid and provide information allowing comparison of losses paid to losses incurred and losses anticipated.

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

4 SECTION 1. 10-4-401, Colorado Revised Statutes 1973, is  
5 amended BY THE ADDITION OF A NEW SUBSECTION to read:

6 10-4-401. Purpose - applicability - definitions -  
7 construction. (4) As used in this part 4, unless the context

1 otherwise requires:

2 (a) "Loss paid" or "losses paid" means the amount of money  
3 which is actually paid in settlement of an insurance claim before  
4 or after judgment.

5 (b) "Loss incurred" or "losses incurred" means the amount  
6 of money put in an insurance company reserve account for  
7 potential payment on a loss after a formal claim is made on the  
8 insurance company, whether orally, in writing, or by legal  
9 action.

10 (c) "Loss anticipated" or "losses anticipated" means the  
11 amount of money put in an insurance company reserve for potential  
12 payment of a loss before a formal claim is made.

13 SECTION 2. 10-4-402 (1), Colorado Revised Statutes 1973, is  
14 amended to read:

15 10-4-402. Standards for rates - competition - procedure.

16 (1) Rates shall not be excessive, inadequate, unfairly  
17 discriminatory, destructive of competition, or detrimental to the  
18 solvency of insurers, as measured by a reasonable underwriting  
19 profit. In determining whether rates comply with the foregoing  
20 standards, the commissioner shall consider insurers' earnings on  
21 investments of ~~incurred~~ ALL loss and unearned premium reserves.  
22 Moreover, in considering past and prospective loss experience,  
23 the commissioner ~~shall~~ MAY consider loss experience ~~within-and~~  
24 ~~without-the-state-of-Colorado.--in-considering--such--experience;~~  
25 OUTSIDE THIS STATE ONLY IF THERE IS INSUFFICIENT EXPERIENCE  
26 WITHIN THIS STATE UPON WHICH A RATE COULD BE BASED. PRIOR TO  
27 CONSIDERING EXPERIENCE OUTSIDE THIS STATE, THE COMMISSIONER SHALL

1 FIRST MAKE A FORMAL WRITTEN FINDING THAT THERE IS INSUFFICIENT  
2 EXPERIENCE WITHIN THIS STATE UPON WHICH A RATE COULD BE BASED.  
3 HOWEVER, IN CONSIDERING EXPERIENCE OUTSIDE THIS STATE, THE  
4 INSURANCE COMMISSIONER SHALL ATTEMPT TO GATHER EXPERIENCE ONLY  
5 FROM STATES WITH SOCIAL, ECONOMIC, GEOGRAPHIC, AND POPULATION  
6 MAKE-UP SIMILAR TO THIS STATE. IN ALL OTHER INSTANCES THE  
7 COMMISSIONER SHALL CONSIDER THIS STATE'S EXPERIENCE EXCLUSIVELY  
8 AND IN INSTANCES WHEN THIS STATE'S EXPERIENCE IS INSUFFICIENT the  
9 commissioner shall give as much weight as possible to ~~the~~  
10 ~~Colorado~~ THIS STATE'S experience.

11 SECTION 3. 10-4-405, Colorado Revised Statutes 1973, is  
12 amended BY THE ADDITION OF A NEW SUBSECTION to read:

13 10-4-405. Public disclosure. (4) Quarterly, every insurer  
14 and every rating organization shall furnish the commissioner with  
15 a comprehensive list of losses paid for the previous quarter. In  
16 addition to listing each loss paid, the report shall itemize the  
17 corresponding amount which the insurer had set aside as the loss  
18 incurred reserve and, if any, the loss anticipated reserve for  
19 each loss paid by said insurer, as well as the total losses paid  
20 in relation to the total losses incurred for all such losses  
21 paid.

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

LEGISLATIVE COUNCIL  
COMMITTEE ON LOCAL GOVERNMENT

Members of the Committee

Rep. Charles Howe, Chairman	Rep. Edward Bendelow
Sen. Robert Allshouse, Vice-Chairman	Rep. Robert Burford
Sen. Lorena Darby	Rep. Betty Dittmore
Sen. Martin Hatcher	Rep. William Flanery
Sen. Barbara Holme	Rep. Nancy Flett
Sen. Kenneth Kinnie	Rep. Carl Gustafson
Sen. Kingston Minister	Rep. John Hamlin
Sen. Dan Noble	Rep. E. E. Hayes
	Rep. Jim Lloyd
	Rep. Stephen Lyon
	Rep. Jean Marks
	Rep. Betty Neale
	Rep. Dorothy Witherspoon
	Rep. Sam Zakhem

Council Staff

Wallace Pulliam Principal Analyst	Bart Bevins Senior Research Assistant
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## COMMITTEE ON LOCAL GOVERNMENT

The Committee on Local Government was charged with conducting a study of:

(a) The structure and functions of counties in relation to the services to be provided by counties and municipalities, including limits on the geographic areas each should be responsible for, and the interrelated financing thereof;

(b) The implementation of county functional home rule as a response to meeting such defined responsibilities;

(c) The need for retention of special districts if the state's policy places the responsibilities for local services upon counties and municipalities;

(d) The role each segment of government should be assigned in implementing any state policy;

(e) The role of regional service authorities; and

(f) Legislation regarding mining in Colorado, including the major aspects of reclamation, demand for minerals unique to Colorado in addition to coal and oil shale, and federal regulation of minerals and lands in Colorado.

### Recommendations Regarding Local Government

The local government proposals presented herein reflect the consensus of the committee that the state's policy should place greater responsibilities upon counties and municipalities for the provision of urban functions and services in order to help reduce the fragmentation of governmental administrative responsibility which results, in part, from a reliance on special districts. To accomplish this, the committee recommends five bills on local government which combine elements of four of the committee's local government study directives. The committee did not have time to specifically address the role of regional service authorities.

### County and Municipal Plans for Service and Transfer of Special District Functions to Counties and Municipalities -- Bill 36

Bill No. 36 offers a composite approach designed to: reduce the proliferation of, and reliance on, independent special districts; provide a mechanism by which the governing body of a county and municipality can finance and provide special district type services; and coordinate the provision of such services between counties and municipalities.

Formation of new special districts. Bill No. 36 would place a prohibition, effective July 1, 1976, on the future formation of certain types of urban service districts, namely, metropolitan recreation districts, metropolitan districts, water districts, water and sanitation districts, fire protection districts, cemetery districts, and hospital districts, as separate quasi-municipal entities.

The termination of the ability to form the above special districts would not prevent the provision of similar services in undeveloped areas or in urban areas where a particular service is needed. Counties and municipalities are authorized to use the powers granted by the existing acts and to establish, under the control of the governing body of the county or municipality, special taxing districts to provide these specific services to a given area.

Existing special districts. Existing special districts would not be abolished by the proposal nor would the existing special district acts be repealed. However, counties and municipalities would be granted greater authority to take over existing districts and assume the responsibility for the provision of services of any special district located wholly or partially within their boundaries. Takeover of districts is not required, but it is permitted. This transfer would be accomplished in the following manner:

(1) The transfer may be initiated by a county or municipality filing notice of its intent to take over the district with that district and the district court. The district would then be required to prepare a statement describing the district's assets, liabilities, territory, facilities, programs, and plans. The only requirements placed on the general purpose governments would be that they agree to continue the services provided by the district and provide a mechanism to insure that any outstanding bonded indebtedness would be paid. Unless a petition, signed by five percent of the qualified electors of the district to be assumed by the county or municipality, is filed asking that an election be held, takeover would be automatic. If such a petition is filed, an election must be held on the takeover.

(2) The district court would be responsible only for: receiving the records of transfer and, in case of dispute, providing for the orderly transfer of powers, duties, assets, and liabilities; insuring payment of outstanding indebtedness and the continuation of services; and designating the local government to which the district would be transferred.

(3) Districts located in an unincorporated area and located within one mile of a municipality would be governed by the provisions outlined below.

County and municipal plans for service. The proposal would require counties and municipalities to jointly develop, by 1980, land use, development, and service plans for the provision of the urban services which are now provided by the urban service districts which the bill precludes from being formed as separate entities. Such plans

are required because the takeover of special districts located within the territory of two or more general purpose governments and the formation of new special taxing districts for urban services (by either a county or a municipality near an adjoining municipality) may pose inter-jurisdictional problems. The use of these plans for service as a means of preventing inter-jurisdictional conflicts is an adaptation of a concept proposed in H.B. 1092, 1975 session (a comprehensive land use and urban service area act). It is, however, utilized in the proposal only as a mechanism to plan for fire, water, sanitation, parks and recreation, cemetery, and hospital services which are now provided to a great extent by special districts. The committee's proposal is outlined below:

(1) Under the proposal, cities would have the primary authority to provide services within one mile of their boundaries or one-half the distance to the next municipality, whichever is less, unless otherwise agreed to in the county and municipal plans for service.

(2) Counties and cities would be able to mutually agree to land use, development, and plans of service for water, sanitation, fire, hospital, park and recreation, and cemeteries on the periphery of the municipality. To accomplish this, the county would be required to develop, as part of its comprehensive plan, plans for service for the unincorporated area of the county and specifically for the periphery of each municipality. The county plan would then be submitted to each affected municipality for review and suggested modifications. The municipality would simultaneously develop its own plans for the extension of these services into the unincorporated areas adjoining its current boundaries. The county and the municipality would negotiate, by 1981, any differences in their respective plans. Once agreement is reached, the plans would be filed with the district court. The assumption of any existing district located within two or more jurisdictions, or located on or near the boundaries of a municipality, would be governed by the agreed upon plans. The district court would be responsible for resolving any questions on interpretation.

If the county and municipality could not agree on a joint plan, the municipality would be authorized to use its primary authority to plan and extend services within the above-mentioned one-mile limit.

Special taxing districts. The committee recognizes that, in the past, special districts may have provided the only available means for the provision of urban services in many areas. As a means of assuring a mechanism for the provision of these services, the proposal would authorize counties and municipalities to establish special taxing districts under the control of the county or municipal governing body. These districts could be established to provide a means of assuring continuation of the services of any district which may be assumed under the bill or they may be established to provide such services to specific areas within the local government's jurisdiction.

Police Powers to Home Rule Counties -- Bill 37

In recommending Bill 37, the committee is responding to one of the most common requests of county governments -- the authority to enact ordinances and set penalties for nuisance-type offenses, within the unincorporated territory of the county. Bill 37 would grant specific police powers to home rule counties.

The committee does not recommend granting such powers to all counties. The consensus was that counties should be encouraged to reorganize their structure pursuant to the existing county home rule statute. Limiting police powers to home rule counties may encourage the adoption of structural home rule charters.

Among the suggested police powers which would be granted to home rule counties are the powers to enact ordinances:

(1) To prevent and suppress riots, disorderly conduct, noises, disturbances, and disorderly assemblies in any public or private place;

(2) To use the county jail for the confinement or punishment of offenders;

(3) To provide for fire control within the boundaries of the county;

(4) To authorize the acceptance of a bail bond;

(5) To license, control, and regulate the operation and location of any nuisance activity which is of local concern within the county;

(6) To control and regulate the speed and use of vehicles on county roads not under the jurisdiction of the state;

(7) To adopt codes relating to buildings or other structures;

(8) To adopt codes by reference, subject to certain conditions; and

(9) To regulate and prohibit the running-at-large and keeping of animals within the county.

Disposition of fines. Since county ordinances would be enforced in the county courts, and county courts are a part of the state-funded judicial system, the committee proposes that one-half of all fines and forfeitures for the violation of ordinances be paid to the county and one-half of the fines and forfeitures be paid to the general fund of the state of Colorado.



### Compensation of County Officers -- Bill 38

Periodically the General Assembly is asked to fulfill its constitutional responsibility and set, by law, the salaries for all elected county officials in non-home rule counties. (A 1970 constitutional amendment allows counties adopting a structural home rule charter to set the salaries of elected officials.) As indicated earlier in this report, the committee believes that local government should be provided with greater administrative authority and the committee agreed that the determination of the salaries to be paid to local officials should be a local responsibility and not a state legislative function.

Therefore, the committee recommends that a constitutional amendment be submitted to the voters providing that the county commissioners shall set the salaries of all elective county officers (including county commissioners). In brief, the amendment would provide that in May of each general election year the board of county commissioners would fix, by resolution, the salaries of all elected county officials. The salaries would apply for the next two years, and no salary of an elected official could be decreased during his term of office. The salaries of all county commissioners of that county would be equal.

### Amendments to the Special District Exclusion Act -- Bill 39

For a number of years, municipalities have contended that the Special District Exclusion Act is too restrictive to accomplish its purpose, i.e., to allow territory to be excluded from a special district's boundaries. At the request of the Colorado Municipal League, the committee considered, and recommends, a bill to amend the exclusion act.

The existing act requires that a municipality wishing to have territory excluded must agree to provide "the service provided by the district" to the excluded territory. Some have interpreted this requirement to mean that, for example, if a recreation district provides a golf course, the municipality must also provide a golf course before the territory can be excluded. The committee's proposal amends this requirement so that a municipality would be required to provide "the general type of service", e.g., recreational facilities, that are provided by the district.

The proposal would also shift the emphasis on other requirements. For example, under the existing act, the district court is directed to order the exclusion of territory if it finds that certain conditions are met (the continuation of services described above is an example). The proposal would direct the court to order the territory excluded unless it finds that the municipality has not agreed to certain conditions such as to provide recreational facilities as described above. The proposal would also expand the procedures for the disposition of assets between the district and the municipality.

## Buildings Constructed with Funds of Public Agencies -- Bill 40

Bill 40 also results from a recommendation of the Colorado Municipal League. The bill would encourage cooperation and coordination among units of state and local government in order that site locations for public buildings would be compatible with plans and land use policies of local government and that construction of public buildings would be adequate for the safety of the public. Local governments would be encouraged to assist public agencies in reviewing the construction of buildings to help ensure structural, mechanical, fire resistance and other standards adequate for the public safety.

## Reclamation of Land Disturbed by Mining

The committee was charged with examining mining in Colorado, including the major aspects of reclamation.

### Current Laws

Colorado's mined land reclamation laws presently appear in three separate articles of Title 34, each applicable to different types of mining operations. Article 22 of Title 34 deals with underground coal mines; Article 32 regulates the reclamation of lands disturbed by the open mining of coal, limestone used for construction purposes, quarry aggregate, and sand and gravel; and, Article 40, often referred to as the "hard rock law", concerns the reclamation of various other types of mining operations. After reviewing the above laws, and after public hearings marked by conflicting testimony concerning the effectiveness of these reclamation statutes, the committee agreed that four areas of the existing law needed revision. These were:

- Regulation of the disturbance to surface areas caused by the exploration for minerals;
- Expansion or revision of the composition of the present Mined Land Reclamation Board;
- The criteria presently used by the board to approve a mining permit application, and the duties imposed on the operator at the time of approval; and
- The specific inclusion of the mining of oil shale as an activity to be regulated by the state.

## The Mined Land Reclamation Act -- Bill 41

Restoration of lands disturbed by prospecting. None of Colorado's present reclamation laws regulate the disturbances to the

land's surface caused by the exploration for minerals. Testimony indicated there exists the potential for a significant amount of disturbance during certain phases of an exploration operation. It was therefore the consensus of the committee that some measures should be taken to deal with this disturbance. The committee recognizes, however, that both state and federal statutes have traditionally encouraged the exploration for minerals. The committee does not wish to interfere unnecessarily with exploration and has endeavored to avoid placing unreasonable restrictions thereon. Consequently, in recommending the proposed provisions regulating reclamation of lands disturbed by mineral exploration, the committee elected to incorporate into Colorado's statute, in so far as possible, the exploration requirements now in effect on federal lands under the jurisdiction of the United States Bureau of Land Management (B.L.M.).

In brief, the bill, in order to conform to B.L.M. requirements, would require a prospector to file with the Mined Land Reclamation Board a notice of intent to conduct prospecting operations and to provide surety for subsequent reclamation. Upon the completion of the prospecting operation the operator would file a notice of completion. The board then would notify the operator of the steps necessary to reclaim the land disturbed, inspect the reclamation upon completion, and, if satisfied, release the surety posted.

The Mined Land Reclamation Board. The present Mined Land Reclamation Board is composed of the executive director of the Department of Natural Resources, the deputy commissioner of mines, the chief inspector of coal mines, the state geologist, and a member of the State Soil Conservation Board. The committee noted that three of the five members of the board are employees of the Department of Natural Resources under the supervision of the executive director. The committee agreed with the contention that the present composition fails to provide for adequate representation of other diverse interests, such as agriculture, conservation, and mining. Therefore, the committee recommends the membership be revised in order to provide more effective representation of other interests.

The committee proposes that the three employees of the department, the deputy commissioner of mines, state geologist, and chief inspector of coal mines, be removed, and that the board be expanded to seven members composed of: the executive director of the Department of Natural Resources; a member of the State Soil Conservation Board; and five persons appointed by the Governor to serve at his pleasure, three of whom would possess experience in agriculture or conservation, and two of whom would be representatives of the mining industry.

Reclamation of all lands disturbed by mining. The committee agreed that Colorado's reclamation laws should govern the surface disturbance resulting from all types of mining, and should therefore be drafted as one single statute. The committee elected to use the most comprehensive of the three mining laws -- Article 32 of Title 34, the Open Mine Reclamation Act -- as the vehicle to incorporate all reclamation provisions. The committee recognizes that its decision to

incorporate all reclamation provisions into one article of law is a significant change from current policy. However, the committee found that different types of mining are presently subject to significantly different requirements as to the extent of reclamation required. For example, mines regulated by Article 40 (essentially all mining except underground coal mines and surface mines for limestone used for construction purposes, coal, sand, gravel, and quarry aggregates) are required only to reclaim lands to prevent landslides, floods, or erosion. This is significantly less than the reclamation requirements imposed on the surface coal mines or quarries.

The consensus of the committee was that more uniform reclamation standards were justified. However, the committee recognizes that the many various types of mining present varying reclamation problems. Thus, while the committee proposes some uniform minimum standards, it attempts to provide enough statutory flexibility to allow the Land Reclamation Board and the operator to recognize and deal individually with each reclamation problem.

Mining permits. The committee's proposal would provide that an operator may not engage in any mining without obtaining a permit to do so. As noted, this is a significant change because mines operating under Articles 22 and 40 are not now governed by a mandatory permit process. In order to deal with this change, provision would be made for the "phasing-in" of operations currently subject to these articles.

In brief, a permit would be obtained by filing with the board an application containing certain specific information, such as: the legal description of land to be affected; the owners of the surface and of the substance to be mined; a description of the method of operation; and the size of the area to be worked at any one time. The application would also include a reclamation plan showing the type of reclamation the operator chooses to conduct. Finally, a map would accompany the application showing the location of all land features and structures such as creeks, roads, and buildings around and on the area to be affected; the topography of the area; the type of soil over the area; the type of vegetation; and the depth and thickness of the mineral deposit to be mined. The application would be accompanied by a basic fee of 50 dollars, plus fifteen dollars per acre of land affected. In the event the permit is denied, 75 percent of the fee would be refunded.

Upon receipt of the application described above, the board must set a date for its consideration within 90 days. At that time the board would approve or deny the application, or for good cause, set a date for a hearing. However, the board must act upon the application within 120 days. If the board did not act within this time, the application, upon the presentation of surety, would be considered approved. The application would be denied if, among other things, the proposed operation: 1) would violate any city, town, or county zoning or subdivision regulation; 2) would violate a law or regulation of this state or the federal government; or 3) could not be carried out

in conformance with the act. The proposal also states that an application may be denied if the operation would take place upon certain state and federal lands which have been specifically exempted by state or federal regulation or statute. Finally, the proposal sets forth several minimum standards of reclamation which an operator must meet.

The proposed bill would also make provision for a simplified application procedure to be used in the case of a small operation which employs five or less individuals, disturbs ten acres or less, and extracts 50,000 tons of overburden or mineral each calendar year. It should be noted that the operator would still comply with the reclamation duties outlined in the bill.

Length of permit. The existing surface mined land reclamation act provides that each permit issued is to be valid for a five-year period, which may be renewed. In view of the expanded scope of its proposal, the committee did not elect to retain this provision. Instead, the committee's proposal would allow a permit to be issued for the "life of the mine". This decision effectively alters the present method of enforcement from one emphasizing permit renewal to one stressing a program of monitoring by the board. Under the present act, the burden of proof of compliance is largely placed upon the operator at the time of each renewal. With the life-of-the-mine permit, the reclamation board and the Department of Natural Resources must enforce the reclamation provisions largely by inspection of operations, and, thus, prove non-compliance with reclamation standards.

Fiscal note. Because of the shift in emphasis from a permit renewal process to an on-going enforcement program, and because the committee's proposal expands the number of mines to be governed by the reclamation act, the committee recommends that the Department of Natural Resources' reclamation budget be increased by \$140,000 over the 1976 requested increase (\$100,000) made by the department to administer the existing law. The department is currently funded at \$60,000.

#### MINORITY REPORT

A minority of the committee herewith submits Bill 42. Bill 42 is a redraft of H.B. 1092, 1975 session -- the Urban Service Area Act.

The basic concept of the bill involves designating urban service areas throughout the state, controlling incompatible development within these areas, and preserving non-urban areas from urban encroachments through an integrated local planning process.

As introduced in 1975, the state land use commission was granted the authority to finally designate all urban service areas. This function would be removed. As presented to the interim committee, the commission would review and comment only on local urban service area plans. The revised bill would offer two alternatives to ensure that local governments comply with the designation require-

ments. Failure of county and municipal officials to jointly designate urban service areas would constitute either malfeasance in office or contempt of court.

In brief, Bill 42 would provide that:

- (1) Counties and municipalities as a part of their comprehensive plans would jointly be responsible for defining proposed urban service areas which would include all territory within their boundaries plus, in the case of municipalities, such contiguous areas as should logically be included.
- (2) Delineation of urban service areas would be based on criteria contained in the bill. Some of the standards or considerations which would be used to determine local urban service areas include:
  - (a) Local desires as to the size and character of the community;
  - (b) Ability and willingness to provide or make available adequate and economical water, sewer, police, and fire protection and other urban services;
  - (c) Regional housing needs by type, quantity, and impact;
  - (d) School needs and impact;
  - (e) Regional transportation needs and impact; and
  - (f) Natural and man-made barriers to expansion of urban areas or service within urban areas.

The bill also includes mechanisms to help regulate: future development outside of urban service areas; annexation of territory by a municipality within its designated urban service area; any proposed formation or extension of a special district providing water or sewer service within a municipal service area, provided the municipality was able and willing to annex the territory or otherwise serve it within a reasonable period; and the incorporation of new municipalities within the service area of an existing municipality.

COMMITTEE ON LOCAL GOVERNMENT

BILL 36

A BILL FOR AN ACT

1 CONCERNING SPECIAL DISTRICTS, AND PROVIDING FOR THE TRANSFER OF  
2 FUNCTIONS PROVIDED THEREBY TO MUNICIPALITIES AND COUNTIES.

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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.)

Places a moratorium on the formation of special districts and provides for the transfer of special district functions to local governments. Requires municipalities and counties to develop a plan in the development and provision of services to the territory adjoining their boundaries. Defines duties of counties, municipalities, and special districts during the transfer of special district functions. Provides for special taxing districts within municipalities and counties.

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

4 SECTION 1. Title 32, Colorado Revised Statutes 1973, as  
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 1.5

7 Transfer to General-purpose Local Governments

8 32-1.5-101. Legislative declaration. In enacting this  
9 article it is the intent of the general assembly to provide for  
10 the implementation of amendments made to articles XI and XIV of  
11 the state constitution, adopted at the 1970 general election,

1 concerning local government; to simplify the structure of local  
2 government in this state; to provide a means of vesting  
3 single-purpose government decision making with general-purpose  
4 local governments; and to reduce overlapping boundaries of local  
5 governments. The general assembly further declares that the  
6 procedures, powers, and authority set forth in this article are a  
7 matter of state concern, will serve a public use, and will  
8 promote the health and general welfare of the people of this  
9 state.

10 32-1.5-102. Definitions. As used in this article, unless  
11 the context otherwise requires:

12 (1) "Division" means the division of local government of  
13 the department of local affairs.

14 (2) "Notice of intent" means a resolution declaring the  
15 intent of a municipality or a county to succeed to the powers,  
16 rights, property, and other assets and assume the obligations of  
17 any special district.

18 (3) "Services" means those services which may be provided  
19 by a special district.

20 (4) "Special district" means any district organized  
21 pursuant to article 2 or 3, part 1, 2, or 3 of article 4, article  
22 5, or article 10 of this title.

23 32-1.5-103. Moratorium declared. On and after July 1,  
24 1976, no new special district shall be organized in this state,  
25 nor shall the types of services provided by, or the area of, any  
26 existing special district be expanded. The provisions of this  
27 section shall not preclude the organization of any special



1 district for which a petition for formation has been filed, prior  
2 to July 1, 1976, with the district court of the county in which  
3 such district is sought to be formed. Any district so organized  
4 shall comply with the provisions of this article in the same  
5 manner as all other existing special districts.

6 32-1.5-104. Transfer of special district functions. (1)  
7 Pursuant to the provisions of section 18 (1) (c) of article XIV  
8 of the state constitution, a municipality or a county shall have  
9 the right to succeed to the powers, rights, properties, and other  
10 assets and assume the obligations of any special district as  
11 provided in this article. Adequate provision shall be made for  
12 payment of outstanding indebtedness of the special district as it  
13 becomes due, and no such transfer shall deprive residents of such  
14 special district of any existing services necessary for their  
15 health, welfare, and safety.

16 (2) All transfers of special district functions authorized  
17 in this article shall only occur at the close of the special  
18 district's budget year.

19 (3) Only the entire area of a special district shall be  
20 transferred to a municipality or a county, unless otherwise  
21 provided for by agreement between the county and the  
22 municipality.

23 (4) Upon the petition of five percent of the qualified  
24 electors of the special district to be transferred, an election  
25 of the residents of the district shall be held concerning the  
26 transfer of the district. The election shall be conducted,  
27 insofar as practicable, in accordance with the provisions of part

1 8 of article 1 of this title. At such election the voters shall  
2 vote for or against the transfer of such special district. If a  
3 majority of the electors vote against such transfer, the transfer  
4 procedure shall cease.

5 32-1.5-105. Municipality and county service plans. (1) (a)  
6 On or before July 1, 1980, every municipality, as a part of its  
7 comprehensive plan, shall develop and submit to the counties and  
8 other municipalities lying within one mile of its corporate  
9 boundaries a land use, development, and service plan for the  
10 development and provision of services to the territory adjoining  
11 its boundaries.

12 (b) On or before July 1, 1980, the board of county  
13 commissioners of every county, as a part of the county's  
14 comprehensive plan, shall have developed and shall submit to the  
15 municipalities lying within, partially within, or within one mile  
16 of its boundaries a land use, development, and service plan for  
17 the development and provision of services throughout the county.

18 (c) Such plan shall be based on a twenty-year period, shall  
19 provide for the projected land use, development of adjoining  
20 territory, and the extension of services and the possible  
21 transfer of existing special districts, and shall designate the  
22 future service areas of such municipalities and counties.

23 (d) Any differences in such service plans shall be jointly  
24 resolved by agreements between such municipalities and counties.

25 (e) The final plans, and any agreements relating thereto,  
26 as adopted by resolution of the board of county commissioners and  
27 the governing body of the municipality, shall be filed with the

1 appropriate district court. Unless subsequently amended jointly  
2 by the parties, such plans and agreements shall be binding, and  
3 any conflicts concerning such documents shall be resolved by such  
4 district court.

5 (2) If a resolution of the differences in such plans of  
6 service cannot be made on or before January 1, 1981, such plans  
7 shall be filed with the appropriate district court. The  
8 following criteria shall be used by the court in reaching a  
9 resolution of any jurisdictional disputes in the absence of  
10 agreement:

11 (a) Municipalities shall have primary authority for the  
12 provision of services, the land use planning, and the approval of  
13 development, within an area extending one mile from their  
14 corporate boundaries or one-half the distance to the next  
15 municipality, whichever is less, as they may from time to time be  
16 adjusted.

17 (b) Counties shall not provide any land use planning or any  
18 services or authorize any development within one mile of a  
19 municipality without the approval of such municipality.

20 (c) No petition for the incorporation of a new municipality  
21 shall be filed within the unincorporated territory of any county  
22 without the approval of the board of county commissioners.

23 (d) No petition for incorporation of a new municipality  
24 shall be filed where any portion of the boundaries of the  
25 proposed municipality is within one mile of the boundaries of an  
26 existing municipality without the approval of the existing  
27 municipality.

1           (3) A municipality shall have the right to assume services  
2 being provided by a special district or a special taxing district  
3 once such services are provided to an area within one mile of its  
4 corporate boundary, as provided in sections 32-1.5-104,  
5 32-1.5-106, and 32-1.5-107.

6           32-1.5-106. Duties of the special district. (1) Upon  
7 receipt of a notice of intent from a municipality or a county,  
8 the board of directors of the special district shall promptly and  
9 in good faith take the necessary steps to provide for the orderly  
10 transfer of the powers, rights, properties, assets, and  
11 liabilities of its respective special district to the appropriate  
12 municipality or county.

13           (2) On or before thirty days after receipt of a notice of  
14 intent, the board of directors of the special district shall file  
15 with the appropriate municipality or county and with the division  
16 a transfer statement, on a form prescribed by the division.

17           (3) The transfer statement shall:

18           (a) Describe the territory embraced in the special district  
19 and have appended a map of the district as constituted at the  
20 time of application;

21           (b) Contain a current financial statement of the district;

22           (c) Describe the assets, properties, liabilities, financial  
23 obligations, employee contracts, bonded indebtedness, and other  
24 information essential to the general administration of the  
25 district;

26           (d) Include a current service plan of the district if such  
27 plan is available; and

1 (e) Describe any current contract negotiations and any  
2 proposed extension of service areas.

3 32-1.5-107. Duties of the municipality or county. (1)  
4 Subject to the provisions of subsection (3) of this section, upon  
5 receipt of the transfer statement from the special district  
6 pursuant to section 32-1.5-106, the governing body of the  
7 municipality or county shall initiate action to provide for the  
8 orderly transfer of power from the special district to such  
9 municipality or county.

10 (2) (a) As a part of the transfer procedure, the governing  
11 body of the county or municipality shall conduct a public hearing  
12 concerning the orderly transfer of the special district's  
13 functions.

14 (b) If the special district is located within more than one  
15 county or municipality or partly within a municipality and partly  
16 within the unincorporated territory of a county, the governing  
17 bodies of such counties and municipalities shall be parties in  
18 interest at such hearings.

19 (c) The transfer procedure shall include consideration of  
20 the manner in which any residents of the special district located  
21 in areas outside the jurisdiction of the municipality or county  
22 are to continue to receive the services provided by such  
23 district.

24 (3) It is the duty of the governing body of the county or  
25 municipality to:

26 (a) Negotiate necessary contracts and adopt appropriate  
27 ordinances or resolutions essential to ensure that any

1 outstanding obligations of the district are met;

2 (b) Ensure that services essential to the health and safety  
3 of the residents of the district are continued;

4 (c) Provide for the orderly transfer of property, assets,  
5 and liabilities of the district;

6 (d) Establish, when necessary, special taxing districts as  
7 provided in section 32-1.5-108;

8 (e) Contract, when necessary, with municipal or county  
9 governments for the provision of services to any residents of the  
10 district located outside the boundaries of the municipality or  
11 county.

12 (4) The governing body of the county or municipality shall  
13 develop a plan to provide for the following:

14 (a) Operation and maintenance of the services and  
15 facilities of the special district;

16 (b) Establishment of rates, charges, and certification of  
17 mill levies for areas to be served;

18 (c) Establishment of procedures for contract modification;

19 (d) Provision for the general administration of the  
20 services provided by the district; and

21 (e) Provision for any applicable employee rights and  
22 retirement benefits.

23 (5) If the special district being transferred is a fire  
24 protection district, provision shall be made for the continuation  
25 of paid employees' rights, as provided in section 32-5-315, and  
26 the retirement benefits of paid and volunteer firemen, as  
27 provided in parts 4 and 5 of article 30 of title 31, C.R.S. 1973.

1 (6) Once the provisions of this section and sections  
2 32-1.5-104 to 32-1.5-106 are met, the special district shall be  
3 transferred to the appropriate local government at the end of its  
4 current budget year as provided in section 32-1.5-104 (2).

5 32-1.5-108. Special taxing districts. (1) Pursuant to the  
6 provisions of section 18 (1) (d) of article XIV of the state  
7 constitution, the governing body of any municipality or county  
8 shall, unless it can show the capability of providing the  
9 services formerly provided by the district by other means,  
10 establish special taxing districts to provide services formerly  
11 provided or which would likely have been provided by special  
12 districts and to facilitate the collection of ad valorem taxes  
13 and charges for such services. Such special taxing districts  
14 shall be utilized where services are to be provided to a specific  
15 area and where resulting ad valorem taxes or charges may vary  
16 from those imposed in other areas within the municipality or  
17 county. Territory included within a special taxing district need  
18 not be contiguous, and the same territory may lie within more  
19 than one special taxing district.

20 (2) Except as otherwise provided in subsection (3) of this  
21 section, any ordinance or resolution establishing a special  
22 taxing district pursuant to this section shall meet the following  
23 conditions:

24 (a) A service plan for the proposed special taxing district  
25 shall be developed showing how the proposed services are to be  
26 provided and financed. The service plan shall include a map of  
27 the proposed special taxing district and an estimate of the

1 population and the valuation for assessment of the territory  
2 included within the area; a description of the facilities, land,  
3 and equipment necessary for the operation of the special taxing  
4 district; estimates for the cost of engineering and legal  
5 services; proposed indebtedness of the special taxing district,  
6 including the maximum interest rates; and other information  
7 deemed relevant to the financing and operation of the special  
8 taxing district.

9 (b) Legal notice of the date, time, and place of a public  
10 hearing concerning formation of the special taxing district shall  
11 be given in a newspaper of general circulation in the county in  
12 which such special taxing district is located once each week for  
13 a period of three consecutive weeks, the first of which shall be  
14 at least twenty days prior to the hearing date.

15 (c) At such hearing any person may be heard on the  
16 proposal, including questions of inclusion in or exclusion from  
17 the district. All such matters shall be determined by the  
18 governing body of the county or the municipality on the basis of  
19 the public interest, the needs of the county or the municipality  
20 and of the territory to be served, the service to be provided,  
21 and the taxes or charges to be imposed.

22 (d) The governing body may continue the hearing as  
23 necessary and may, after the conclusion thereof, enact the  
24 proposed ordinance, with or without amendments, or may reject the  
25 proposed ordinance.

26 (e) An election of the residents of the area to be included  
27 in the special taxing district shall be held concerning the



1 formation of such special taxing district. The election shall be  
2 conducted, insofar as practicable, in accordance with the  
3 provisions of part 8 of article 1 of this title. At such  
4 election the voters shall vote for or against the organization of  
5 the district.

6 (3) Decisions of the governing body of the county or  
7 municipality concerning the formation of a special taxing  
8 district are not subject to review unless review by certiorari,  
9 in accordance with the Colorado rules of civil procedure, is  
10 instituted by an aggrieved party within forty-five days after the  
11 effective date of the ordinance. If such action is not brought  
12 within such time, the action shall forever be barred.

13 (4) No restraining order or temporary injunction enjoining  
14 the formation, the inclusion or exclusion of territory, or the  
15 operation or financing of the special taxing district may be  
16 issued pending final judgment of the district court. Any such  
17 final judgment which has the effect of enjoining the formation,  
18 the inclusion or exclusion of territory, or the operation or  
19 financing of a special taxing district shall automatically be  
20 stayed upon the filing of any appeal of such decision, and no  
21 application for supersedeas shall be necessary. Such stay shall  
22 continue in full force and effect pending final disposition of  
23 the proceedings.

24 (5) The provisions of paragraphs (b) to (e) of subsection  
25 (2) and subsections (3) and (4) of this section shall not be  
26 applicable to any special taxing district created by a  
27 municipality or a county pursuant to the transfer and assumption

1 of services of a special district pursuant to this article  
2 wherein the area and provision of service remains essentially  
3 unchanged.

4 32-1.5-109. Indebtedness of the transferred special  
5 district. The outstanding bonds of a special district which is  
6 transferred to a municipality or a county pursuant to the  
7 provisions of this article shall be satisfied and discharged in  
8 the following manner: For the purpose of retiring the district's  
9 outstanding indebtedness and the interest thereon existing at the  
10 effective date of the transfer, the district shall remain intact  
11 and all territory within the district shall be obligated to the  
12 same extent. The governing body of the municipality or the  
13 county shall levy annually a property tax on all such property  
14 sufficient, together with other funds and revenues of the  
15 district, to pay such outstanding indebtedness and the interest  
16 thereon. The governing body of the county or municipality is  
17 also empowered to establish, maintain, enforce, and, from time to  
18 time, modify such service charges, tap fees, and other rates,  
19 fees, tolls, and charges, upon residents or users in the area of  
20 the district as it existed prior to the transfer, as, in the  
21 discretion of the governing body, may be necessary to supplement  
22 the proceeds of said tax levies in the payment of the outstanding  
23 indebtedness and the interest thereon.

24 32-1.5-110. Report to division. Any change in the status  
25 of a special district effected pursuant to this article shall be  
26 reported to the division by the municipality or the county which  
27 has assumed the powers, rights, assets, and liabilities of the

1 special district within thirty days after such change is finally  
2 effected.

3 32-1.5-111. Responsibilities of counties and  
4 municipalities. Unless the person initiating the request agrees  
5 otherwise in writing, before finally adopting an amendment to a  
6 zoning regulation, or platting or replatting any area, or  
7 granting a new building permit, the governing body of a county or  
8 municipality has an obligation to ensure, through the creation of  
9 a special taxing district, use of general tax revenues, or other  
10 governmental mechanisms, that services essential to the health  
11 and welfare of the existing or potential residents of the  
12 affected area are provided or continued.

13 SECTION 2. Effective date. This act shall take effect July  
14 1, 1976.

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

COMMITTEE ON LOCAL GOVERNMENT

BILL 37

A BILL FOR AN ACT

1 CONCERNING HOME RULE COUNTIES, AND DEFINING THE POWERS AND  
2 FUNCTIONS THEREOF.

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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.)

Defines powers and functions of home rule counties.

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

4 SECTION 1. Title 30, Colorado Revised Statutes 1973, as  
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 11.5

7 Home Rule Counties

8 PART 1

9 GENERAL PROVISIONS

10 30-11.5-101. Definitions. As used in this article, unless  
11 the context otherwise requires:

12 (1) "Board" means the principal governing body of any home  
13 rule county as specified in the county's home rule charter.

14 (2) "Home rule county" means a county which has adopted a  
15 home rule charter pursuant to the provisions of part 5 of article

1 11 of this title.

2 30-11.5-102. General police protection powers. In addition  
3 to any other powers granted or prescribed by law, the board has  
4 the authority to provide police protection throughout the  
5 unincorporated areas of the county and throughout the entire  
6 county by contracting with its municipalities.

7 30-11.5-103. Police powers. (1) The board, if authorized  
8 by home rule charter, has the power to enact regulatory  
9 ordinances not in conflict with state law for the control of any  
10 activity which is of purely local concern within the  
11 unincorporated territory of the county, including the following  
12 activities:

13 (a) To do all acts and make all regulations which may be  
14 necessary or expedient for the promotion of health or the  
15 suppression of disease;

16 (b) To declare what is a nuisance and abate the same and to  
17 impose fines upon parties who may create or continue nuisances or  
18 suffer them to exist;

19 (c) (I) To provide for and compel the removal of weeds,  
20 brush, and rubbish of all kinds from lots and tracts of land  
21 within the county at such time, upon such notice, and in such  
22 manner as the board may prescribe by ordinance and to assess the  
23 whole cost thereof, including the costs of inspection and other  
24 incidental costs in connection therewith, upon the lots and  
25 tracts of land from which the weeds, brush, and rubbish are  
26 removed. The assessment shall be a lien against each lot or  
27 tract of land until paid and shall have priority over all other

1 liens except general taxes and prior special assessments.

2 (II) In case such assessment is not paid within a  
3 reasonable time specified by ordinance, it may be certified by  
4 the county clerk and recorder to the county treasurer who shall  
5 collect the assessment, together with a penalty as set forth in  
6 the ordinance for cost of collection, in the same manner as other  
7 taxes are collected. The laws of this state for assessment and  
8 collection of general taxes, including the laws for the sale and  
9 redemption of property for taxes, shall apply to the collection  
10 of such assessments.

11 (d) To prevent and suppress riots, disorderly conduct,  
12 noises, disturbances, and disorderly assemblies in any public or  
13 private place;

14 (e) To use the county jail for the confinement or  
15 punishment of offenders, subject to such conditions as are  
16 imposed by state law and within the limits set forth in an  
17 ordinance;

18 (f) To provide for fire control within the boundaries of  
19 the county;

20 (g) To authorize the acceptance of a bail bond when any  
21 person has been arrested for the violation of any ordinance and a  
22 continuance or postponement of trial is granted. When such bond  
23 is accepted, it shall have the same validity and effect as bail  
24 bonds provided for under the criminal statutes of this state.

25 (h) To license, control, and regulate in a manner not  
26 inconsistent with state law the operation and location of any  
27 nuisance activity which is of local concern within the county;

1 (i) To control and regulate the speed and use of vehicles  
2 on county roads not under the jurisdiction of the state and to  
3 regulate the parking of motor vehicles within the county;

4 (j) To adopt codes relating to buildings or other  
5 structures including building codes, fire or fire prevention  
6 codes, plumbing codes, housing codes, mechanical codes, and  
7 electrical codes;

8 (k) To regulate and prohibit the running-at-large and  
9 keeping of animals within the county and to otherwise provide for  
10 the regulation and control of any animals including, but not  
11 limited to, licensing, impoundment, and disposition of impounded  
12 animals;

13 (l) To zone and regulate the use of land within the county;  
14 and

15 (m) To adopt codes by reference, provided that copies of  
16 the adopted codes are kept on file and open to public inspection  
17 in the office of the county clerk and recorder and in the office  
18 of the chief enforcement officer of the code.

19 30-11.5-104. Countywide ordinances. The board has the  
20 power to enact ordinances that apply uniformly to all territory  
21 within the county if the board has the agreement of the governing  
22 bodies of all municipalities within its boundaries that such  
23 uniform act shall be applicable to the municipalities and that  
24 the ordinance does not go beyond the powers granted to the county  
25 by state law.

26 PART 2

27 ORDINANCES - PENALTIES - PROCEDURE FOR ADOPTION

1           30-11.5-201. Ordinance powers - penalty. The governing  
2 body of each home rule county has the power to enforce obedience  
3 to ordinances adopted by it through the county courts by a fine  
4 of not more than three hundred dollars, or by imprisonment for  
5 not more than ninety days, or by both such fine and imprisonment.

6           30-11.5-202. Style of ordinances. The style of the  
7 ordinances in counties shall be: "Be it ordained by the board of  
8 county commissioners of ..... ."

9           30-11.5-203. Proving ordinances. All ordinances may be  
10 proven by the seal of the home rule county, and, when printed in  
11 book or pamphlet form printed and published by authority of the  
12 home rule county, the same shall be received in evidence in all  
13 courts and places without further proof.

14           30-11.5-204. Reading before board - publication. No  
15 ordinance allowed by this article shall be adopted by any board  
16 of any home rule county in this state unless the same has been  
17 previously introduced and read at a preceding regular or special  
18 meeting of such board and published in full in one or two  
19 newspapers of general circulation published in such home rule  
20 county at least ten days before its adoption. If there is no  
21 such newspaper published in the county, copies of the proposed  
22 ordinance shall be posted in at least six public places in such  
23 county at least ten days prior to its adoption. Such previous  
24 introduction of such ordinance at such preceding meeting of the  
25 board and the fact of its publication in such newspapers or by  
26 posting shall appear on such ordinance after its adoption.

27           30-11.5-205. Reading - adoption of code. Whenever the



1 reading of an ordinance or of a code which is to be adopted by  
2 reference is required by statute, any such requirement shall be  
3 deemed to be satisfied if the title of the proposed ordinance is  
4 read and the entire text of the proposed ordinance or of any code  
5 which is to be adopted by reference is submitted in writing to  
6 the board before adoption.

7 30-11.5-206. Majority of all members required - record. On  
8 the adoption of every ordinance and of every resolution  
9 authorized by this article by the board of any home rule county,  
10 the yeas and nays shall be called and recorded and the  
11 concurrence of a majority of all members elected to the board  
12 shall be required for the ordinance to pass. The names of those  
13 who voted and the vote each candidate received upon the vote  
14 resulting in an appointment shall be recorded.

15 30-11.5-207. Record and publication of ordinances. All  
16 ordinances, as soon as may be after their adoption, shall be  
17 recorded in a book kept for that purpose and shall be  
18 authenticated and the fact of previous introduction and  
19 publication, as required by section 30-11.5-204, certified and  
20 attested to, by the signature of the presiding officer of the  
21 board and the county clerk and recorder. All ordinances of a  
22 general or permanent nature and those imposing any fine, penalty,  
23 or forfeiture, following adoption, shall be published in some  
24 newspaper published within the limits of the home rule county or,  
25 if there is none, in some newspaper of general circulation in the  
26 home rule county. It is a sufficient defense to any suit or  
27 prosecution for such fine, penalty, or forfeiture to show that no

1 publication was made. If there is no newspaper published or  
2 having a general circulation within the limits of the home rule  
3 county, then, upon a resolution being passed by the board to that  
4 effect, ordinances may be published by posting copies thereof in  
5 six public places within the limits of the home rule county, at  
6 least ten days prior to its adoption to be designated by the  
7 board. Ordinances shall not take effect and be in force before  
8 thirty days after they have been so published. The book of  
9 ordinances provided for in this section shall be taken and  
10 considered in all courts of this state as prima facie evidence  
11 that such ordinances have been published as provided by law.

12 30-11.5-208. Disposition of fines and forfeitures.  
13 One-half of all fines and forfeitures for the violation of  
14 ordinances and all moneys collected for licenses or otherwise  
15 shall be paid into the treasury of the home rule county at such  
16 times and in such manner as may be prescribed by ordinance, or,  
17 if there is no ordinance referring to the case, it shall be paid  
18 to the treasurer at once, and one-half of the fines and  
19 forfeitures shall be paid to the general fund of the state of  
20 Colorado.

21 30-11.5-209. One-year limitation of suits. All suits for  
22 the recovery of any fine and prosecutions for the commission of  
23 any offense made punishable under any ordinance of any home rule  
24 county shall be barred one year after the commission of the  
25 offense for which the fine is sought to be recovered.

26 SECTION 2. Safety clause. The general assembly hereby  
27 finds, determines, and declares that this act is necessary for

1 the immediate preservation of the public peace, health, and  
2 safety.

COMMITTEE ON LOCAL GOVERNMENT

BILL 38

CONCURRENT RESOLUTION NO.

1 SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AN  
2 AMENDMENT TO ARTICLE XIV OF THE CONSTITUTION OF THE STATE OF  
3 COLORADO, CONCERNING THE COMPENSATION OF COUNTY OFFICERS.

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Resolution Summary

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

Amends the state constitution so that county commissioners set the compensation paid to officers in their counties.

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4 Be It Resolved by the of the Fiftieth General  
5 Assembly of the State of Colorado, the concurring  
6 herein:

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

12 Section 15 of article XIV of the constitution of the state  
13 of Colorado is amended to read:

14 Section 15. Compensation and fees of county officers. (1)

1 The general assembly shall--fix--the--compensation--of--county  
2 officers-in-this-state-by-law,-and shall establish scales of fees  
3 to be charged and collected by such county officers. All such  
4 fees shall be paid into the county general fund.

5 (2) When-fixing-the-compensation-of--county--officers;--the  
6 general---assembly---shall---give---due---consideration---to---county  
7 variations;-including-population;-the-number-of-persons--residing  
8 in--unincorporated--areas;--assessed--valuation;--motor--vehicle  
9 registrations;-building-permits;-military-installations;-and-such  
10 other--factors--as--may--be--necessary--to--prepare--compensation  
11 schedules---that---reflect---variations---in--the--workloads--and  
12 responsibilities-of-county-officers-and-in-the-tax--resources--of  
13 the-several-counties;

14 The-compensation-of-any-county-officer-shall-be-increased-or  
15 decreased--only--when--the--compensation--of--all-county-officers  
16 within-the-same-county;-or-when-the--compensation--for--the--same  
17 county--officer--within--the--several--counties--of-the-state;-is  
18 increased-or-decreased;

19 Except-for-the-schedule-of-increased-compensation-for-county  
20 officers-enacted-by-the-general-assembly-to-become--effective--on  
21 January--1;-1969;-county-officers-shall-not-thereafter-have-their  
22 compensation-increased-or-decreased-during-the-terms-of-office-to  
23 which-they-have-been-elected-or-appointed; ON OR BEFORE MAY 1 OF  
24 EACH YEAR OF A GENERAL ELECTION, THE BOARD OF COUNTY  
25 COMMISSIONERS OF EACH COUNTY SHALL FIX, BY RESOLUTION, THE SALARY  
26 AND OTHER COMPENSATION OF ALL ELECTIVE COUNTY OFFICERS OF EACH  
27 SUCH COUNTY; AND SUCH SALARY AND COMPENSATION, AS SO FIXED, SHALL

1 APPLY TO THE NEXT SUCCEEDING TWO YEARS FOR SUCH OFFICE, SUBJECT  
2 TO THE LIMITATION, HOWEVER, THAT THE SALARY AND COMPENSATION OF  
3 ALL COUNTY COMMISSIONERS WITHIN A COUNTY SHALL BE EQUAL AND THAT  
4 NO SALARY OR COMPENSATION OF AN ELECTIVE COUNTY OFFICER MAY BE  
5 DECREASED DURING THE TERM OF OFFICE TO WHICH SUCH OFFICER WAS  
6 ELECTED OR APPOINTED; AND, FOR THE PERIOD OF JANUARY 1, 1977, TO  
7 JANUARY 1, 1979, ONLY, THE SALARIES OF COUNTY COMMISSIONERS SHALL  
8 BE EQUAL WITHIN A COUNTY AND AS FIXED BY THE GENERAL ASSEMBLY.

9 SECTION 2. Each elector voting at said election and  
10 desirous of voting for or against said amendment shall cast his  
11 vote as provided by law either "Yes" or "No" on the proposition:  
12 "An amendment to article XIV of the constitution of the state of  
13 Colorado, concerning the compensation of county officers."

14 SECTION 3. The votes cast for the adoption or rejection of  
15 said amendment shall be canvassed and the result determined in  
16 the manner provided by law for the canvassing of votes for  
17 representatives in Congress, and if a majority of the electors  
18 voting on the question shall have voted "Yes", the said amendment  
19 shall become a part of the state constitution.

COMMITTEE ON LOCAL GOVERNMENT

BILL 39

A BILL FOR AN ACT

1 CONCERNING THE EXCLUSION OF TERRITORY FROM SPECIAL DISTRICTS.

---

Bill Summary

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

Changes the conditions for exclusion of municipal territory from special districts.

---

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

3 SECTION 1. 32-1-304, Colorado Revised Statutes 1973, is  
4 amended to read:

5 32-1-304. Conditions necessary for exclusion. (1) The  
6 court shall order the territory described in the petition  
7 ~~excluded from the special district if--the--following--conditions~~  
8 ~~are-met-by-the-parties-to-the-proceedings:~~ UNLESS THE COURT FINDS  
9 THAT:

10 (a) The governing body of the municipality agrees HAS NOT  
11 AGREED, by resolution, to provide the GENERAL TYPE OF service  
12 provided by the special district to the area described in the  
13 petition within one year from the effective date of the exclusion  
14 order; OR

1           (b) The ~~quality-of--the~~ service to be provided by the  
2 municipality will not be ~~lower-than-the-service-provided-by-the~~  
3 ~~district~~ ADEQUATE TO SERVE THE REASONABLE NEEDS OF THE RESIDENTS  
4 in the territory described in the petition for exclusion. The  
5 ~~quality~~ ADEQUACY of service shall be a question of fact, and the  
6 court's determination shall not be overruled unless clearly  
7 arbitrary and capricious.

8           ~~(e)--The-governing-bodies-of-the-municipality--and--district~~  
9 ~~have--contracted--for--the--disposition--of--assets--owned-by-the~~  
10 ~~district-and-located-within-the-area-described-in--the--petition.~~  
11 ~~Said--contract-shall-include,-if-applicable,-provisions-as-to-the~~  
12 ~~maintenance-and-continuity-of-service--of--any--lines,-or--other~~  
13 ~~facilities,-to-be-utilized-by-the-territories-both-within-and~~  
14 ~~without-the--municipal--boundaries--and--composing--part--of--the~~  
15 ~~territories--of--the--district,-The--court--shall--review--the~~  
16 ~~provisions-of-said-contract,-and,-if-it-finds-the-contract-to-be~~  
17 ~~fair--and--equitable,-the--court--shall-approve-the-contract-and~~  
18 ~~incorporate-the-provisions-thereof-in-its-exclusion--order,-The~~  
19 ~~court's--review--of-the-provisions-of-the-contract-shall-include,~~  
20 ~~but-not-be--limited--to,-consideration--of--the--amount--of--the~~  
21 ~~district's--outstanding--bonded--indebtedness--in-relation-to-the~~  
22 ~~percentage-of-total-district-territory--proposed--for--exclusion;~~  
23 ~~the-fair-market-value-of-the-district's-assets-located-within-the~~  
24 ~~territory--proposed--for--exclusion,-and--the--effect--which-the~~  
25 ~~transfer-of-these-assets-will-have-upon-the-service--provided--by~~  
26 ~~the--district--in--territory--unaffected--by--the--exclusion~~  
27 ~~proceedings;~~



1           (2) (a) THE GOVERNING BODIES OF THE MUNICIPALITY AND  
2 DISTRICT SHALL CONTRACT FOR THE DISPOSITION OF ASSETS OWNED BY  
3 THE DISTRICT AND LOCATED WITHIN THE AREA DESCRIBED IN THE  
4 PETITION. SUCH CONTRACT SHALL INCLUDE PROVISIONS WHEREBY ALL  
5 SUCH ASSETS, IF PRACTICAL, MAY CONTINUE TO BE USED BY ALL  
6 RESIDENTS IN THE BOUNDARIES OF THE DISTRICT PRIOR TO EXCLUSION,  
7 ON A FAIR AND EQUAL BASIS, AND ALL OUTSTANDING BONDED DEBT OF THE  
8 DISTRICT PRIOR TO EXCLUSION CONTINUES TO BE PAID BY TAXES OR  
9 CHARGES AGAINST THE APPLICABLE PROPERTIES WITHIN THE DISTRICT  
10 BOUNDARIES PRIOR TO THE EXCLUSION. PROVISIONS FOR THE  
11 MAINTENANCE OF AND CONTINUITY OF ANY SERVICES DERIVED FROM SUCH  
12 ASSETS OF THE DISTRICT SHALL BE INCLUDED IN THE CONTRACT, IF  
13 APPLICABLE, AND SHALL BE ASSUMED BY THE MUNICIPALITY UNLESS THE  
14 MUNICIPALITY AND DISTRICT AGREE OTHERWISE. WHERE THE SERVICES  
15 ARE TO BE PROVIDED BY THE MUNICIPALITY, IT SHALL DEMONSTRATE  
16 CAPABILITY AND WILLINGNESS TO PROVIDE SUCH MAINTENANCE AND  
17 CONTINUITY OF SERVICES DERIVED FROM SUCH ASSETS. THE COURT SHALL  
18 REVIEW THE PROVISIONS OF THE CONTRACT. IF IT FINDS THE CONTRACT  
19 TO BE SUBSTANTIALLY FAIR AND REASONABLE, THE COURT SHALL APPROVE  
20 THE CONTRACT AND INCORPORATE THE PROVISIONS THEREOF IN ITS  
21 EXCLUSION ORDER.

22           (b) IN THE EVENT THE NATURE OF SUCH ASSETS IS THAT THE  
23 REQUIREMENTS OF PARAGRAPH (2) (a) OF THIS SECTION CANNOT BE  
24 APPLIED, SUCH CONTRACT SHALL PROVIDE FOR THE FAIR AND REASONABLE  
25 DISPOSITION OF SUCH ASSETS OF THE DISTRICT. THE COURT SHALL  
26 REVIEW THE CONTRACT. ITS REVIEW MAY INCLUDE, BUT NEED NOT BE  
27 LIMITED TO, CONSIDERATIONS OF: EQUITY POSITION OF TERRITORIES

1 WITHIN AND WITHOUT THE EXCLUDED AREA IN ALL DISTRICT ASSETS  
2 WHEREVER LOCATED IN RELATION TO THE FAIR MARKET VALUE OF THE  
3 CURRENT USE OF ASSETS TO BE TRANSFERRED, THE DISTRICT'S  
4 OUTSTANDING INDEBTEDNESS, AND THE EFFECT WHICH TRANSFER OF ASSETS  
5 WILL HAVE UPON THE SERVICE PROVIDED BY THE DISTRICT IN TERRITORY  
6 UNAFFECTED BY THE EXCLUSION PROCEEDINGS. IF THE COURT FINDS THE  
7 CONTRACT TO BE SUBSTANTIALLY FAIR AND REASONABLE, THE COURT SHALL  
8 APPROVE THE CONTRACT AND INCORPORATE THE PROVISIONS THEREOF IN  
9 ITS EXCLUSION ORDER.

10 {d} (c) If the parties are unwilling or unable to agree to  
11 a contract, as provided in paragraph ~~(e)-of-this-subsection-(1)~~;  
12 (a) OR (b) OF THIS SUBSECTION (2), for the disposition of assets  
13 owned by the district, the court, upon the motion of one of the  
14 parties to the proceeding, shall make disposition of such assets  
15 and provide for such financial adjustments which in the opinion  
16 of the court are fair and reasonable. For the purpose of making  
17 this determination, the criteria set forth in paragraph ~~(b)-of~~  
18 ~~this-subsection-(1)~~ (a) OR (b) OF THIS SUBSECTION (2) shall be  
19 considered. Any determination for the disposition of assets  
20 shall be specifically set forth in the order excluding territory  
21 from the district.

22 {2} (3) The following additional requirements shall be met  
23 before any court shall exclude area from any water, sanitation,  
24 or water and sanitation district:

25 (a) The district's outstanding bonded indebtedness shall  
26 not exceed ten percent of the valuation for assessment of the  
27 taxable property of the entire district as it existed prior to

1 exclusion, or, as an alternative, the municipality shall have  
2 entered into a binding agreement to purchase the entire system or  
3 systems of the district at a price at least sufficient to pay in  
4 full all of the outstanding indebtedness of the district and all  
5 of the interest thereon.

6 (b) All areas of the district shall, at the time of filing  
7 of the petition for exclusion from the district, be receiving the  
8 service or services for which the district was created in  
9 substantial compliance and fulfillment of the service plan of the  
10 district, if one exists, or in accordance with the petition for  
11 organization of the district if no service plan was originally  
12 adopted and approved pursuant to the "Special District Control  
13 Act", as it appears in part 2 of this article.

14 (c) The municipality and the district shall have entered  
15 into a binding agreement for the municipality to assume full  
16 responsibility for the operation and maintenance of the entire  
17 system or systems of the district, and to integrate said system  
18 or systems with those of the municipality to the largest extent  
19 possible. The terms and conditions of service and the rates to  
20 be charged by the municipality for said service under the  
21 agreement shall be uniform with the terms, conditions, and rates  
22 for similar service provided by said municipality in other areas  
23 outside its boundaries. If there are no other such areas, then  
24 the service shall be rendered at a mutually agreeable rate with  
25 the same standards and conditions as are applicable within the  
26 municipality.

27 SECTION 2. Safety clause. The general assembly hereby

1 finds, determines, and declares that this act is necessary for  
2 the immediate preservation of the public peace, health, and  
3 safety.

COMMITTEE ON LOCAL GOVERNMENT

BILL 40

A BILL FOR AN ACT

1 CONCERNING BUILDINGS CONSTRUCTED WITH FUNDS OF PUBLIC AGENCIES.

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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.)

Provides for cooperation and coordination between local governments and agencies of state and federal governments for the location and construction of public buildings.

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

3 SECTION 1. Title 9, Colorado Revised Statutes 1973, as  
4 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

5 ARTICLE 5.5

6 Buildings Constructed with Funds

7 of Public Agencies

8 9-5.5-101. Legislative declaration. The general assembly  
9 declares that it is the purpose of this article to encourage  
10 cooperation and coordination among units of state and local  
11 governments, to the ends that site locations for public buildings  
12 will be compatible with plans and land use policies of the  
13 appropriate county or municipality and that construction of  
14 public buildings will be adequate for the safety of the public

1 and other occupants. Specifically, public agencies are  
2 encouraged to locate public buildings in a manner which will  
3 promote better planning, land use, traffic, safety, utility, and  
4 other considerations of the applicable municipality or county.  
5 Municipalities and counties are encouraged to assist public  
6 agencies in reviewing the construction of buildings to help  
7 ensure that construction will be in compliance with structural,  
8 mechanical, fire resistance, and other standards which are  
9 adequate for the public safety.

10 9-5.5-102. Definitions. As used in this article, unless  
11 the context otherwise requires:

12 (1) "Building" means any building financed in whole or in  
13 part by funds of a public agency.

14 (2) "Public agency" means the state, any municipality,  
15 county, school district or special district, or any board,  
16 commission, agency, institution, or other political subdivision  
17 of the state.

18 9-5.5-103. Building location. Prior to preparing final  
19 construction plans and specifications for a proposed building,  
20 any public agency shall file, with the governing body of the  
21 municipality in which the construction is to occur, or with the  
22 governing body of the county if construction is to occur in an  
23 unincorporated area, a preliminary plan which shows the location  
24 of the proposed building. Any municipality or county receiving  
25 such a preliminary plan shall have thirty days in which it may  
26 review and provide advisory comments to the public agency upon  
27 the location.

1           9-5.5-104. Plan review. Prior to commencing construction  
2 on any proposed building, any public agency shall file, with the  
3 governing body of the municipality in which the construction is  
4 to occur, or with the governing body of the county if  
5 construction is to occur in an unincorporated area, a copy of the  
6 complete final construction plans and specifications of the  
7 proposed building. Such municipality or county shall have thirty  
8 days in which it may review and provide advisory comments to the  
9 public agency upon the plans and specifications.

10           9-5.5-105. Courtesy inspections. The building inspector of  
11 the municipality in which the building is being constructed or of  
12 the county if construction is occurring in an unincorporated area  
13 may conduct courtesy inspections of the construction during its  
14 progress and may make recommendations to the public agency as a  
15 result of such inspections.

16           9-5.5-106. Building codes. Notwithstanding any provisions  
17 of law to the contrary, any public agency constructing a building  
18 may enter into a voluntary agreement with a municipality or  
19 county subjecting any particular building or all future buildings  
20 of the public agency to locally adopted and enforced building and  
21 construction standards, if the local standards are no less  
22 restrictive than any state standards otherwise applicable to  
23 construction by the public agency. Any such agreement must be  
24 approved by any state agency otherwise having authority to  
25 regulate building and construction standards of the public  
26 agency.

27           9-5.5-107. Review by fire protection district. Where a

1 building is to be located in an area served by a fire protection  
2 district, the public agency shall also file a copy of the  
3 complete final construction plans and specifications of the  
4 proposed building with the special district providing fire  
5 protection service for possible review and comments in accordance  
6 with section 9-5.5-104.

7 9-5.5-108. Fees prohibited. No municipality, special  
8 district, or county may charge any plan review fee, building  
9 permit fee, or inspection fee for any services provided pursuant  
10 to this article, except upon voluntary agreement by the public  
11 agency.

12 SECTION 2. Safety clause. The general assembly hereby  
13 finds, determines, and declares that this act is necessary for  
14 the immediate preservation of the public peace, health, and  
15 safety.



COMMITTEE ON LOCAL GOVERNMENT

BILL 41

A BILL FOR AN ACT

1 CONCERNING MINED LAND RECLAMATION.

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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.)

Provides for the reclamation of land which is to be mined or is to have certain types of prospecting performed on it.

---

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

3 SECTION 1. Article 32 of title 34, Colorado Revised  
4 Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to  
5 read:

6 34-32-101. Short title. This article shall be known and  
7 may be cited as the "Colorado Mined Land Reclamation Act". of  
8 1973.

9 34-32-102. Legislative declaration. It is declared to be  
10 the policy of this state to provide for the reclamation of land  
11 subjected to surface disturbance by mining operations and thereby  
12 conserve natural resources, aid in the protection of wildlife and  
13 aquatic resources, and establish recreational, home, and  
14 industrial sites, to protect and perpetuate the taxable value of

1 property, and to protect and promote the health, safety, and  
2 general welfare of the people of this state.

3 34-32-103. Definitions. As used in this article, unless  
4 the context otherwise requires:

5 (1) "Affected land" means the surface of an area within the  
6 state where a mining operation is being or will be conducted,  
7 including but not limited to: On-site private ways, roads, and  
8 railroad lines appurtenant to any such area; land excavations;  
9 prospecting sites; drill sites or workings; refuse banks or spoil  
10 piles; evaporation or settling ponds; leaching dumps; placer  
11 areas; tailings ponds or dumps; work, parking storage, or waste  
12 discharge areas; areas in which structures, facilities,  
13 equipment, machines, tools, or other materials or property which  
14 result from or are used in such operations, are situated. All  
15 lands shall be excluded that would be otherwise includable as  
16 land affected but which have been reclaimed in accordance with an  
17 approved plan or otherwise, as may be approved by the board.

18 (2) "Board" means the land reclamation board established by  
19 section 34-32-105.

20 (3) "Department" means the department of natural resources  
21 or such department, commission, or agency as may lawfully succeed  
22 to the powers and duties of such department.

23 (4) "Development" means the work performed in relation to a  
24 deposit following the exploration required to prove minerals in  
25 commercial quantities but prior to production activities, aimed  
26 at, but not limited to, preparing the site for mining, defining  
27 further the ore deposit by drilling or other means, conducting

1 pilot plant operations, constructing roads or ancillary  
2 facilities, and other related activities.

3 (5) "Executive director" means the executive director of  
4 the department of natural resources, or such officer as may  
5 lawfully succeed to the powers and duties of such executive  
6 director.

7 (6) "Mineral" means an inanimate constituent of the earth,  
8 in either solid, liquid, or gaseous state which, when extracted  
9 from the earth, is useable in its natural form or is capable of  
10 conversion into useable form as a metal, a metallic compound, a  
11 chemical, an energy source, a raw material for manufacturing or  
12 construction material. For the purposes of this article, this  
13 definition does not include surface or ground water, geothermal  
14 resources, nor natural oil and gas, but shall include oil shale.

15 (7) "Mining operation" means the development and extraction  
16 of a mineral from its natural occurrences, including, but not  
17 limited to, open mining, underground mining, and in situ mining.  
18 The term includes the following operations on affected land:  
19 Transportation, concentrating, milling, evaporation, and other  
20 primary processing. The term does not include: The extraction  
21 of natural petroleum in a liquid or gaseous state by means of  
22 wells or pipe; the extraction of geothermal resources; smelting  
23 or refining operations; or operations and transportation not  
24 conducted on affected land.

25 (8) "Open mining" means the mining of natural minerals by  
26 removing the overburden lying above such deposits and mining  
27 directly from the deposits thereby exposed. The term shall

1 include mining directly from such deposits where there is no  
2 overburden. The term includes, but is not limited to, such  
3 practices as open cut mining, open pit mining, strip mining,  
4 quarrying, and dredging.

5 (9) "Operator" means any person, firm, partnership,  
6 association, or corporation, or any department, division or  
7 agency of federal, state, county, or municipal government,  
8 engaged in or controlling a mining operation.

9 (10) "Overburden" means all of the earth and other  
10 materials which lie above natural minerals and also means such  
11 earth and other materials disturbed from their natural state in  
12 the process of mining.

13 (11) "Peak" means a projecting point of overburden created  
14 in the mining process.

15 (12) "Prospecting" means the act of searching for or  
16 investigating a mineral deposit. Prospecting includes, but is  
17 not limited to: Sinking shafts; tunneling; drilling core and  
18 bore holes and digging pits or cuts and other works for the  
19 purpose of extracting samples prior to commencement of  
20 development or production mining operations; and the building of  
21 roads, access ways, and other facilities related to such work.  
22 The term does not include reconnaissance activities in which less  
23 than ten acres of land are excavated or used as a disposal site  
24 in a period of twelve consecutive months, or where power  
25 machinery, power tools, or explosives are not used, or where  
26 activities such as airborne surveys and aerial photography and  
27 the use of instruments and devices which are carried by hand or

1 otherwise transported without appreciable surface damage.

2 (13) "Reclamation" means the employment during and after a  
3 mining operation of procedures reasonably designed to minimize as  
4 much as practicable the disruption from the mining operation and  
5 to provide for the rehabilitation of any such surface resources  
6 adversely affected by such mining operations through the  
7 rehabilitation of plant cover, soil stability, water resources,  
8 or other measures appropriate to the subsequent beneficial use of  
9 such mined and reclaimed lands.

10 (14) "Refuse" means all waste material directly connected  
11 with the cleaning and preparation of substances mined by a mining  
12 operation.

13 (15) "Ridge" means a lengthened elevation of overburden  
14 created in the mining process.

15 34-32-104. Administration. In addition to the duties and  
16 powers of the department prescribed by the provisions of article  
17 4 of title 24, C.R.S. 1973, it has full power and authority to  
18 carry out and administer the provisions of this article.

19 34-32-105. Land reclamation board - created. (1) There is  
20 hereby created as a part of the office of the director in the  
21 department of natural resources the land reclamation board.

22 (2) The board shall consist of seven members: The  
23 executive director, who shall be chairman; a member of the state  
24 soil conservation board designated by such board; and five  
25 persons to be appointed by the governor who shall serve at the  
26 governor's pleasure. Such appointed members shall be three  
27 individuals possessing experience in agriculture or conservation,

1 and two individuals who are representative of the mining  
2 industry. All members of the board shall be residents of the  
3 state of Colorado. The members of the board shall receive no  
4 compensation for their services on the board but shall be  
5 reimbursed for necessary expenses incurred in the performance of  
6 their duties on the board.

7 (3) The board shall exercise its powers and perform its  
8 duties and functions specified in this article under the  
9 department as if the same were transferred to the department by a  
10 type 1 transfer as such transfer is defined in the  
11 "Administrative Organization Act of 1968", being article 1 of  
12 title 24, C.R.S. 1973.

13 (4) The board shall have jurisdiction and authority over  
14 all persons and property, public and private, necessary to  
15 enforce the provisions of this article. Any delegation of  
16 authority to any other state officer, board, division,  
17 commission, or agency to administer any or all other laws of this  
18 state relating to mined land reclamation is hereby rescinded and  
19 withdrawn; any such authority is hereby conferred upon the board  
20 and department as provided in this article.

21 34-32-106. duties of the board. (1) The board shall:

22 (a) Meet at least once each month;

23 (b) Carry on a continuing review of the problems of mining  
24 and land reclamation in the state of Colorado;

25 (c) Develop and promulgate standards for land reclamation  
26 plans and substitution of affected lands as provided in section  
27 34-32-115;

1 (d) Administer the land reclamation fund and determine the  
2 order of priority of reclamation of previously mined lands as  
3 funds are available.

4 (2) It is the duty of the department of agriculture, the  
5 department of higher education, the state soil conservation  
6 board, the Colorado geological survey, the division of parks and  
7 outdoor recreation, the division of wildlife, the university of  
8 Colorado, Colorado state university, Colorado school of mines,  
9 and the state forester to furnish the board and its designees, as  
10 far as practicable, whatever data and technical assistance the  
11 board may request and deem necessary for the performance of total  
12 reclamation and enforcement duties.

13 34-32-107. Powers of board. The board may initiate and  
14 encourage studies and programs through the department and in  
15 other agencies and institutions of state government relating to  
16 the development of less destructive methods of mining operations;  
17 better methods of land reclamation; more effective reclaimed land  
18 use; and coordination of the provisions of this article with the  
19 programs of other state agencies dealing with environmental,  
20 recreational, rehabilitation, and related concerns.

21 34-32-108. Rules and regulations. The board may adopt and  
22 promulgate reasonable rules and regulations respecting the  
23 administration of this article and in conformity therewith.

24 39-32-109. Necessity of permit - application to existing  
25 permits. (1) Permits for mining operations shall be obtained as  
26 specified herein.

27 (2) After June 30, 1976, any operator proposing to engage

1 in a new mining operation must first obtain from the board a  
2 permit as specified in this article.

3 (3) Applications for permits filed pursuant to this article  
4 prior to, but pending on, July 1, 1976, shall be processed in  
5 accordance with the provisions of this article in effect prior to  
6 July 1, 1976. Such provisions are hereby maintained and  
7 continued in effect for the purpose and any repeal or amendment  
8 thereof is hereby modified accordingly. Permits granted after  
9 June 30, 1976 pursuant to such applications which had been filed  
10 prior to July 1, 1976, and permits granted prior to July 1, 1976,  
11 shall be subject to the provisions of this article for the  
12 purpose of renewal. An application for renewal shall be filed  
13 prior to the expiration of the permit. Such application shall be  
14 in accordance with section 34-32-111 except that the applicant  
15 need not supply information, materials, and undertakings  
16 previously supplied. The renewal permit shall show the area  
17 mined or disturbed and the area reclaimed since the original  
18 permit or the last renewal.

19 (4) Mining operations which were lawfully being conducted  
20 prior to July 1, 1976 without a permit may continue to be so  
21 conducted until July 1, 1977, provided that between July 1, 1976  
22 and July 1, 1977 the operators of such existing mining operations  
23 must apply for a permit as specified in this article. Any such  
24 operator having made application by July 1, 1977 but not having  
25 received a permit by this date, shall be permitted to continue  
26 his mining operation until such permit is either granted or  
27 denied. Any such operator who is denied a permit and continues



1 operations after such denial or who has not applied for a permit  
2 by July 1, 1977 and continues operations after July 1, 1977 shall  
3 be considered in violation of this article and subject to the  
4 provisions of sections 34-32-121. An operator of an existing  
5 operation who is in compliance with all requirements of the  
6 statutes in effect prior to July 1, 1976 and rules, regulations,  
7 and orders issued thereunder and any applicable stabilization and  
8 reclamation agreements shall not be denied a permit if he  
9 provides such bond and undertakes such new reclamation program as  
10 may be required reasonably in relation to his existing operation,  
11 pursuant to the provisions of this article.

12 (5) Permits granted pursuant to applications, including  
13 applications for renewal, filed after June 30, 1976, shall be  
14 effective for the life of the particular mining operation  
15 provided that the operator complies with the conditions of such  
16 permits and with applicable statutes, rules, and regulations.

17 (6) No governmental office of the state, other than the  
18 board, or any political subdivision of the state shall have the  
19 authority to issue a permit. However, the board shall not grant  
20 a permit in violation of city, town, county, or city and county  
21 zoning or subdivision regulations, or contrary to any master plan  
22 for extraction adopted pursuant to section 34-1-304.

23 (7) An operator shall obtain a development and extraction  
24 permit from the board for each mining operation.

25 (8) The board shall not grant a permit for a new mining  
26 operation if the operator's reclamation plan for an area is  
27 inconsistent with any reasonable public use of such area

1 proposed pursuant to an adopted plan by any county, city and  
2 county, city, or town. However, the operator shall not be  
3 required to install improvements to or on the area reclaimed.  
4 After the filing of any application for a permit under this  
5 article, the board shall notify each county in which the area  
6 proposed to be mined is located and each municipality located  
7 within two miles of the area to be mined of the filing of the  
8 application.

9 34-32-110. Small operators - notice of intent. (1) Any  
10 mining operation which affects less than ten acres per calendar  
11 year, and employs five persons or less, including the owner of  
12 the operation, and extracts less than fifty thousand tons of  
13 mineral or overburden, shall be subject to the provisions of this  
14 section.

15 (2) (a) The operator shall file annually with the board a  
16 notice of intent to conduct mining operations. The notice of  
17 intent shall state:

18 (I) The address of the general office and the local address  
19 or addresses of the operator;

20 (II) The owner of the surface of the affected land;

21 (III) The owner of the subsurface rights of the affected  
22 land;

23 (IV) A map showing information sufficient to determine the  
24 location of the affected land on the ground, and existing and  
25 proposed roads or access routes to be used in connection with the  
26 mining operation.

27 (V) The approximate size of the affected land;

1 (VI) Information sufficient to describe or identify the  
2 type of mining operation proposed and how it would be conducted;  
3 and

4 (VIII) The measures to be taken to comply with the  
5 applicable provisions of section 34-32-115 (1).

6 (3) A fee of twenty-five dollars, plus ten dollars for each  
7 acre of affected land and such surety not to exceed two thousand  
8 five hundred dollars as the board shall determine shall accompany  
9 the notice and shall be paid by the applicant.

10 (4) If the board determines that any of the proposed  
11 affected land lies within the boundaries of lands described in  
12 section 34-32-114 (4) (f), that land shall be withdrawn from the  
13 operation.

14 (5) The operator at any time after the completion of  
15 reclamation may notify the board that the land has been  
16 reclaimed. Upon receipt of the notice that the affected land or  
17 a portion of it has been reclaimed, the board shall cause the  
18 land to be inspected and release the surety or a portion of it,  
19 within thirty days after the board finds the reclamation to be  
20 satisfactory and in accordance with an informal plan between the  
21 board and the operator.

22 (6) After June 30, 1976, any operator proposing to engage  
23 in a new mining operation as provided in subsection (1) of this  
24 section shall file a notice of intent to engage in mining thirty  
25 days prior to the start of the mining operation. Mining  
26 operations which were lawfully conducted prior to July 1, 1976,  
27 may continue to be so conducted, provided that the operator file

1 with the board such notice of intent with this board. Any  
2 operations which were being conducted prior to July 1, 1976 which  
3 were issued a reclamation permit shall remain in force until such  
4 time as it expires. At such time, the operator shall file with  
5 the board a notice of intent.

6 34-32-111. Application for permit - bond - fee - notice.

7 (1) Any operator desiring to obtain a permit shall make written  
8 application to the board for a permit on forms provided by the  
9 board. The permit, or the renewal of an existing permit, if  
10 approved, shall authorize the operator to engage in such mining  
11 operation upon the affected land described in his application for  
12 the life of the mine. Such application shall consist of the  
13 following:

14 (a) Two application forms;

15 (b) A reclamation plan submitted with each of the  
16 applications;

17 (c) Five copies of an accurate map of the affected land  
18 submitted with each of the applications;

19 (d) The application fee.

20 (2) The application forms shall state:

21 (a) The legal description and area of affected land;

22 (b) The owner of the surface of the area of affected land;

23 (c) The owner of the substance to be mined;

24 (d) The source of the applicant's legal right to enter and  
25 initiate a mining operation on the affected land;

26 (e) The address and telephone number of the general office  
27 and the local address and telephone number of the applicant;

1 (f) Whether the applicant or any affiliated person holds  
2 or has held any other permits under this article, and an  
3 identification of such permits and whether the applicant or any  
4 affiliated person has forfeited a reclamation bond in any other  
5 state or failed to meet any conditions of any previous mining  
6 permit.

7 (g) The detailed description of the method of mining to be  
8 employed;

9 (h) The size of the area to be worked at any one time;

10 (i) The timetable estimating the periods of time which will  
11 be required for the various stages of the mining operation.

12 (3) The reclamation plan shall be based upon provisions  
13 for, or satisfactory explanation of, all general requirements for  
14 the type of reclamation proposed to be implemented by the  
15 operator. The plan shall be based upon the advice of technically  
16 trained personnel experienced in that type of reclamation on  
17 mined lands and upon scientific knowledge from research in  
18 reclaiming and utilizing mined lands. Reclamation shall be  
19 required on all the affected land. The reclamation shall  
20 include:

21 (a) A description of which of the approved uses the  
22 operator proposes to achieve in the reclamation of the affected  
23 land, why each use was chosen, and the amount of acreage accorded  
24 to each;

25 (b) A description of how the reclamation plan will be  
26 implemented to meet the requirements of section 34-32-115;

27 (c) A proposed timetable indicating when and how the

1 reclamation plan shall be implemented;

2 (d) A description of how the reclamation plan will  
3 rehabilitate the surface disturbances affected by the mining  
4 operation. This description shall include but not be limited to  
5 the following factors: Natural vegetation, wildlife, water, air,  
6 and soil resources; and

7 (e) The map accompanying the reclamation plan shall include  
8 all of the land to be affected by all phases of the total scope  
9 of the mining operation. It shall indicate the following:

10 (I) The expected physical appearance of the area of the  
11 land affected, correlated to the timetable; and

12 (II) Portrayal of the proposed final land use for each  
13 portion of the affected lands.

14 (4) The accurate map of the affected lands shall:

15 (a) Be made by a registered land surveyor, professional  
16 engineer, or other qualified person.

17 (b) Identify the area which corresponds with the  
18 application;

19 (c) Show contiguous mining operations and contiguous  
20 surface owners;

21 (d) Be made to a scale of not more than one hundred feet to  
22 the inch and not less than six hundred sixty feet to the inch;

23 (e) Show the name and location of all creeks, roads,  
24 buildings, oil and gas wells and lines, and power and  
25 communication lines on the area of affected land and within two  
26 hundred feet of all boundaries of such area;

27 (f) Show the total area to be involved in the operation

1 including the area to be mined and the area of affected land;

2 (g) Show the topography of the area with contour lines of  
3 sufficient detail to portray the direction and rate of slope of  
4 the affected land in question;

5 (h) Indicate on a map or by a statement the general type,  
6 thickness, and distribution of soil over the area in question;

7 (i) Show the type of present vegetation covering the  
8 affected land.

9 (5) The reclamation plan shall also:

10 (a) Show by statement or map the depth and thickness of the  
11 ore body or deposit to be mined and the thickness and type of the  
12 overburden to be removed; and

13 (b) Show by statement or map the expected physical  
14 appearance of the area to be mined and the area of affected land  
15 correlated to the timetable required by paragraphs (i) of  
16 subsection (2) and (c) of subsection (3) of this section.

17 (6) (a) In determining the amount of surety to be required,  
18 the board shall consider factual information as to the magnitude,  
19 type, and costs of reclamation activities planned for the  
20 affected land and the nature, extent, and duration of the mining  
21 operation.

22 (b) In determining the form of surety to be provided by the  
23 operator if other than a bond, the board shall consider, with  
24 respect to the operator, such factors as his financial status,  
25 his assets within the state, his past performance on contractual  
26 agreements, and his facilities available to carry out the planned  
27 work. The operator shall supply evidence of financial

1 responsibility for all surety other than a bond.

2 (c) Liability of an operator under surety provisions shall  
3 continue until such time as released as to part, or in its  
4 entirety, by the board. In no case shall surety be held more  
5 than twelve months after completion of reclamation.

6 (d) Surety in an amount and form as determined by the board  
7 shall be provided by the operator prior to the issuance of a  
8 permit pursuant to section 34-32-110.5.

9 (7) A basic fee of fifty dollars plus fifteen dollars for  
10 each acre or fraction thereof of the area of affected land shall  
11 be paid before the processing of the application begins and shall  
12 accompany the application. In the event of permit denial,  
13 seventy-five percent of the fee shall be refunded.

14 (8) All reclamation is to be completed within five years  
15 after the date the operator advises the board that reclamation  
16 has commenced as provided in the introductory portion of section  
17 34-32-115 (1) (r); except that such period may be extended by the  
18 board upon a finding that additional time is necessary for the  
19 completion of the terms of the reclamation plan.

20 (9) An operator may, within the term of a permit, apply to  
21 the board for a permit renewal or for an amendment to the permit  
22 increasing or decreasing the acreage to be affected or otherwise  
23 revising the mining operation. Where applicable, there shall be  
24 filed with any application for amendment a map and application  
25 with the same content as required for an original application.  
26 The application shall be accompanied by a basic fee of ten  
27 dollars plus a fee of fifteen dollars for each new acre or



1 fraction thereof by which the original area is to be increased  
2 and a supplemental surety, as determined by the board, for such  
3 additional acreage. In no case, shall the renewal or amendment  
4 fee be less than one hundred dollars. If the area of the  
5 original application is reduced, the amount of the surety, as  
6 determined by the board, shall proportionately be reduced.  
7 Renewal applications shall contain the information required in  
8 the original application if different from that in the original  
9 application or renewal. The renewal permit shall show the area  
10 mined or disturbed and the area reclaimed since the original  
11 permit or the last renewal. Applications for renewal or  
12 amendment of a permit shall be reviewed by the board in the same  
13 manner as applications for new permits.

14 (10) Information provided the board in an application for a  
15 permit relating to the location, size, or nature of the deposit,  
16 or information required by section 34-32-111 (5) (a) and marked  
17 confidential by the operator shall be protected as confidential  
18 information by the board and not be a matter of public record in  
19 the absence of a written release from the operator, or until such  
20 mining operation has been terminated.

21 (11) (a) Upon the filing of his application for a permit  
22 with the board, the applicant shall file a copy of such  
23 application for public inspection at the office of the board and  
24 in the office of the county clerk and recorder of the county in  
25 which the affected land is located. The information exempted by  
26 subsection (10) of this section may be deleted from such file  
27 copies.

1           (b) The applicant shall cause notice of the filing of his  
2 application to be published in a newspaper of general circulation  
3 in the locality of the proposed mining operation once a week for  
4 four consecutive weeks commencing not more than ten days after  
5 the filing of his application with the board. Such notice shall  
6 contain information regarding the identity of the applicant, the  
7 location of the proposed mining operation, the proposed dates of  
8 commencement and completion of the operation, the proposed future  
9 use of the affected land, the location where additional  
10 information about the operation may be obtained, and the location  
11 and final date for filing objections with the board.

12           (c) In addition, the applicant shall mail a copy of such  
13 notice immediately after first publication to all owners of the  
14 surface rights of the affected land, to the owners of the surface  
15 and mineral rights of immediately adjacent lands, and to any  
16 other persons who are owners of record which might be affected by  
17 the proposed mining operation. Proof of such notice and mailing  
18 shall be provided the board and become part of the application.

19           34-32-112. Prospecting notice - reclamation requirements.

20           (1) Any person desiring to conduct prospecting shall, prior to  
21 entry upon the lands, file with the board a notice of intent to  
22 conduct prospecting operations on a form approved by the board.

23           (2) The notice form shall contain the following:

24           (a) The name of the person or organization doing the  
25 prospecting;

26           (b) A statement that prospecting will be conducted pursuant  
27 to the terms and conditions listed on the approved form;

1 (c) A brief description of the type of operations which  
2 will be undertaken;

3 (d) A description of the lands to be prospected by township  
4 and range;

5 (e) An approximate date of commencement of operations.

6 (3) Upon filing the notice of intent to conduct  
7 prospecting, the person shall post surety in an amount not to  
8 exceed two thousand dollars per acre of the land to be disturbed,  
9 or posts a surety of fifty thousand dollars for statewide  
10 prospecting.

11 (4) Upon completion of the prospecting, there shall be  
12 filed with the board a notice of completion of prospecting  
13 operations. Within ninety days after the filing of the notice of  
14 completion, the board shall notify the person who had conducted  
15 the prospecting operations of the steps necessary to reclaim the  
16 land and any measures that must be taken to rectify any damage to  
17 the land.

18 (5) The board shall inspect the lands prospected within  
19 thirty days after the person prospecting the lands completes the  
20 reclamation and notifies the board that the reclamation is  
21 finished. If the board finds the reclamation satisfactory, the  
22 board shall release the surety.

23 (6) The surety shall not be held for more than thirty days  
24 after the completion of the reclamation.

25 34-32-113. Protests and petitions for a hearing. Any  
26 person has the right to file written objections to an application  
27 for a permit with the board. Such protests or petitions for a

1 hearing shall be timely filed with the board not more than twenty  
2 days after the date of last publication of notice pursuant to  
3 section 34-32-111 (11). For good cause shown, the board, in its  
4 discretion, may hold a hearing on the question of whether the  
5 permit should be granted.

6 34-32-114. Action by board - appeals. (1) Upon receipt of  
7 an application for a permit and all fees due from the operator,  
8 the board shall set a date for the consideration of such  
9 application not more than ninety days after the date of filing.  
10 At that time the board shall approve or deny the application or,  
11 for good cause shown, hold a hearing on the question of whether  
12 the permit should be granted. If objections are filed without  
13 reasonable cause therefor, the board in its discretion may order  
14 the losing party to pay the attorney's fees and costs incurred by  
15 the applicant in dealing with such objections.

16 (2) Prior to the holding of any such hearing, the board  
17 shall provide notice to any person previously filing a protest or  
18 petition for a hearing pursuant to section 34-32-113, and publish  
19 notice of the time, date, and location of the hearing in a  
20 newspaper of general circulation in the locality of the proposed  
21 mining operation once a week for two consecutive weeks  
22 immediately prior to the hearing. The hearing shall be conducted  
23 as a proceeding pursuant to article 4 of title 24, C.R.S. 1973.  
24 A final decision on the application shall be made within one  
25 hundred twenty days of the receipt of the application.

26 (3) The board shall complete its agenda at each meeting  
27 scheduled. Even if considerations extend into a second or third

1 day, the board shall continue until its agenda is complete. At  
2 the discretion of the board various items on the agenda may be  
3 shifted in order to facilitate speedier consideration. Final  
4 decision on the application shall be made at the time the  
5 considerations of the board are complete. If action upon the  
6 application is not completed within the one hundred twenty day  
7 period specified above, the permit shall be considered to be  
8 approved and shall be promptly issued upon presentation by the  
9 applicant of surety in the amount of two thousand dollars per  
10 acre affected.

11 (4) The board shall grant a permit to an operator if the  
12 application complies with the requirements of this article and  
13 all applicable local, state, and federal laws. The board shall  
14 not deny a permit except for one or more of the following  
15 reasons:

16 (a) The application is incomplete.

17 (b) The applicant has not paid the required fee.

18 (c) Any part of the proposed mining operation, reclamation  
19 program, or the proposed future use is contrary to the law or  
20 regulation of this state or the United States.

21 (d) The mining operation will adversely affect the  
22 stability of any significant, valuable, and permanent man-made  
23 structures located within two hundred feet of the affected land,  
24 except where there is an agreement between the operator and the  
25 persons having an interest in the structure that damage to the  
26 structure is to be compensated for by the operator.

27 (e) The mining operation would be in violation of any city,

1 town, county, or city and county zoning or subdivision  
2 regulations, or contrary to any master plan for extraction  
3 adopted pursuant to section 34-1-304.

4 (f) The mining operation is located upon lands within:

5 (I) the boundaries of units of the state park system, the  
6 national park system, the national wildlife refuge system, the  
7 national system of trails, the national wilderness preservation  
8 system where mining operations are prohibited, the wild and  
9 scenic rivers system, and state and national recreation areas, or  
10 the boundaries of any state forest, and if mining operations are  
11 specifically prohibited in such areas by federal or state  
12 regulation or statute; and

13 (II) The boundaries of any local government recreational  
14 facility established pursuant to article 7 of title 29, C.R.S.  
15 1973.

16 (g) The proposed mining operation and reclamation could in  
17 no way be carried out in conformance with the requirements of  
18 section 34-32-115.

19 34-32-115. Duties of operator. (1) Every operator to whom  
20 a permit is issued pursuant to the provisions of this article may  
21 engage in the mining operation upon the affected lands described  
22 in the permit, upon the performance of and subject to the  
23 following requirements with respect to such lands:

24 (a) On or before July 1 of each year, the operator shall  
25 submit a reclamation plan and map showing the affected land and  
26 other pertinent details, such as roads and access to the area,  
27 and reclamation accomplished. All maps shall show

1 quarter-section, section, township, and county lines within the  
2 scope of the map, access to the area from the nearest public  
3 road, a meridian, a title containing the name of the operator and  
4 his address, the scale of the map, the name of the person or  
5 engineer who prepared the map, the date, and the township, range,  
6 and county. The reclamation plan prepared by the operator shall  
7 be based upon provisions for, or satisfactory explanation of, all  
8 general requirements for the type of reclamation chosen. The  
9 details of the plan shall be appropriate to the type of  
10 reclamation designated by the operator and based upon the advice  
11 of technically trained personnel experienced in that type of  
12 reclamation on affected lands and upon scientific knowledge from  
13 research in reclaiming and utilizing such lands.

14 (b) Grading, if part of the reclamation, shall be carried  
15 on by striking off ridges to a width of not less than fifteen  
16 feet at the top and peaks to a width of not less than fifteen  
17 feet at the top or as otherwise approved by the board. In all  
18 cases, an even or gently undulating skyline will be a major  
19 objective.

20 (c) Earth dams shall be constructed in final cuts of all  
21 operations, where practicable, if necessary to impound water, if  
22 the formation of such impoundments will not interfere with mining  
23 operations or damage adjoining property.

24 (d) Acid-forming material in the exposed face of a mineral  
25 seam that has been mined shall be covered with earth or spoil  
26 material to a depth which will protect the drainage system from  
27 pollution, unless covered with water to a depth of not less than

1 four feet.

2 (e) All refuse shall be disposed of in a manner that will  
3 control stream pollution, unsightliness, or deleterious effects  
4 from such refuse, and water from the mining operation shall be  
5 diverted in a manner designed to control siltation, erosion, or  
6 other damage to streams and natural watercourses.

7 (f) In those areas where revegetation is part of the  
8 reclamation plan, land shall be revegetated in such a way to  
9 establish a diverse, effective, and long-lasting vegetative cover  
10 that is indigenous to the affected land, capable of  
11 self-regeneration, and at least equal in extent of cover to the  
12 natural vegetation of the surrounding area. Native species  
13 should receive first consideration, but introduced species may be  
14 used in the revegetation process when found desirable by the  
15 board.

16 (g) Where it is necessary to remove overburden in order to  
17 mine the mineral, topsoil shall be removed from the affected land  
18 and segregated from other spoil. If such topsoil is not replaced  
19 on a backfill area within a time short enough to avoid  
20 deterioration of the topsoil, vegetative cover or other means  
21 shall be employed so that the topsoil is preserved from wind and  
22 water erosion, remains free of any contamination by other acid or  
23 toxic material, and is in a usable condition for sustaining  
24 vegetation when restored during reclamation. If, in the  
25 discretion of the board, such topsoil is of insufficient quantity  
26 or of poor quality for sustaining vegetation, or if other strata  
27 can be shown to be more suitable for vegetation requirements, the



1 operator shall remove, segregate, and preserve in a like manner  
2 such other strata which is best able to support vegetation.

3 (n) Disturbances to the prevailing hydrologic balance of  
4 the affected land and of the surrounding area and to the quality  
5 and quantity of water in surface and ground water systems both  
6 during and after the mining operation and during reclamation  
7 shall be minimized.

8 (i) Areas outside of the affected land shall be protected  
9 from slides or damage occurring during the mining operation and  
10 reclamation.

11 (j) All surface areas, including spoil piles, affected by  
12 the mining operation and reclamation shall be stabilized and  
13 protected so as to effectively control erosion and attendant air  
14 and water pollution.

15 (k) On all affected land, the operator, subject to the  
16 approval of the board, shall determine which parts of the  
17 affected land shall be reclaimed for forest, range, crop,  
18 horticultural, homesite, recreational, industrial, or other uses,  
19 including food, shelter, and ground cover for wildlife. Prior to  
20 approving any new reclamation plan or approving a change in any  
21 existing reclamation plan as provided in this section, the board  
22 shall confer with the local board of county commissioners and the  
23 board of supervisors of the soil conservation district if the  
24 mining operation is within the boundaries of a soil conservation  
25 district. Reclamation shall be required on all the affected  
26 land.

27 (l) If the operator's choice of reclamation is forest

1 planting, he may, with the approval of the department, select the  
2 type of trees to be planted. Planting methods and care of stock  
3 shall be governed by good planting practices. If the operator is  
4 unable to acquire sufficient planting stock of desired tree  
5 species from the state or elsewhere at a reasonable cost, he may  
6 defer planting until planting stock is available to plant such  
7 land as originally planned, or he may select an alternate method  
8 of reclamation.

9 (m) The operator shall construct fire lanes or access roads  
10 when necessary through the area to be planted. These lanes or  
11 roads shall be available for use by the planting crews, and shall  
12 serve as a means of access for supervision and inspection of the  
13 planting work.

14 (n) On lands owned by the operator, the operator may permit  
15 the public to use the same for recreational purposes, in  
16 accordance with the limited landowner liability law contained in  
17 article 41 of title 33, C.R.S. 1973, except in areas where such  
18 use is found by the operator to be hazardous or objectionable.

19 (o) If the operator's choice of reclamation is for range,  
20 he shall strike off all the peaks and ridges to a width of not  
21 less than fifteen feet, in accordance with the other requirements  
22 of this article, prior to the time of seeding. To the greatest  
23 extent possible, the affected land shall be restored to slopes  
24 commensurate with the proposed land use and shall not be too  
25 steep to be traversed by livestock, subject to the approval of  
26 the board. The legume seed shall be properly inoculated in all  
27 cases. The area may be seeded either by hand, power, or the

1 aerial method. The species of grasses and legumes and the rates  
2 of seeding to be used per acre shall be determined primarily by  
3 recommendations from the agricultural experiment stations  
4 established pursuant to article 33 of title 23, C.R.S. 1973, and  
5 experienced reclamation personnel of the operator, after  
6 considering other research or successful experience with range  
7 seeding. No grazing shall be permitted on reclaimed land until  
8 the planting is firmly established. The board in consultation  
9 with the landowner and the local soil conservation district, if  
10 any, shall determine when grazing may start.

11 (p) If the operator's choice of reclamation is for  
12 agricultural or horticultural crops which normally require the  
13 use of farm equipment, the operator shall grade off peaks and  
14 ridges and fill valleys, except the highwall of the final cut, so  
15 that the area can be traversed with farm machinery. Preparation  
16 for seeding or planting, fertilization, and seeding or planting  
17 rates shall be governed by general agricultural and horticultural  
18 practices, except where research or experience in such operations  
19 differs with these practices.

20 (q) If the operator's choice of reclamation is for the  
21 development of the affected area for homesite, recreational,  
22 industrial, or other uses, including food, shelter, and ground  
23 cover for wildlife, the basic minimum requirements necessary for  
24 such reclamation shall be agreed upon by the operator and the  
25 board.

26 (r) All reclamation provided for in this section shall be  
27 carried to completion by the operator with all reasonable

1 diligence and shall be completed prior to the expiration of five  
2 years after the date on which the operator advises the board that  
3 reclamation work has commenced, unless such period is extended by  
4 the board pursuant to section 34-32-110 (8), except that:

5 (I) No planting of any kind shall be required to be made on  
6 any affected land being used or proposed to be used by the  
7 operator for the deposit or disposal of refuse until after the  
8 cessation of operations productive of such refuse, or proposed  
9 for future mining, or within depressed haulage roads or final  
10 cuts while such roads or final cuts are being used or made, or  
11 any area where permanent pools or lakes have been formed;

12 (II) No planting of any kind shall be required on any  
13 affected land, so long as the chemical and physical  
14 characteristics of the surface and immediately underlying  
15 material of such affected land are toxic, deficient in plant  
16 nutrients, or composed of sand, gravel, shale, or stone to such  
17 an extent as to seriously inhibit plant growth and such condition  
18 cannot feasibly be remedied by chemical treatment, fertilization,  
19 replacement of overburden, or like measures. Where natural  
20 weathering and leaching of any of such affected land, over a  
21 period of ten years after the end of the year in which mining was  
22 completed thereon, fails to remove the toxic and physical  
23 characteristics inhibitory to plant growth or if, at any time  
24 within such ten-year period, the board determines that any of  
25 such affected land is, and during the remainder of said ten-year  
26 period will be, unplatable, the operator's obligations under the  
27 provisions of this article with respect to such affected land

1 may, with the approval of the board, be discharged by reclamation  
2 of an equal number of acres of land previously mined and owned by  
3 the operator not otherwise subject to reclamation under this  
4 article. With the approval of the board and the owner of the  
5 land to be reclaimed, the operator may substitute an equal number  
6 of acres of land previously mined and owned by the operator not  
7 otherwise subject to reclamation under this article. Or in the  
8 alternative, with approval of the board and the owner of the  
9 land, reclamation of an equal number of acres of any lands  
10 previously mined but not owned by the operator if the operator  
11 has not previously abandoned unclaimed mining lands. The board  
12 also has authority to grant in the alternative the reclamation of  
13 lesser or greater acreage so long as the cost of reclaiming such  
14 acreage is equivalent to the cost of reclaiming the original  
15 permit lands. If any area is so substituted, the operator shall  
16 submit a map of the substituted area, which map shall conform to  
17 all of the requirements with respect to other maps required by  
18 this article. Upon completion of reclamation of the substituted  
19 land, the operator shall be relieved of all obligations under  
20 this article with respect to the land for which substitution has  
21 been permitted.

22 (III) Reclamation may be completed in phases and the five  
23 year period may be applied separately to each phase as it is  
24 commenced during the life of the mine.

25 34-32-116. Surety of operator - amount - sufficiency of  
26 surety - violations - compliance. (1) Any surety required under  
27 this article to be filed by the operator shall be in such form as

1 the board prescribes, payable to the state of Colorado,  
2 conditioned that the operator shall faithfully perform all  
3 requirements of this article and comply with all rules and  
4 regulations made in accordance with the provisions of this  
5 article. Such surety shall be signed by the operator as  
6 principal and, if required, by a good and sufficient corporate  
7 surety authorized to do business in this state. The penalty of  
8 such surety shall be in such amount as the board deems necessary  
9 to insure the performance of the duties of the operator under  
10 this article with respect to the affected land. If a county or  
11 municipality requires, in the opinion of the board, an adequate  
12 reclamation plan and a surety sufficient to carry out that plan,  
13 evidence of such plan and surety shall be acceptable to the  
14 board. In lieu of such surety, the operator may deposit cash and  
15 government securities with the board in an amount equal to that  
16 of the required surety on conditions as prescribed in this  
17 subsection (1). In the discretion of the board, surety  
18 requirements may also be fulfilled by using existing reclaimed  
19 areas if owned by the operator in excess of cumulative permit or  
20 mined acres that have been reclaimed under the provisions of this  
21 article and approved by the board. The penalty of the surety or  
22 amount of cash and securities shall be increased or reduced from  
23 time to time as provided in this article. Such surety or  
24 security shall remain in effect until the mined acreages have  
25 been reclaimed, approved, and released by the board.

26 (2) A surety filed as above prescribed shall not be  
27 cancelled by the surety without giving at least sixty days'

1 notice to the board prior to the anniversary date of its intent  
2 to limit exposure to existing circumstances as of the next  
3 anniversary date. In the event the surety is cancelled, the  
4 operator shall provide substitute surety covering operations or  
5 post cash surety in lieu thereof.

6 (3) If the license to do business in this state of any  
7 corporate surety upon a surety filed with the board pursuant to  
8 this article is suspended or revoked, the operator, within sixty  
9 days after receiving notice thereof from the board, shall  
10 substitute for such surety a good and sufficient corporate surety  
11 licensed to do business in the state. Upon failure of the  
12 operator to make substitution of surety, the board has the right  
13 to suspend the permit of the operator to conduct operations upon  
14 the land described in such permit until such substitution has  
15 been made.

16 (4) The board has the power to reclaim, in accordance with  
17 the provisions of this article, any affected land with respect to  
18 which a surety has been forfeited.

19 (5) Whenever an operator has completed all requirements  
20 under the provisions of this article as to any affected land or  
21 segment thereof, he shall notify the board in writing. If the  
22 board releases the operator from further obligations regarding  
23 such affected land, the penalty of the surety shall be reduced  
24 proportionately.

25 34-32-117. bond forfeiture proceedings - prerequisites -  
26 penalties. The attorney general, upon request of the board,  
27 shall institute proceedings to have the surety of the operator

1 forfeited for violation by the operator of an order entered  
2 pursuant to section 34-32-124. Before making such request of the  
3 attorney general, the board shall notify the operator in writing  
4 of the alleged violation of or noncompliance with such order and  
5 shall afford the operator the right to appear before the board at  
6 a hearing to be held not less than thirty days after the receipt  
7 of such notice by the operator. At the hearing the operator may  
8 present for the consideration of the board statements, documents,  
9 and other information with respect to the alleged violation.  
10 After the conclusion of the hearings, the board shall either  
11 withdraw the notice of violation or shall request the attorney  
12 general to institute proceedings to have the bond of the operator  
13 forfeited as to the land involved.

14 34-32-118. Operators - succession. (1) Where one operator  
15 succeeds another at any uncompleted operation, the board may  
16 release the first operator from all liability as to that  
17 particular reclamation operation and may release his bond as to  
18 such operation if:

19 (a) Both operators have been issued a permit with respect  
20 to the operation;

21 (b) Both operators are in full compliance with the  
22 requirements of this article as to all of their operations within  
23 this state; and

24 (c) The successor operator assumes, as part of his  
25 obligation under this article, all liability for the reclamation  
26 of the land affected by the operation, and his obligation is  
27 covered by an appropriate bond as to such affected land.



1           34-32-119. Permit refused defaulting operator. No permit  
2 for new mining operations shall be granted to any operator who is  
3 currently found to be in violation of the provisions of this  
4 article with respect to any operation in this state.

5           34-32-120. Entry upon lands for inspection. The board, the  
6 bureau of mines of the state of Colorado, the chief inspector of  
7 coal mines, or their authorized representatives may enter upon  
8 the lands of the operator at all reasonable times for the purpose  
9 of inspection to determine whether the provisions of this article  
10 have been complied with.

11           34-32-121. Fees and forfeitures - deposit. All fees and  
12 forfeitures collected under the provisions of this article shall  
13 be deposited in the general fund.

14           32-34-122. Operating without a permit - penalty. (1)  
15 Whenever an operator fails to obtain a valid permit under the  
16 provisions of this article, the board may issue an immediate  
17 cease and desist order. Concurrently with the issuance of such  
18 an order, the board may seek a restraining order or injunction  
19 pursuant to section 32-34-122 (7).

20           (2) Any operator who operates without a permit shall be  
21 subject to a civil penalty of not less than one hundred dollars  
22 per day nor more than one thousand per day during which such  
23 violation occurs.

24           32-34-123. Failure to comply with the conditions of an  
25 order, permit, or regulation - permit. (1) Whenever the board  
26 has reason to believe that there has occurred a violation of an  
27 order, permit, or regulation issued under the authority of this

1 article, written notice shall be given to the operator of the  
2 alleged violation. Such notice shall be served personally or by  
3 certified mail, return receipt requested, upon the alleged  
4 violator or his agent for service of process. The notice shall  
5 state the provision alleged to be violated, the facts alleged to  
6 constitute the violation and may include the nature of any  
7 corrective action proposed to be required.

8 (2) The board may require the alleged violator to appear  
9 before the board no sooner than twenty days after service of  
10 notice, except that an earlier date for hearing may be requested  
11 by the alleged violator.

12 (3) If a hearing is held pursuant to the provisions of this  
13 section, it shall be public. The board shall permit all parties  
14 to respond to the notice served, to present evidence and  
15 arguments on all issues, and to conduct cross-examination  
16 required for a full disclosure of the facts.

17 (4) Hearings held pursuant to this section shall be  
18 conducted in accordance with the provisions of the State  
19 Administrative Procedure Act.

20 (5) Upon a determination, after hearing, that a violation  
21 of permit provision has occurred, the board may suspend, modify,  
22 or revoke the pertinent permit.

23 (6) If the board determines that there exists any violation  
24 of any provision of this article or of any order, permit, or  
25 regulation issued or promulgated under authority of this article,  
26 the board may issue a cease and desist order. Such order shall  
27 set forth the provisions alleged to be violated, the facts

1 alleged to constitute the violation, and the time by which the  
2 acts or practices complained of must be terminated.

3 (7) In the event any operator fails to comply with a cease  
4 and desist order, the board may request the attorney general to  
5 bring a suit for temporary restraining order, preliminary  
6 injunction or permanent injunction to prevent any further or  
7 continued violation of such order. Suits under this section  
8 shall be brought in the district court where the alleged  
9 violation occurs. Emergencies shall be given precedence over all  
10 other matters pending in such court.

11 (8) Any person who violates any provision of any permit  
12 issued under this article or any final cease and desist order  
13 shall be subject to a civil penalty of not less than one hundred  
14 dollars per day nor more than one thousand dollars per day for  
15 each day during which such violation occurs.

16 SECTION 2. Article 22 of title 34, Colorado Revised  
17 Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to  
18 read:

19 34-22-105. Conflict with Colorado mined land reclamation  
20 act. Nothing in this article shall apply to any mining operation  
21 regarding reclamation of mined land which is regulated by the  
22 land reclamation board pursuant to article 32 of title 34, C.R.S.  
23 1973.

24 SECTION 3. Article 40 of title 34, Colorado Revised  
25 Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to  
26 read:

27 34-40-119. Conflict with Colorado mined land reclamation

1 ~~act.~~ Nothing in this article shall apply to any mining operation  
2 regarding reclamation of mined land which is regulated by the  
3 land reclamation board pursuant to article 32 of title 34, C.R.S.  
4 1973.

5 SECTION 4. Appropriation. There is hereby appropriated out  
6 of any moneys in the state treasury not otherwise appropriated,  
7 to the department of natural resources, for the fiscal year  
8 beginning July 1, 1976, the sum of one hundred and forty thousand  
9 dollars (\$140,000), or so much thereof as may be necessary for  
10 the implementation of this act.

11 SECTION 5. Effective date. This act shall take effect July  
12 1, 1976.

13 SECTION 6. 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.

COMMITTEE ON LOCAL GOVERNMENT

BILL 42

A BILL FOR AN ACT

1 ENACTING THE "LAND USE PLANNING AND URBAN SERVICE AREA ACT OF  
2 1976".

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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.)

Requires every county and municipality to jointly define the area where they will provide services, called the urban service area. Provides for regional commission review of and comment on such service areas. Requires counties to determine urban service areas for urbanized unincorporated areas not otherwise included in a service area. Authorizes the Colorado land use commission to review and comment thereon. Provides a redesignation procedure. Prevents annexations by a municipality of any land which is not totally within its urban service area.

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

4 SECTION 1. Title 29, Colorado Revised Statutes 1973, as  
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 22

7 Land Use Planning and Urban Service Area Act

8 29-22-101. Short title. This article shall be known and  
9 may be cited as the "Land Use Planning and Urban Service Area Act  
10 of 1976".

11 29-22-102. Legislative declaration. (1) The general

1 assembly hereby finds and declares that, in providing for planned  
2 and orderly growth throughout Colorado, the following objectives  
3 shall apply:

4 (a) Controlling local government boundary adjustments so as  
5 to avoid the disruptions which sometimes occur;

6 (b) Preserving local control over local planning decisions  
7 and avoiding unnecessary state or regional interference in the  
8 details of local efforts;

9 (c) Controlling urban development occurring in  
10 unincorporated areas and the resulting pressures that are placed  
11 on counties and taxpayers to furnish services to these areas;

12 (d) Controlling defensive annexations and questionable land  
13 use decisions when a developer is able to negotiate between two  
14 or more local governments;

15 (e) Providing all essential urban services at the minimum  
16 cost to the taxpayer;

17 (f) Encouraging comprehensive planning while discouraging a  
18 case-by-case approach;

19 (g) Avoiding unnecessary proliferation of new  
20 municipalities and special districts;

21 (h) Preserving the environment and fragile natural areas;

22 (i) Controlling development in hazardous areas;

23 (j) Reducing urbanization pressures on our better  
24 agricultural lands;

25 (k) Conserving energy and reducing unnecessary travel; and

26 (l) Controlling and directing growth through a  
27 comprehensive planning process.

1           (2) The general assembly declares that, in light of the  
2 objectives stated in subsection (1) of this section, the  
3 provisions of this article are necessary and desirable, and, to  
4 these ends, this article shall be liberally construed; but  
5 nothing in this article shall be construed or interpreted to  
6 expand or limit the jurisdiction of the public utilities  
7 commission either inside or outside urban service areas.

8           29-22-103. Definitions. As used in this article, unless  
9 the context otherwise requires:

10           (1) "Aggrieved person" or "aggrieved party" means any  
11 interested person or interested party who entered the proceedings  
12 prior to the rendering of a decision by which such person was  
13 aggrieved.

14           (2) "Boundary adjustment" means annexation, consolidation,  
15 detachment, or disconnection of a municipality pursuant to  
16 article 2 of title 31, C.R.S. 1973, incorporation or  
17 reorganization pursuant to article 2 of title 31, C.R.S. 1973, or  
18 formation or extension of a special district pursuant to part 2  
19 of article 1 of title 32, C.R.S. 1973, or other applicable law.

20           (3) "Commission" or "state commission" means the Colorado  
21 land use commission.

22           (4) "Comprehensive plan" means a statement in words, maps,  
23 illustrations, or other media of communication setting forth  
24 policies and objectives to guide public decisions in social,  
25 economic, and environmental matters. For the purposes of this  
26 article, a "comprehensive plan" shall incorporate, but not be  
27 limited to, the provisions of section 29-22-109.

1           (5) "Governing body" means the board of county  
2 commissioners of a county or the city council or board of  
3 trustees of a city, city and county, or town.

4           (6) "Interested person" or "interested party" means any  
5 person who has filed notice in writing, with the appropriate  
6 governing body, at least three days prior to a hearing of its  
7 intent to enter the proceedings.

8           (7) "Municipality" means a statutory city or town, a home  
9 rule city, town, or city and county, or a territorial charter  
10 city. Wherever reference is made to action by a municipality,  
11 authority to act shall be vested in its governing body or in its  
12 designee.

13           (8) "Notice" means written notification by registered or  
14 certified mail, which notice shall be effective upon being  
15 deposited and properly addressed, return receipt requested with  
16 postage prepaid.

17           (9) "Person" means any individual, partnership,  
18 association, or corporation and may include agencies and  
19 organizations of the federal government.

20           (10) "Political subdivision" means a regional commission,  
21 county, city and county, city, town, service authority, school  
22 district, local improvement district, law enforcement authority,  
23 water, sanitation, fire protection, metropolitan, irrigation,  
24 drainage, or other special district, or any other kind of  
25 municipal, quasi-municipal, or public corporation organized  
26 pursuant to law. The definition of an entity as a political  
27 subdivision pursuant to this article shall not be construed as



1 conferring on a regional commission or any other entity the legal  
2 status of a political subdivision.

3 (11) "Regional commission" means the regional planning  
4 commission or the council of governments which has been  
5 designated by the governor to provide a review of applications of  
6 local governments for federal financial assistance for a regional  
7 planning and management district.

8 (12) "Service" or "services" means any service provided by  
9 a political subdivision, but does not include the provision of  
10 electricity or natural gas.

11 (13) "Special district" means any quasi-municipal political  
12 subdivision of the state formed or operating pursuant to article  
13 3 of title 32 or part 1 of article 4 of title 32, C.R.S. 1973.

14 29-22-104. Responsibilities of municipalities in defining  
15 proposed urban service areas. (1) Not more than twelve months  
16 after the effective date of this article, each municipality, as a  
17 part of its comprehensive plan, shall prepare and submit to the  
18 county or counties in which its proposed urban service area is  
19 located the proposal for its urban service area, consisting of  
20 all territory within its boundaries together with any contiguous  
21 territory which it determines should be included within its  
22 service area. In preparing its proposal, each municipality shall  
23 consult with, and shall consider any relevant plans which have  
24 been adopted by, such county or counties.

25 (2) Accompanying the proposal specified in subsection (1)  
26 of this section shall be a written explanation of the reasons  
27 underlying the proposed urban service area, including reference

1 to the applicable provisions of section 29-22-109 and any other  
2 factors deemed relevant.

3 (3) In lieu of complying with the provisions of subsections  
4 (1) and (2) of this section, a municipality may elect to have the  
5 county or counties in which it is located prepare a proposal for  
6 an urban service area for the municipality after consultation by  
7 the county or counties with the municipality.

8 (4) If a municipality fails to comply with the provisions  
9 of subsections (1) and (2) or subsection (3) of this section, its  
10 proposed urban service area shall be deemed to include only the  
11 territory within its corporate boundaries.

12 29-22-105. Responsibilities of counties in defining and  
13 reviewing proposed urban service areas. (1) Not more than  
14 fifteen months after the effective date of this article, each  
15 county, as a part of its comprehensive plan, shall submit to the  
16 regional commission of the region in which it is located, to each  
17 municipality having a proposed urban service area within such  
18 county, and to the state commission the following:

19 (a) The proposal for an urban service area and explanatory  
20 reasons of each municipality, as submitted pursuant to section  
21 29-22-104 (1) and (2), together with any recommendation from the  
22 county for change in the proposed urban service area;

23 (b) The proposal for an urban service area of any  
24 municipality as prepared by the county pursuant to section  
25 29-22-104 (3); and

26 (c) Based upon information provided by such municipality,  
27 the territory included within the existing corporate boundaries

1 of any municipality in the county falling within the provisions  
2 of section 29-22-104 (4).

3 (2) No later than fifteen months after the effective date  
4 of this article, each county, as a part of its comprehensive  
5 plan, shall also prepare, adopt, and submit to the regional  
6 commission of the region in which it is located, to each  
7 municipality in such county, and to the state commission a  
8 proposal for an urban service area for each unincorporated  
9 urbanized area or proposed area of urbanization, if any, within  
10 the county which is not within a municipality or the proposed  
11 service area of a municipality.

12 (3) If a regional commission does not provide a review of  
13 applications of local governments for federal financial  
14 assistance for a regional planning and management district, the  
15 submissions required by this section shall be made directly to  
16 the state commission.

17 (4) Accompanying the submissions required by this section  
18 shall be a written explanation of the reasons underlying the  
19 urban service areas proposed by the county and any changes  
20 recommended by the county with respect to urban service areas  
21 proposed by any municipality, including reference to applicable  
22 provisions of section 29-22-109 and any other factors deemed  
23 relevant.

24 29-22-106. Responsibilities of regional commissions in  
25 reviewing proposed urban service areas. (1) No later than sixty  
26 days after receipt of the proposals and recommendations submitted  
27 pursuant to section 29-22-105, each regional commission shall

1 review and submit to each county and municipality within the  
2 regional planning and management district comments regarding the  
3 proposals for urban service areas which have been submitted by  
4 the municipalities and counties within the region.

5 (2) In making its comments, the regional commission shall  
6 place particular emphasis on reconciling any conflicts, which may  
7 exist in the plans and recommendations of the counties and  
8 municipalities, with existing regional plans and programs.

9 (3) Accompanying the submissions required by this section  
10 shall be a written explanation of the reasons underlying the  
11 recommendations of the regional commission, including reference  
12 to applicable provisions of section 29-22-109 and any other  
13 factors deemed relevant.

14 29-22-107. Responsibilities of state commission. (1) Upon  
15 receipt from each county of the proposals and recommendations  
16 submitted pursuant to section 29-22-105, the state commission  
17 shall proceed to review such proposals and recommendations in  
18 light of the standards and considerations provided in section  
19 29-22-109 and on the basis of the relevant provisions of part 2  
20 of article 65.1 of title 24, C.R.S. 1973.

21 (2) If the state commission decides that modification of  
22 the proposals and recommendations submitted by the counties and  
23 municipalities is desirable, the state commission, within sixty  
24 days of receipt of the proposals, shall submit to the governing  
25 bodies of the counties and municipalities written notification of  
26 its recommendations and shall specify in writing the  
27 modifications which the state commission deems appropriate. The

1 state commission shall place particular emphasis on reconciling  
2 any conflicts which may exist in the plans and recommendations of  
3 the counties and municipalities within the county.

4 (3) Upon receipt of the modifications recommended by the  
5 state commission, the governing body of counties and  
6 municipalities may incorporate such modifications in its proposed  
7 urban service area as it deems appropriate. In those cases where  
8 such modifications result in conflicts between the proposals  
9 submitted by counties and municipalities, such conflicts shall be  
10 reconciled as provided in section 29-22-108.

11 29-22-108. Designation of urban service areas. (1) Upon  
12 receipt of the proposals and recommendations submitted pursuant  
13 to section 29-22-105, each municipality having a proposed urban  
14 service area shall proceed to review such proposals and  
15 recommendations in light of the standards and considerations  
16 provided for in section 29-22-109. No later than eighteen months  
17 after the effective date of this article, such municipalities may  
18 submit written comment to the county regarding the proposed urban  
19 service areas as submitted by the county.

20 (2) In those cases where conflicts in the plans and  
21 recommendations of the counties and municipalities concerning the  
22 territory to be included in an urban service area exist, the  
23 governing bodies of the affected municipalities and the county  
24 shall promptly proceed to jointly reconcile these conflicts. The  
25 designated service area of each municipality shall include as a  
26 minimum all of the incorporated territory within its boundaries.

27 (3) No more than twenty-four months after the effective

1 date of this article, the county and the municipality shall  
2 jointly adopt a plan designating the boundaries of urban service  
3 areas throughout the county.

4 (4) Accompanying the final designation shall be a written  
5 explanation of the reasons underlying the urban service area  
6 designations, including reference to applicable provisions of  
7 section 29-22-109 and any other factors deemed relevant.

8 Option I

9 (5) If the provisions of subsection (2) of this section are  
10 not complied with, such noncompliance shall be considered  
11 malfeasance in office, and no member of the board of county  
12 commissioners of the county nor member of the governing body of  
13 the appropriate municipality shall be entitled to or earn any  
14 compensation for his services or receive any payment for salary  
15 or expenses; nor shall any member be eligible to succeed himself  
16 in office.

17 Option II

18 (5) (a) If the county and municipalities whose proposed  
19 urban service areas are in conflict fail to reconcile these  
20 conflicts as provided in subsection (2) of this section, the  
21 state commission may bring suit in the nature of mandamus.

22 (b) If satisfied that the governing bodies of the county  
23 and municipalities have not complied with the provisions of this  
24 section and that an agreement may not be reached within the  
25 immediate future, the court may make an appropriate order  
26 compelling the county and municipality to reach such an agreement  
27 within the time to be specified in the order. Upon failure to do

1 so, the governing bodies of the county and municipality will be  
2 held in contempt of court and shall be subject to the penalties  
3 provided by the laws of this state.

4 29-22-109. Criteria for designating urban service areas.

5 (1) In proposing, reviewing, or designating urban service areas,  
6 each municipality and county shall be guided by the following  
7 criteria:

8 (a) Local desires concerning the size and character of the  
9 community, including, but not limited to, the written or oral  
10 testimony received in conjunction with the hearings required in  
11 section 29-22-110;

12 (b) Economic considerations concerning minimum community  
13 size in order to provide desired community services, such as  
14 schools and medical, shopping, and recreational facilities;

15 (c) Ability and willingness to provide or make available  
16 adequate and economic water, sewer, police and fire protection  
17 and other urban services within a general time period or in  
18 accordance with a plan of phased or sequential development;

19 (d) Optimum size to provide adequate and economic urban  
20 services;

21 (e) Regional housing needs by type, quantity, and impact;

22 (f) School needs and impact;

23 (g) Regional transportation needs and impact;

24 (h) Natural and man-made barriers to expansion of urban  
25 areas or service within urban areas;

26 (i) Proximity of neighboring urban areas and the  
27 desirability, when practical, of retaining separate community

1 identities which exist because of geographic or historic  
2 considerations;

3 (j) Elimination or controlling of further urbanization in  
4 areas where such urbanization would be hazardous because of  
5 geological, climatic, topographic, or other hazardous conditions;  
6 and

7 (k) Need for maintenance of agricultural lands.

8 (2) In addition to the criteria provided in subsection (1)  
9 of this section, the following criteria shall apply to  
10 reconciling conflicts between proposed urban service areas or in  
11 determining whether a proposed boundary adjustment, pursuant to  
12 sections 29-22-113 and 29-22-114, should be approved:

13 (a) There should be a fair and equitable distribution of  
14 the costs of services and facilities among those who benefit  
15 therefrom.

16 (b) Any boundary adjustment should not unduly complicate  
17 local government organizational patterns.

18 (c) Annexation to an existing municipality should be  
19 preferred over incorporation of a municipality or formation or  
20 extension of a special district.

21 (d) Incorporation of a municipality or formation of a  
22 special district should require a clear and convincing  
23 demonstration of the need for such services and facilities as can  
24 only be provided through incorporation or by the formation of a  
25 special district.

26 (e) Any designation of urban service areas or any boundary  
27 adjustment should be consistent with prevailing and developing



1 community interests as evidenced by economic, environmental, and  
2 social factors.

3 (f) The proximity of the territory to a municipality and  
4 the extent to which residents of the territory use the  
5 employment, civic, social, religious, recreational, and  
6 commercial facilities of a municipality should be considered.

7 (g) The existence and provisions of any annexation  
8 agreements should be examined and incorporated, where practical,  
9 into the urban service area of the municipality who is a party to  
10 the agreement.

11 (h) Maintenance of open space between service areas should  
12 be encouraged.

13 29-22-110. Hearings. (1) A public hearing shall be held  
14 by the governing body of the municipality or county, as the case  
15 may be, prior to such a municipality or county defining a  
16 proposed urban service area and submitting recommendations  
17 thereon. A second public hearing shall be held jointly by the  
18 county and municipalities before finally designating the urban  
19 service areas.

20 (2) Published notice of the hearings shall be provided by  
21 the governing body in one or more newspapers of general  
22 circulation in their respective jurisdictions no later than  
23 thirty days prior to the hearings. In case of joint hearings,  
24 the costs of publication shall be paid proportionately by all  
25 participating governing bodies based upon each of the bodies  
26 share of the total population of the county. In addition, notice  
27 shall be provided not later than fifteen days prior to the

1 hearing to each affected municipality, county, and regional  
2 commission.

3 (3) Any interested party or political subdivision or any  
4 person may appear and be heard.

5 (4) All proceedings at the hearing shall be recorded by  
6 electronic or stenographic means, but proceedings need not be  
7 transcribed unless the subject under consideration at the hearing  
8 is appealed to the court of appeals.

9 (5) If a redesignation of an urban service area is proposed  
10 pursuant to section 29-22-111, a public hearing and notice  
11 thereof shall be provided in the manner provided by this section.

12 29-22-111. Redesignation of urban service areas. (1)  
13 Territory not included within an urban service area or territory  
14 within an existing urban service area may be redesignated by  
15 agreement between the county and municipality after review and  
16 recommendation from the applicable municipality or municipalities  
17 and county.

18 (2) Except as provided in this section, the criteria,  
19 considerations, and procedures for redesignation shall be  
20 substantially the same as those applicable to an original  
21 designation.

22 (3) Redesignation shall be made only if:

23 (a) There was significant error in the original  
24 designation;

25 (b) There has been a significant change in the character of  
26 the area; or

27 (c) There is a demonstrated need for additional, expanded,

1 or reduced urban service areas.

2 (4) Any proposal for additional or expanded urban service  
3 areas shall be accompanied by a plan for development of such  
4 areas.

5 29-22-112. Uses permitted in areas outside of urban service  
6 areas - hearing. (1) In areas outside of designated urban  
7 service areas, any of the following uses, whether alone or in  
8 conjunction with other uses listed within the same paragraph or a  
9 combination of paragraphs within paragraphs (a) through (f) of  
10 this subsection (1) shall be uses of right, subject to any county  
11 or other applicable restriction thereon:

12 (a) Forestry, farming, ranching, and other agricultural  
13 pursuits, including the use of greenhouses;

14 (b) Residential uses in connection with forestry, farming,  
15 ranching, and other agricultural pursuits;

16 (c) Extraction and processing of natural resources;

17 (d) Storage, sales, and delivery facilities for  
18 agricultural products or livestock;

19 (e) Public utility transmission lines, pipelines,  
20 underground facilities, substations, switching and regulatory  
21 stations, water supply and treatment works, and sewage collection  
22 and treatment works; and

23 (f) Commercial radio, television, and telephone towers.

24 (2) In areas outside of designated urban service areas, any  
25 of the following uses may be permitted as special exceptions,  
26 subject to any county or other applicable restriction thereon and  
27 to the provisions of subsection (3) of this section:

1 (a) Recreational uses, such as playgrounds, parks, golf  
2 courses, swimming areas, riding tracks and stables, ski trails,  
3 runs and lifts, target ranges, hiking trails, and similar  
4 facilities and uses; service buildings and support facilities  
5 directly related to such facilities and uses; and hotels, motels,  
6 lodges, guest ranches, and similar multifamily structures used as  
7 temporary dwellings by the vacationing public;

8 (b) Airports;

9 (c) Waste management sites;

10 (d) Single-family dwelling units of not less than five  
11 acres per unit designed for and used as seasonal vacation  
12 dwellings;

13 (e) Service facilities designed to serve the traveling  
14 public where there is a demonstrated need for such facilities  
15 which cannot be filled in existing designated urban service  
16 areas; and

17 (f) Governmental installations, other than those included  
18 in subsection (1) of this section.

19 (3) An application for a special exception permit shall be  
20 filed with the county or counties in which the proposed use is to  
21 be located in the form and manner and containing such information  
22 as may be required by the county. The county shall conduct a  
23 hearing on said application within forty-five days and shall post  
24 notice thereof for at least fifteen days preceding the hearing in  
25 a conspicuous location on the premises for which the application  
26 has been filed. In addition, written notice shall be provided  
27 not later than thirty days prior to the hearing to each

1 municipality within the county, to the appropriate regional  
2 commission, and to the state commission. Any interested person  
3 or party, including the state commission or political  
4 subdivision, or any person may appear at the hearing and be  
5 heard. The board of county commissioners shall either grant the  
6 special exception permit, grant it subject to stated conditions,  
7 or deny the application.

8 (4) In passing on a special exception application, the  
9 county shall grant the special exception permit, or it shall  
10 grant it subject to stated conditions only if the following  
11 standards are met:

12 (a) Granting thereof would not permit an urban use which  
13 would be contrary to the applicable provisions of section  
14 29-22-109;

15 (b) Granting thereof would not encourage urbanization of  
16 adjacent areas; and

17 (c) Granting thereof would not be contrary to any county or  
18 other applicable resolution or regulation.

19 (5) No later than thirty days following a grant or denial  
20 of a special exception permit, any aggrieved party or person,  
21 including a political subdivision, may seek judicial review in  
22 the district court for the judicial district in which the  
23 proposed use is to be located.

24 (6) In areas outside of designated urban service areas, all  
25 uses not set forth in subsections (1) and (2) of this section are  
26 prohibited.

27 (7) Except for a nonconforming use which may be continued

1 pursuant to section 29-22-116, any use or proposed use of  
2 property outside a designated urban service area which does or  
3 would violate this section may be enjoined by an action brought  
4 by the state commission, by the governing body of any county in  
5 which such use occurs or is proposed to occur, or by the  
6 governing body of any affected municipality.

7 29-22-113. Boundary adjustments within urban service areas.

8 (1) Any provision of law to the contrary notwithstanding, no  
9 municipality may annex territory which is not located entirely  
10 within the boundaries of its designated urban service area.  
11 Within its designated urban service area, a municipality may  
12 annex any territory eligible for annexation pursuant to the  
13 procedures and subject to the limitations provided in the state  
14 constitution and any applicable state law.

15 (2) Except as provided in section 31-12-107 (5), C.R.S.  
16 1973, a municipality may exercise its discretion in refusing to  
17 annex territory. A property owner within the urban service area  
18 of a municipality aggrieved by a refusal of a municipality to  
19 annex territory otherwise eligible for annexation may seek  
20 judicial review of such denial no later than forty-five days  
21 after the date of denial in the district court for the judicial  
22 district in which such territory is located. The denial of the  
23 annexation shall be sustained unless the court finds that, based  
24 upon the applicable provisions of section 29-22-109, refusal to  
25 annex was arbitrary and capricious. If refusal to annex is  
26 deemed to be arbitrary and capricious, the court shall afford the  
27 municipality a reasonable period of time in which to annex the

1 territory. Nothing in this subsection (2) shall be construed to  
2 preclude a municipality from exercising reasonable discretion in  
3 following a plan of phased or sequential development within its  
4 urban service area.

5 (3) Any provision of law to the contrary notwithstanding,  
6 no municipality may be incorporated if the boundary of the  
7 proposed municipality includes any territory within a designated  
8 urban service area of an existing municipality.

9 (4) (a) Any provision of law to the contrary  
10 notwithstanding, except as provided in paragraph (b) of this  
11 subsection (4), no special district may be formed or extended  
12 involving any territory located within the urban service area of  
13 a municipality unless such formation or extension is approved in  
14 writing by the municipality.

15 (b) Where a municipality is unable or unwilling to annex  
16 territory eligible for annexation pursuant to article 12 of title  
17 31, C.R.S. 1973, or is also unable or unwilling to provide the  
18 services proposed to be provided by the special district within  
19 either a reasonable period of time after written demand from  
20 property owners within its urban service area or in accordance  
21 with an adopted plan of phased or sequential development, the  
22 limitations of paragraph (a) of this subsection (4) shall not  
23 apply.

24 (5) Any provisions of law to the contrary notwithstanding,  
25 within any urban service area other than the urban service area  
26 of a municipality, no municipality may be incorporated or special  
27 district formed or extended without approval of the county. Said

1 incorporation, formation, or extension shall be denied unless the  
2 county finds that such boundary adjustment is consistent with the  
3 applicable provisions of section 29-22-109.

4 (6) No later than thirty days after a grant or denial of a  
5 boundary adjustment by a municipality or county, pursuant to  
6 subsections (4) or (5) of this section, any aggrieved party or  
7 person, including a political subdivision, may seek judicial  
8 review of the decision in the district court of the judicial  
9 district in which the proposed boundary adjustment is to occur.

10 29-22-114. Boundary adjustments outside of urban service  
11 areas. (1) Any provision of law to the contrary  
12 notwithstanding, no municipality shall be incorporated or  
13 territory annexed to a municipality which includes territory  
14 outside of designated urban service areas.

15 (2) Any provision of law to the contrary notwithstanding,  
16 no special district shall be formed or extended within any  
17 territory outside of designated urban service areas without  
18 approval of the county in which such territory is located. Said  
19 formation or extension shall be denied unless the county finds  
20 that such boundary adjustment is consistent with the applicable  
21 provisions of section 29-22-109 and will not encourage or result  
22 in urbanization within the affected territory.

23 (3) No later than thirty days after a grant or denial of a  
24 boundary adjustment by a county, any aggrieved party or person,  
25 including a political subdivision, may seek judicial review of  
26 the decision in the district court of the judicial district in  
27 which the proposed boundary adjustment is to occur.



1           29-22-115. Land use controls in urban service areas of  
2 municipalities. (1) At least twenty days prior to a hearing, if  
3 one is held, or prior to approval by a county of any zoning,  
4 rezoning, planned-unit development, subdivision, utility  
5 extension, or road, highway, or airport project over which the  
6 county has jurisdiction in an unincorporated urban service area  
7 of a municipality, the county shall refer the proposal to the  
8 municipality for its review and comment. Prior to acting on any  
9 such proposal, the county shall take into consideration any  
10 comments or recommendations submitted by the municipality within  
11 said twenty days.

12           (2) If the municipality fails to submit comments or  
13 recommendations or if the decision of the county is consistent  
14 with the comments or recommendations of the municipality, the  
15 county's decision shall be final.

16           (3) If the county approves a proposal over the objections  
17 of the municipality and if approval is inconsistent with the  
18 comprehensive plan of the municipality as it applies to the urban  
19 service area, the municipality may seek review of the decision in  
20 the district court of the judicial district in which the affected  
21 property is located no later than thirty days after the date of  
22 such approval. In reviewing the county's approval, the court  
23 shall consider the municipality's comprehensive plan for its  
24 urban service area and the applicable provisions of section  
25 29-22-109.

26           29-22-116. Nonconforming uses in areas which are not  
27 designated urban service areas. Any use of property outside of

1 an urban service area, which use was in existence at the time the  
2 urban service areas were designated pursuant to section  
3 29-22-108, may be continued as a nonconforming use,  
4 notwithstanding the fact that it is not a use of right or a  
5 permitted special exception recognized pursuant to section  
6 29-22-112. A subdivision which has been platted and approved  
7 prior to designation of the urban service areas pursuant to  
8 section 29-22-108 shall have nonconforming rights only where  
9 water and sewer services were available to the subdivision prior  
10 to such designation or where it can be shown that the water  
11 supply and the requirements for on-lot sewage disposal systems,  
12 as set forth in section 30-28-133, C.R.S. 1973, and in any  
13 applicable regulations therefore set forth by the state  
14 department of health and the state water engineer have been met  
15 prior to such designation. Any individual lot subdivided and  
16 owned by a person other than a subdivider prior to the effective  
17 date of this article may be improved for residential purposes,  
18 subject to any county or other applicable restrictions thereon,  
19 even though it has not been included within a designated urban  
20 service area.

21 29-22-117. Judicial review. (1) Any aggrieved person may  
22 obtain initial judicial review of a final designation pursuant to  
23 the provisions of this article only in the court of appeals.  
24 Such review shall be commenced by an action filed with the court  
25 of appeals no later than thirty days after the final  
26 administrative decision of the commission.

27 (2) No decision of a county or municipality pursuant to

1 this article shall be directly or collaterally questioned in any  
2 suit, action, or proceeding except as expressly authorized in  
3 this article.

4 (3) No decision of a county or municipality pursuant to  
5 this article is subject to judicial review unless all applicable  
6 administrative remedies pursuant to the provisions of this  
7 article have been exhausted.

8 (4) Any action for judicial review and any action for a  
9 declaratory judgment relating to this article shall be brought  
10 within the time limits specified in this article or shall be  
11 forever barred. All proceedings for judicial review shall be on  
12 the record and shall be limited to a determination as to whether  
13 the county or municipality or both, as the case may be, exceeded  
14 its jurisdiction or abused its discretion.

15 (5) All proceedings for judicial review brought pursuant to  
16 this article shall be advanced as a matter of immediate interest  
17 and concern and heard at the earliest practical moment.

18 (6) An appeal of a decision of the court of appeals to the  
19 supreme court shall be upon the record.

20 (7) In all other respects, judicial review of a decision of  
21 any county or municipality made pursuant to this article shall be  
22 pursuant to C.R.C.P. 106 (a) (4).

23 29-22-118. Restrictions - effective. No restriction on the  
24 use of land and no restriction on boundary adjustments contained  
25 in this article shall be effective until adoption of a  
26 designation plan pursuant to section 29-22-108.

27 29-22-119. Technical assistance - state agencies. Upon

1 request, appropriate state agencies shall provide technical  
2 assistance to counties and municipalities in the implementation  
3 of this article.

4 29-22-120. Boundary adjustment - action to enjoin. (1)  
5 Any incorporation of a municipality which is prohibited by this  
6 article may be enjoined by an action brought by the county in  
7 which such incorporation is proposed to occur or by any affected  
8 municipality.

9 (2) Any proposed boundary adjustment for which approval is  
10 required by this article but which is not obtained may be  
11 enjoined by an action brought by the county or municipality  
12 having authority to grant such approval.

13 SECTION 2. 13-4-102 (2), Colorado Revised Statutes 1973, as  
14 amended, is amended to read:

15 13-4-102. Jurisdiction. (2) The court of appeals shall  
16 have initial jurisdiction to review awards or actions of the  
17 industrial commission, as provided in articles 53 and 74 of title  
18 8, C.R.S. 1973, to review orders of the banking board granting or  
19 denying charters for new state banks as provided in article 2 of  
20 title 11, C.R.S. 1973, to review actions of the board of medical  
21 examiners in refusing to grant or in revoking or suspending a  
22 license or in placing the holder thereof on probation, as  
23 provided in section 12-36-119 (2), C.R.S. 1973, and to review  
24 actions of the board of dental examiners in refusing to issue or  
25 renew or in suspending or revoking a license to practice  
26 dentistry or dental hygiene as provided in section 12-35-115,  
27 C.R.S. 1973, AND TO REVIEW THE FINAL DESIGNATION OF URBAN SERVICE

1 AUTHORITIES AS PROVIDED IN SECTION 29-22-117, C.R.S. 1973.

2 SECTION 3. Part 1 of article 2 of title 31, Colorado  
3 Revised Statutes 1973, as amended, is amended BY THE ADDITION OF  
4 A NEW SECTION to read:

5 31-2-110. Approval required. Any provision of law to the  
6 contrary notwithstanding, effective upon adoption of a  
7 designation plan pursuant to section 29-22-108, C.R.S. 1973, no  
8 town or city may be incorporated under this part 1 unless the  
9 incorporation has been first approved pursuant to the provisions  
10 of article 22 of title 29, C.R.S. 1973.

11 SECTION 4. Part 1 of article 12 of title 31, Colorado  
12 Revised Statutes 1973, as amended, is amended BY THE ADDITION OF  
13 A NEW SECTION to read:

14 31-12-123. Approval required. Any provision of law to the  
15 contrary notwithstanding, effective upon adoption of a  
16 designation plan pursuant to section 29-22-108, C.R.S. 1973, no  
17 annexation or detachment under this article shall be effected  
18 unless the same has been approved pursuant to the provisions of  
19 article 22 of title 29, C.R.S. 1973.

20 SECTION 5. Article 3 of title 32, Colorado Revised Statutes  
21 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to  
22 read:

23 32-3-134. Approval required. Any provision of law to the  
24 contrary notwithstanding, effective upon adoption of a  
25 designation plan pursuant to section 29-22-108, C.R.S. 1973, no  
26 formation, consolidation, or dissolution and no inclusion or  
27 detachment of territory of a district under this article shall be

1 effected unless the same been approved pursuant to the provisions  
2 of article 22 of title 29, C.R.S. 1973.

3 SECTION 6. Part 1 of article 4 of title 32, Colorado  
4 Revised Statutes 1973, as amended, is amended BY THE ADDITION OF  
5 A NEW SECTION to read:

6 32-4-141. Approval required. Any provision of law to the  
7 contrary notwithstanding, effective upon adoption of a  
8 designation plan pursuant to section 29-22-108, C.R.S. 1973, no  
9 formation, consolidation, or dissolution and no inclusion or  
10 detachment of territory of a district under this article shall be  
11 effected unless the same has been approved pursuant to the  
12 provisions of article 22 of title 29, C.R.S. 1973.

13 SECTION 7. 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.

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

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COMMITTEE ON HEALTH, ENVIRONMENT,  
WELFARE, AND INSTITUTIONS

The two major areas of activity on which the HEWI committee concentrated were: Colorado Blue Cross-Blue Shield and nursing homes, with particular emphasis on alternatives to nursing home care. Nine bills are submitted, four bills relating to Blue Cross-Blue Shield and four bills relating to nursing homes. Another recommended bill concerns drug histories of patients and would apply to nursing homes and a number of other facilities and institutions.

Additional actions taken by and recommendations of the committee on topics involving Blue Cross-Blue Shield and nursing home reimbursement are reviewed in this report. This report also contains a recommendation that health facility certificate of need legislation be placed on the Governor's call for the 1976 session, although specific legislation is not included.

Part of the assignment of the HEWI committee was a review of state statutes pertaining to air pollution and the administration of these statutes. The committee did not have time to conduct this study this interim period.

Colorado Blue Cross-Blue Shield

Senate Bill 136 of the 1975 session directed that an interim study be conducted on a number of specified areas concerning non-profit hospital and health insurance corporations, with the study to be coordinated with a performance audit by the Legislative Audit Committee. The performance audit, however, was begun after several HEWI committee meetings and is not expected to be completed until early spring, 1976. Further efforts at coordination of information gathered by the two committee studies will need to be considered at that time.

Based on substantial information presented at five hearings relating to Blue Cross-Blue Shield, the committee submits four bills and also reports the action taken on administrative costs of handling claims.

Rate Filing Procedures -- Bill 43

This bill would make technical amendments to the article under which non-profit hospital and health service corporations are organized (Article 16 of Title 10, C.R.S. 1973). The amendments were suggested by the Office of Attorney General based on the rate hearings held last summer by the insurance commissioner relative to subscriber rate increases for the Blues.



Specifically, the bill would provide that the insurance commissioner could require, on his own motion, the filing of rate information. The time within which a hearing would need to be held would be lengthened from twenty to 40 days. Upon disapproval of an original filing and a subsequent refiling, the insurance commissioner would be given discretion to waive the requirements pertaining to public hearings.

#### Prospective Reimbursement -- Bill 44

Colorado statutes now provide that the Department of Health select, for both hospitals and nursing homes, not less than four nor more than eight institutions for pilot programs to test the concept of prospective reimbursement. Results of these projects are to be reported before July 1, 1977. Bill 44 would require that the number of hospitals under the pilot programs be set at eight.

On a related matter, the committee concluded that the standing HEWI committees need to be provided with periodic progress reports on the pilot programs. At the direction of the committee, a letter from the chairman to appropriate persons was prepared to help assure that the standing committees be given this information.

#### Audit of Fiscal Agent Under the Medical Assistance Act -- Bill 45

A conflict has existed for some years in regard to whether the state or the fiscal agent of the state, in this case, Colorado Blue Cross-Blue Shield, would assume the cost for overpayment, multiple payments, or fraudulent payments, under Title XIX, the Medicaid program. At the present time the agreement provides that the vendor does not assume this cost, so the cost of any overpayments are borne by the state.

Bill 45 would provide that an audit be made to determine the amount of financial loss due to administrative error in claim payments. The conclusion reached was that information on the amount of money involved and the types of problems which result in overpayment should be known before legislation to correct the situation is enacted. This bill would require an appropriation for a special audit of the claim payments, so that any problem of overpayment, multiple payments, or fraudulent payments could be evaluated.

#### Board of Directors - Blue Cross-Blue Shield -- Bill 46

Three amendments are submitted to existing statutes relating to the corporate organization of Colorado Blue Cross-Blue Shield. The amendments would apply to non-profit hospital and health service corporations which have an annual gross subscription income of over \$1,000,000, thus limited to the Blues. The three amendments are:

(a) The legislative intent section would express that members of the corporate board include representation from all economic income levels in the state.

(b) The terms of members of the board would be for a period not to exceed six years and all board members would need to be subscribers of a plan offered by the corporation.

(c) The names of potential appointees to the board, along with other information as requested, would be submitted to the insurance commissioner for his review and comment before appointment.

#### Activity Relating to Administrative Costs

Administrative costs for the handling of claims of Blue Cross were especially disturbing in two areas. The committee found that the company has substantially lower costs than the national average as fiscal agent for the Medicare program (\$4.64 - Colorado; \$6.01 - national in 1974), but experiences a higher than average unit cost per claim paid than the national average for the administration of claims for other programs paid for by Colorado subscribers (\$14.50 compared to \$11.58). In view of this inconsistency, the committee questioned whether Colorado subscribers are subsidizing the administrative costs of the Medicare program.

Further information supplied by the Blues indicated another trend that may also have serious consequences. The annual administrative cost for the operation of the Blue Shield programs has increased each year from \$5,669,973 (1969) to \$14,133,283 (1974). The payment of claims has also increased from \$41,138,655 in 1969 to \$76,895,387 in 1974. The problem noted is that claims were paid at a considerably lesser rate of increase than the increase in the rate of the administrative costs. A similar pattern of increases is found in regard to Colorado Blue Cross, although administrative costs of Blue Shield (\$14,133,283) compared with claims paid (\$76,895,387) appears to be a major problem for the corporation.

Two letters were approved by the committee in regard to administrative costs of processing claims by the Blues corporations, one to J. Richard Barnes, Commissioner of Insurance, and the second to John Proctor, State Auditor. In general, the letters reported on the difficulty in obtaining data for the time period requested and also on the trends of administrative costs which the available data showed.

It was recommended that these departments further pursue these concerns. The committee asked that the insurance division and the Legislative Audit Committee attempt to suggest methods of reducing administrative costs of the corporations.

## Institutional Health Care Requirements for Drug Histories - Bill 47

Information was received that drug histories are not systematically provided for patients who enter nursing homes and other institutions, even though this lack of information could result in serious consequences in drug treatment at the facility.

Bill 47 would require that the facilities listed in the act make a reasonable effort to obtain a history of all drugs prescribed for the person for a one-year period prior to admittance to the facility. Facilities that would need to comply with this requirement include the different categories of nursing homes, community-based group homes for the developmentally disabled, hospitals, and state homes for the aged and for the mentally retarded.

The Medical Practice Act would also be amended by a new section to require that medical doctors licensed under the act comply with the requirement for drug histories.

### Nursing Home Reimbursement

The adequacy of the level of reimbursement for nursing home care was of considerable concern to the committee. Since the level of state reimbursement for nursing homes is within the jurisdiction of the Joint Budget Committee and the state Department of Social Services, the committee prepared letters to these offices expressing concern in regard to the current system of reimbursement. The opinion of the committee was that private pay patients are subsidizing Medicaid patient care and that the reimbursement level from the state may not be adequate to cover services required and expected of nursing homes. The letter stated, in part, that "...the quality of patient care which we expect of nursing homes cannot be provided at the current reimbursement rate for some nursing homes."

Since the method of calculating the reimbursement of nursing homes is both complex and controversial, below is an explanation of and background information on the current procedure.

Reimbursement for skilled and intermediate care nursing homes is funded under Title XIX of the Social Security Act, the Medicaid program, and represents payment to the vendor for services rendered to the Medicaid recipient. Patients of nursing homes who receive Medicaid funds include the aged, blind, and disabled who have insufficient income and financial resources to meet the cost of necessary medical services.

State and federal governments subsidize the patient costs which are in excess of that which the patient is able to contribute. The federal government pays 54.69 percent of the costs in excess of the patient's contribution and the state government subsidizes 45.31 percent of such costs. The present state appropriation for skilled and

intermediate nursing care is approximately \$20.1 million of the combined state-federal appropriation of \$47.0 million. 1/

### The Reimbursement Formula

Colorado statutes provide that long-term care facilities shall be reimbursed for the actual or reasonable cost of services rendered, plus a reasonable allowance for profit, based on rules and regulations of the Department of Social Services (Section 26-4-110, C.R.S. 1973). The statute was amended in 1975 to specify that actual or reasonable cost is to include an allowance to compensate for fluctuating costs, based on the consumer price index of the U.S. Bureau of Labor Statistics (Chapter 247, 1975 Session Laws). The current reimbursements (including patient contributions) range from \$10.34 per patient day to a maximum of \$16.60 per patient day, with a weighted average reimbursement of \$15.65 per patient day. The long bill specifies that the overall average patient reimbursement, excluding patient contribution, cannot exceed \$12.25 per day. The average patient contribution is approximately \$3.65 per diem.

The reimbursement ceiling is determined on an annual basis, but the rate of reimbursement for individual facilities is recalculated every six months, based on two audits conducted by the department of each facility's cost reports. One audit is a "desk" audit of cost reports; the second audit is a field audit conducted at the facility.

The rationale for the six-month interval reporting periods and reimbursement adjustments is to provide reimbursement on the basis of actual costs, without having to make retroactive cost adjustments. In addition, the fluctuating cost allowance was established to provide an inflation factor between reporting periods.

The formula developed by the department determines the maximum reimbursement rate, to cover the costs for 90 percent of the patients in participating homes. Conversely, the costs for ten percent of the patients in participating facilities will not be fully covered by the Medicaid reimbursement. Both state and federal regulations also provide that the maximum Medicaid reimbursement rate cannot result in a weighted average payment which is greater than the weighted average Medicare payment for like services.

1/ The FY 1975 long bill also contains a \$921,435 appropriation for residential nursing homes with the state share approximately \$415,000. Under current federal Medicaid regulations, residential nursing homes are no longer reimbursable with federal Medicaid funds, according to the Department of Social Services.

Nursing homes cannot be reimbursed for amounts greater than the maximum annual reimbursement rate of \$16.60 per patient. Thus, facilities with patient costs equal to or greater than the maximum rate do not receive reimbursement for profit or fluctuating costs. Nursing homes which have lower costs than the annual reimbursement ceiling are reimbursed for patient costs, plus the profit and fluctuating cost allowances.

As mentioned previously, not all of the patient costs may be covered by the Medicaid reimbursement if a facility's patient costs exceed the maximum reimbursement. The intent of the reimbursement system, as stated by the department, is to "reimburse participating facilities for services rendered eligible recipients at the lowest cost possible and, at the same time, to attempt to give the facilities an incentive to control their costs." 2/

Questions relating to the formula for reimbursement, such as the determination of the profit allowance, the return on investments of nursing homes, and the earnings of nursing homes, were raised by committee members. The questions raised on these topics were not fully answered during the committee meetings but are of significant importance to require the development of further information.

#### Other Issues

The current maximum reimbursement rate of \$16.60 per patient day was set for the period from July 1, 1975, through December 31, 1975. The state Department of Social Services indicated that this reimbursement level was developed on the basis of a small portion of nursing home cost reports because the majority of the facilities with a six-month reporting period had not submitted their financial and statistical report in sufficient time to be included in this computation. The department stated: "Based on a survey (by the department), as of June 30, 1975, the maximum reimbursement that probably should have been in effect on July 1, based on the coverage of 90% of the Medicaid patients, would have been \$17.89 per patient day instead of the \$16.60 presently in use." 3/

2/ Memorandum to HEWI Committee from Mr. Willis LaVance, Financial Director, Department of Social Services, entitled "Colorado System of Medicaid Reimbursement to Long Term Care Facilities", p. 4.

3/ Memorandum transmitted to the HEWI Committee, "Establishment of the Schedule of Payments for Reimbursement to Nursing Homes Participating in the Colorado Medicaid Program", by Mr. Willis LaVance, Financial Director, Department of Social Service, p.2.

According to the department, the maximum reimbursement could not have been higher than \$16.60 because the total appropriation necessary for reimbursement of nursing homes had been underestimated. The appropriation for skilled and intermediate nursing homes for fiscal year 1976 is \$47,001,300, and the overall average patient cost, excluding patient contributions, is a maximum of \$12.25 per day. However, for fiscal year 1977, the Department of Social Services proposes to "...hold the total cost of nursing home care to the fiscal year 1975-76 level to encourage use of alternatives to nursing home care, believed to be more appropriate and more economical...This action will severely restrict the number of days of care available, since nursing home costs continue to rise." 4/

The Colorado Health Care Association, as representatives of the nursing home industry, conducted a survey of patient costs in nursing homes as of September 1, 1975. The association reported the audited cost for 90 percent of the patients to be \$17.72 per patient day, to which would be added the fluctuating cost allowance (presently 5.1 percent and a 70-cent allowance for profit. Under this calculation, the maximum allowance would total \$19.32, compared with the existing maximum reimbursement ceiling of \$16.60.

The method employed by the Department of Social Services to compute the maximum allowable cost, however, reduces the reimbursement necessary to cover 90 percent of the Medicaid patients by the profit and inflation factors, rather than add these two factors on to the patient costs at the ceiling rate.

The CHA is in disagreement with the formula in the subtraction of profit and fluctuating cost allowances from the maximum reimbursable cost. Furthermore, they are of the opinion that "Nursing homes are being reimbursed at a figure per day far below actual or reasonable costs in violation of our State nursing home reimbursement statute." 5/

#### Alternatives to Nursing Homes

One aspect of the committee's examination of the nursing home industry was the consideration of alternatives to nursing home care. The following statement from a representative of the Grey Panthers, an

4/ Colorado State Department of Social Services Budget: Program request, fiscal year 1976-1977, p. 13.

5/ Letter from Robert S. Eberhardt, Counsel for the Colorado Health Care Association to Mr. Tom Nussbaum, Governor's Office, September 29, 1975.

organization representing interests of the elderly, reflects the point of view of advocates of the development of programs which can allow persons to remain in their own homes or in other types of living arrangements, such as small group homes, which are alternatives to nursing homes.

One of the biggest concerns affecting older Americans is the desire to remain independent and avoid institutionalization in a nursing home unless absolutely necessary. Unfortunately, many older people are not able to maintain themselves in a completely independent living setting. They are, however, not completely dependent and in need of 24 hour nursing care provided by a nursing home. There is a very inadequate range of alternatives available for these people who are between the extremes of completely independent living and completely dependent nursing home living. 6/

The committee also received testimony from the executive directors and other representatives of the state Departments of Health, Institutions, and Social Services, regarding the need for alternatives to nursing home living. One of the objectives of these departments, through the Human Services Cabinet Council, will be to conduct home health care demonstration projects, tentatively in two local communities, under a waiver of Medicaid regulations which would permit use of Medicaid funds in providing long-term health care and other services to the elderly and disabled persons living at home. Current regulations prohibit Medicaid reimbursement for non-medical services and for long-term care in non-institutional settings.

The demonstration projects, similar to projects being conducted in Minneapolis, Minnesota, and La Crosse, Wisconsin, would establish local agencies called Community Care Organizations (CCO) which would be responsible for maintaining elderly and disabled persons in their homes, following an evaluation to determine the level of care needed. The CCO would normally contract with other agencies for specific services and the state would be responsible for auditing both the cost and the quality of services.

In recent years, care for elderly and disabled persons has been provided primarily in nursing homes and hospitals because public funds have been available for these types of institutional care. Home health care services and homemaker services are available, but some persons who testified before the committee questioned the adequacy of such services.

6/ Memorandum to the HEWI Committee from Anne Fenerty, entitled, "Alternatives to Nursing Homes - Home and Community Based Care for Elderly and Disabled People".

Local private agencies provide a range of services to varying degrees throughout the state, such as transportation and meals-on-wheels, to the elderly and disabled in their homes. However, these efforts are frequently uncoordinated. The CCO demonstration project would be directed at coordinating and supplementing services offered at the local level.

### Cost Benefit of Alternatives

Information presented to the committee from state departments indicated that many individuals currently residing in skilled and intermediate nursing homes may be receiving a higher level of care than is necessary. Based on preliminary research, the Department of Health estimated that, of the 15,100 persons residing in Colorado nursing homes, approximately 25 percent or 3,800 persons could benefit from alternative forms of care. It was also estimated that eleven percent of the state's elderly population, or 21,100 persons, who do not reside in institutions, are in need of in-home services, which services are presently inadequate.

Estimates were provided which illustrate the potential cost-saving benefits of using both home health care services and homemaker services as a substitute for nursing home care, when the level of care required by the patient would so permit.

Home health care. The Department of Health made two preliminary estimates on the potential cost savings which could be realized by reallocating those Medicaid funds which are presently used to support 25 percent of the nursing home population for use in home health care visitations. One estimate was based on a comparison of the state and federal Medicaid costs for 3,800 persons (25 percent) with the costs of providing home health care visits to 3,800 persons now in nursing homes and an additional 21,100 elderly persons who are not receiving institutional care but who are in need of health care. The estimate of the department was a cost savings of \$970,000, assuming that a Medicaid waiver could be obtained for long-term care.

The second estimate by the Department of Health was based on the alternative use of the state share of the Medicaid funds (about \$5,000,000) exclusively for the 25 percent of the nursing home population, without providing additional services to other elderly persons. It was estimated that under this plan there could be a net savings of over \$3 million.

Homemaker services. This program, under the Department of Social Services, provides housekeeping and other home maintenance services, as well as protective services, for the elderly or the disabled who are living in their own homes. The program is also designed to provide services to maintain family life and to safeguard the care of children. Funding is under the federal Title XX program, as are other local county social services, with the state Department of Social Services responsible for the allocation of funds and program oversight.



Reports received by the Department of Social Services from 25 counties for September, 1975, indicated that there was a cost savings with the homemaker program of over \$200,000 for that month, as compared with the cost of maintaining the same clients in nursing homes and hospitals.

The committee recommends four bills which would add to or supplement existing living arrangements for the elderly and disabled. The bills are summarized below.

#### Specialized Social Services -- Bill 48

Three changes would be made under this bill to the existing statutory procedures for state reimbursement of county social services and public assistance payments. First, transportation would be specified as a reimbursable social service under which counties would be eligible to receive state funds. The present matching formula for reimbursement of all authorized social services, unless otherwise specified, provides that the federal share of such costs is 75 percent, the county share is twenty percent, and the state share is five percent. Transportation has been identified as a major problem for the elderly and disabled, particularly in rural areas. The Division of Aging in the Department of Social Services had identified transportation as their first priority in planning services for the elderly.

The second provision of the bill is that the state would reimburse counties for all expenditures for homemaker services, contingent upon county demonstration that individuals have used homemaker services as a substitute for skilled and intermediate nursing homes and hospitals. This provision would encourage the development of homemaker services on a uniform basis throughout the state.

Finally, the bill would require county departments to provide, or contract for, a central information and referral service for all community-based alternatives to institutional care in an effort to reduce inappropriate placement of persons in institutions. The development of local information and referral services is also directed at the coordination of existing services at the local level.

#### Group Homes for the Aged -- Bill 49

This bill would declare that the establishment of state-licensed group homes for persons 60 years of age or older is a matter of state interest and that it is the policy of the state to encourage the development of alternatives to nursing homes.

It is further stated in the bill that the establishment of group homes which serve not more than eight persons of 60 years of age or older would be considered a residential use of property. This declaration of state policy would be directed toward preventing home

rule cities from adopting zoning restrictions which would preclude this use of property in some residential areas.

#### Adult Foster Care Homes -- Bill 50

In April, 1975, residential nursing homes were no longer reimbursable under federal Title XIX. In response to this development, a new non-health care classification of facilities, known as adult foster care facilities, was established by the Department of Social Services. The purpose of this new classification was to allow clients of residential nursing homes to receive federal Supplemental Security Income and Colorado supplemental payments.

Under Bill 50, adult foster care (AFC) would be defined as 24-hour supervision and care in a non-medical setting. The proposed definition would be broad enough to include homes for both elderly persons and developmentally disabled adults.

County social service or welfare departments presently place clients in AFC facilities under agreements between the county and the facility. These agreements cover the programs, physical facilities, and the level of care to be provided by the adult foster care facilities, but they do not constitute county licensure or certification of the homes, although the homes must meet local fire, safety, and sanitation regulations.

The state Department of Social Services, which reimburses counties for social service functions, promulgated "rules and procedures" in September, 1975, which pertain to county placement of clients in AFC facilities and the agreement between counties and the AFC facilities. In another provision of Bill 50, the committee recommends that the Department of Social Services be given specific statutory authority to establish rules and regulations relative to the operation of these facilities.

#### Group Homes for Developmentally Disabled -- Bill 51

The Department of Social Services is presently responsible for licensing and enforcing regulations for the operation of community group homes for the developmentally disabled (S.B. 135, 1975 session). Bill 51 would transfer responsibilities from the Department of Social Services to the Department of Institutions. This recommendation was made by the committee primarily because of the resources and expertise available in the Division for Developmental Disabilities of the Department of Institutions and was preceded by recommendations of the 1973 and 1974 HEWI committee interim studies.

Bill 51 would also amend the definition of community-based group homes for the developmentally disabled to state that such homes are non-medical residences which provide training and supervision to residents. The purpose of the amendment is to distinguish group homes

for the developmentally disabled from other medical model facilities, such as nursing homes.

The medical model for group homes is considered inappropriate by the Division of Developmental Disabilities and by the Colorado Association for Retarded Citizens because residents of the group homes do not require 24-hour skilled medical care. Instead, residents of group homes are in need of training and supervision. The objective is to provide non-institutional environments for the developmentally disabled.

### Health Facilities Certificate of Need

Late in the interim, the state Department of Health presented a draft bill which would make a number of substantive and procedural amendments to the "Colorado Certificate of Public Necessity Act" which pertains to health care facilities (Part 5, Article 3, Title 25, C.R.S. 1973). Changes in the Colorado act appear to be necessary because of federal legislation enacted in January, 1975 (PL 93-641) and provisions in the Social Security Act (Section 1122). The Health Facilities Advisory Council prepared the draft legislation but their recommendations will probably need further revision after the federal guidelines are completed.

Four areas of major changes noted by the Department of Health are quoted below in a statement received from the department:

- (1) Time limitations imposed on area-wide health planning agencies, the council, and the department in the original act have proven to be overly stringent and frequently unworkable. For example, the requirement that the Board of Health set a time and place for a hearing of an appeal within fifteen days after receiving the petition cannot be reconciled with the board's schedule of meetings once every thirty days.

Similarly, the area-wide councils find it impossible to make recommendations on applications within thirty days of receipt. The same objection pertains to the requirement that the council make recommendations within thirty days of receipt of applications from area-wide agencies. The council, like the board, meets once every thirty days. For these reasons changes are requested in the time limitations of the act.

- (2) A major change suggested in section 25-3-503 would modify the situations for which a certificate of need is required. Under the amendment, an expenditure of \$100,000 or more or one of the other five factors listed in the original act would necessitate the applications for a certificate.

- (3) The most difficult of all present provisions to comply with is section 25-3-510 (4) which requires that, in order for the council to reject an application for a certificate, it must find that there would be a significant over-capacity within the community of the type of facility involved, after completion of a project. This requirement frustrates the orderly review and consideration of applications, as otherwise provided for in the act. The amendments suggested would allow flexibility of judgment and discretion by the council in its deliberations and would make full-scale review of the applications by the area-wide planning agencies more effective and efficient.
- (4) Another suggestion would correct the deficiency in the so-called "grandfather" provision of the act. A completion date would be placed on construction, with plans received by May 30, 1973, to be commenced no later than July 1, 1976, and to be completed no later than July 1, 1977. Extensions could be granted for good cause.

The committee submits no recommendation in regard to the draft bill of the department. The amendments suggested in the draft bill will need careful and detailed consideration and they will be important and controversial matters when considered by the General Assembly. Since the committee did not have sufficient time for review of these proposals, but still considered them to be of considerable importance, the conclusion reached was that the topic be recommended for inclusion on the Governor's call for the 1976 session.

COMMITTEE ON HEWI

BILL 43

A BILL FOR AN ACT

1 CONCERNING RATING FILINGS OF NONPROFIT HOSPITAL AND HEALTH  
2 SERVICE CORPORATIONS.

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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.)

Authorizes the insurance commissioner, on his own motion, to require the filing of rate information. Authorizes the commissioner to waive the public inspection requirements when a refiling is made to remedy defects. Allows more time in which to prepare for a public hearing when such hearing is requested by a corporation.

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

4 SECTION 1. 10-16-126, Colorado Revised Statutes 1973, is  
5 amended BY THE ADDITION OF A SUBSECTION to read:

6 10-16-126. Filing of rating information. (4) The  
7 commissioner upon his own motion may require a corporation to  
8 file with him the information required by subsection (1) of this  
9 section.

10 SECTION 2. 10-16-127 (6), Colorado Revised Statutes 1973,  
11 is amended to read:

12 10-16-127. Filings - approval and disapproval -

1 publication. (6) If the commissioner disapproves a filing, he  
2 shall promptly give notice of such disapproval to the corporation  
3 that made the filing, stating the respects in which he finds the  
4 filing does not meet the requirements of this article. THE  
5 COMMISSIONER MAY DISPENSE WITH THE PUBLIC INSPECTION REQUIREMENTS  
6 OF THIS SECTION WHEN A REFILING IS MADE TO REMEDY DEFECTS FOUND  
7 BY THE COMMISSIONER. Once the commissioner approves a filing, he  
8 shall give prompt notice thereof to the corporation that made the  
9 filing, and the filing shall become effective upon such approval  
10 or upon such subsequent date as may be satisfactory to the  
11 commissioner and the corporation that made the filing. If the  
12 commissioner determines that the filing meets the requirements of  
13 this article and during the public inspection period no hearing  
14 is requested and subsequently ordered pursuant to subsection (7)  
15 of this section, then the filing shall be deemed approved by the  
16 commissioner.

17 SECTION 3. 10-16-128 (1), Colorado Revised Statutes 1973,  
18 is amended to read:

19 10-16-128. Hearing and judicial review. (1) When a public  
20 hearing is held, whether pursuant to section 10-16-127 (3) or  
21 (4), the commissioner shall give written notice thereof to the  
22 corporation that made the filing. A hearing pursuant to section  
23 10-16-127 (3) shall be held within twenty days after termination  
24 of the public inspection period provided for in section 10-16-127  
25 (2). A hearing pursuant to section 10-16-127 (4) shall be held  
26 within ~~twenty~~ FORTY days after placing of the filing for public  
27 inspection provided for in section 10-16-127 (4). In any case,

1 the commissioner shall give written notice of a hearing to the  
2 corporation that made the filing not less than ten days prior to  
3 the date of the hearing. The commissioner may also, in his  
4 discretion, give advance public notice of such hearing by  
5 publication of notice in one or more daily newspapers of general  
6 circulation in this state.

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

COMMITTEE ON HEWI

BILL 44

A BILL FOR AN ACT

1 CONCERNING PILOT PROGRAMS OF PROSPECTIVE REIMBURSEMENT BY  
2 NONPROFIT AND HEALTH SERVICE CORPORATIONS.

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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.)

Requires that eight hospitals participate in pilot programs for reimbursement on a prospective reimbursement basis.

---

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

4 SECTION 1. 10-16-131 (1), Colorado Revised Statutes 1973,  
5 is amended to read:

6 10-16-131. Pilot programs. (1) The department of health  
7 shall select no less than ~~four-nor-more-than~~ eight hospitals and  
8 no less than four nor more than eight nursing homes to  
9 participate, beginning with each selected hospital or nursing  
10 home's fiscal year beginning on or after January 1, 1974, and  
11 continuing through their fiscal year ending before July 1, 1977,  
12 in contracts to provide for reimbursement on a prospective  
13 reimbursement basis as provided in section 10-16-130. The  
14 Colorado hospital association and the Colorado health care



1 association shall present a list from which the department may  
2 select the participating hospital or nursing home. The  
3 participating hospital and nursing home shall be selected so as  
4 to represent a cross section of the state's population, various  
5 hospital and nursing home sizes operating at under capacity and  
6 capacity, and the variety of available hospital and nursing home  
7 services.

8 SECTION 2. 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.

COMMITTEE ON HEWI

BILL 45

A BILL FOR AN ACT

1 CONCERNING CONTRACTS FOR VENDOR PAYMENTS UNDER THE "COLORADO  
2 MEDICAL ASSISTANCE ACT", AND MAKING AN APPROPRIATION  
3 THEREFOR.

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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.)

Requires that an audit be made to determine whether there are financial losses due to overpayment, multiple payments, or fraudulent payment in the administration of claim payments. Makes an appropriation to implement the act.

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

5 SECTION 1. 26-4-110, Colorado Revised Statutes 1973, as  
6 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

7 26-4-110. Vendors - payments - rules. (8) Any contract or  
8 other agreement with a corporation which serves as a fiscal agent  
9 on behalf of the state for payment of clients under the program  
10 shall provide that an audit be made to determine whether  
11 financial losses occur due to overpayment, multiple payments, or  
12 fraudulent payment in the administration of claim payments.

13 SECTION 2. Appropriation. There is hereby appropriated,

1 out of any moneys in the state treasury not otherwise  
2 appropriated, to the department of social services, for the  
3 fiscal year commencing July 1, 1976, the sum of \_\_\_\_\_  
4 dollars (\$ ), or so much thereof as may be necessary, for the  
5 implementation of this act.

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

COMMITTEE ON HEWI

BILL 46

A BILL FOR AN ACT

1 CONCERNING THE BOARD OF DIRECTORS OF NONPROFIT HOSPITAL AND  
2 HEALTH SERVICE CORPORATIONS.

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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.)

Declares it to be the intent of the general assembly that the board of directors of nonprofit hospital and health service corporations include members from all economic levels of the state. Limits the term of office for board members to six years. Requires that the names of prospective board members be submitted to the insurance commissioner for his examination and comment on matters of potential conflict of interest.

---

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

4 SECTION 1. 10-16-102, Colorado Revised Statutes 1973, is  
5 amended to read:

6 10-16-102. Legislative declaration. It is the policy of  
7 the general assembly and the intent and purpose of this article,  
8 to promote the availability of hospital care, medical-surgical  
9 care, and other health services on a voluntary nonprofit prepaid  
10 basis, and to thereby promote the health and welfare of the  
11 people of the state of Colorado. IT IS ALSO THE INTENT OF THE  
12 GENERAL ASSEMBLY THAT MEMBERS OF THE BOARD OF TRUSTEES OR

1 DIRECTORS OF NONPROFIT HOSPITAL AND HEALTH SERVICE CORPORATIONS  
2 BE APPOINTED TO INCLUDE REPRESENTATION FROM ALL ECONOMIC INCOME  
3 LEVELS IN THIS STATE.

4 SECTION 2. The introductory portion to 10-16-106 (1),  
5 Colorado Revised Statutes 1973, is amended to read:

6 10-16-106. Directors. (1) The property and lawful  
7 business of every such corporation subject to the provisions of  
8 this article shall be held and managed by a board of trustees or  
9 directors with such powers and authority as shall be necessary or  
10 incidental to the complete execution of the purposes of each such  
11 corporation as limited by its articles or the bylaws. No such  
12 board shall be composed of less than ten nor more than  
13 twenty-four members. THE TERMS OF MEMBERS OF THE BOARD OF every  
14 such corporation with annual gross subscription income exceeding  
15 one million dollars shall have BE FOR A PERIOD NOT TO EXCEED SIX  
16 YEARS AND THERE SHALL BE a majority of ~~its~~ THE board consisting  
17 of persons who are not:

18 SECTION 3. 10-16-106, Colorado Revised Statutes 1973, is  
19 amended BY THE ADDITION OF A NEW SUBSECTION to read:

20 10-16-106. Directors. (4) Before any appointment to the  
21 board of trustees or directors is made, the name of the person  
22 under consideration for appointment shall be submitted to the  
23 commissioner of insurance, together with such other information  
24 as may be requested by the commissioner, for his review and  
25 comment on matters of potential conflicts of interest which may  
26 be present if the person under consideration were to be appointed  
27 to the board.

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

COMMITTEE ON HEWI

BILL 47

A BILL FOR AN ACT

1 CONCERNING DRUG HISTORIES.

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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.)

Requires certain institutions to make an effort to obtain drug histories of persons whom they admit.

---

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

3 SECTION 1. 12-13-109, Colorado Revised Statutes 1973, is  
4 amended BY THE ADDITION OF A NEW SUBSECTION to read:

5 12-13-109. Register - drug history. (2) Every holder of a  
6 permit or license issued pursuant to the provisions of this  
7 article, upon the admittance of each aged person, shall make a  
8 reasonable effort to obtain a complete history of all drugs  
9 prescribed for the aged person for one year prior to admittance.  
10 Such history shall include, but need not be limited to a list of  
11 all drugs prescribed, the recommended dosage, and any adverse  
12 reaction which may have occurred.

13 SECTION 2. Article 36 of title 12, Colorado Revised  
14 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW

1 SECTION to read:

2 12-36-135. Provision of drug histories. Every person  
3 licensed pursuant to the provisions of this article shall provide  
4 a complete history of all drugs prescribed for his patient upon  
5 the request of an institution pursuant to section 12-13-109,  
6 25-3-107, 26-12-105, 27-10.5-104.5, and 27-14-106.

7 SECTION 3. Part 1 of article 3 of title 25, Colorado  
8 Revised Statutes 1973, is amended BY THE ADDITION OF A NEW  
9 SECTION to read:

10 25-3-107. Drug history of the aged. Every nursing care  
11 facility, intermediate care facility, residential care facility,  
12 and other institution of a like nature licensed pursuant to the  
13 provisions of this part 1, upon the admittance of each person,  
14 shall make a reasonable effort to obtain a complete history of  
15 all drugs prescribed for the person for one year prior to  
16 admittance. Such history shall include, but need not be limited  
17 to a list of all drugs prescribed, the recommended dosage, and  
18 any adverse reaction which may have occurred.

19 SECTION 4. 26-12-105, Colorado Revised Statutes 1973, is  
20 amended to read:

21 26-12-105. Standards - management. (1) Each state home  
22 for the aged shall be operated and maintained under standards  
23 established for like medical institutions by the department of  
24 health. Each state home shall have a manager directly  
25 responsible to the state department and such additional  
26 employees, including medical and nursing personnel, as may be  
27 required to provide proper and adequate care for the aged in such



1 state home.

2 (2) EACH STATE HOME FOR THE AGED, UPON THE ADMISSION OF  
3 EACH AGED PERSON, SHALL MAKE A REASONABLE EFFORT TO OBTAIN A  
4 COMPLETE HISTORY OF ALL DRUGS PRESCRIBED FOR THE AGED PERSON FOR  
5 ONE YEAR PRIOR TO ADMISSION. SUCH HISTORY SHALL INCLUDE, BUT  
6 NEED NOT BE LIMITED TO A LIST OF ALL DRUGS PRESCRIBED, THE  
7 RECOMMENDED DOSAGE, AND ANY ADVERSE REACTION WHICH MAY HAVE  
8 OCCURRED.

9 SECTION 5. Article 10.5 of title 27, Colorado Revised  
10 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW  
11 SECTION to read:

12 27-10.5-104.5. Drug history. Upon admittance pursuant to  
13 section 27-10.5-103 or 27-10.5-104, a facility shall make a  
14 reasonable effort to obtain a complete history of all drugs  
15 prescribed for the developmentally disabled person for one year  
16 prior to admission. Such history shall include, but need not be  
17 limited to a list of all drugs prescribed, the recommended  
18 dosage, and any adverse reaction which may have occurred.

19 SECTION 6. 27-14-106, Colorado Revised Statutes 1973, is  
20 amended BY THE ADDITION OF A NEW SUBSECTION to read:

21 27-14-106. Admissions - nonresidents - drug histories. (3)  
22 Upon admittance of a person, a state home and training school  
23 shall make a reasonable effort to obtain a complete history of  
24 all drugs prescribed for the person for one year prior to  
25 admission. Such history shall include, but need not be limited  
26 to a list of all drugs prescribed, the recommended dosage, and  
27 any adverse reaction which may have occurred.

1       SECTION 7. Safety clause. The general assembly hereby  
2 finds, determines, and declares that this act is necessary for  
3 the immediate preservation of the public peace, health, and  
4 safety.

COMMITTEE ON HEWI

BILL 48

A BILL FOR AN ACT

1 CONCERNING SPECIALIZED SOCIAL SERVICES, AND RELATING TO COUNTY  
2 REIMBURSEMENT THEREFOR, AND MAKING AN APPROPRIATION  
3 THEREFOR.

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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.)

Makes transportation a reimbursable social service. Authorizes 100% state reimbursement for homemaker services where counties can demonstrate that such services are used in place of skilled and intermediate care facilities and hospitals. Requires counties to provide a central information and referral service which may prevent or reduce institutional care. Makes an appropriation to implement the act.

---

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

5 SECTION 1. 26-1-122 (4) (e), Colorado Revised Statutes  
6 1973, is amended, and the said 26-1-122 (4) is further amended BY  
7 THE ADDITION OF A NEW PARAGRAPH, to read:

8 26-1-122. County appropriations - reimbursement -  
9 procedure. (4) (e) When a county department provides or  
10 purchases certain specialized social services for public  
11 assistance applicants, recipients, or others to accomplish  
12 self-support, self-care, or better family life, including but not

1 limited to day care, homemaker services, foster care,  
2 TRANSPORTATION, and services to mentally retarded persons, in  
3 accordance with state department rules and regulations, the state  
4 may reimburse or advance funds to such county department at a  
5 rate in excess of eighty percent, within available  
6 appropriations, but not to exceed the amount expended by the  
7 county department for such services. IN THE CASE OF HOME-MAKER  
8 SERVICES, THE STATE SHALL REIMBURSE OR ADVANCE FUNDS TO SUCH  
9 COUNTY DEPARTMENT FOR THE ENTIRE AMOUNT EXPENDED BY THE COUNTY  
10 DEPARTMENT FOR SUCH SERVICES; EXCEPT THAT SUCH REIMBURSEMENT  
11 SHALL BE MADE ONLY WHERE COUNTIES CAN DEMONSTRATE UTILIZATION OF  
12 HOME-MAKER SERVICE FOR INDIVIDUALS SERVED IN SUBSTITUTION OF  
13 SKILLED AND INTERMEDIATE CARE FACILITIES AND HOSPITALS. Where  
14 funds are advanced, adjustment shall be made from subsequent  
15 monthly payments for those purposes. The expenses of training  
16 personnel to provide these services, as determined and approved  
17 by the state department, shall be paid from whatever state and  
18 federal funds are available for such training purposes.

19 (f) County departments shall provide or contract to provide  
20 a central information and referral service for all available  
21 services in the county which may prevent or reduce inappropriate  
22 institutional care through the use of community-based or  
23 home-based care.

24 SECTION 2. Appropriation. There is hereby appropriated out  
25 of any moneys in the state treasury not otherwise appropriated,  
26 to the department of social services, for the fiscal year  
27 commencing July 1, 1976, the sum of \_\_\_\_\_ dollars (\$ ),

1 or so much thereof as may be necessary, for the implementation of  
2 this act.

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.

COMMITTEE ON HEWI

BILL 49

A BILL FOR AN ACT

1 CONCERNING HOMES FOR THE AGED, AND DECLARING SUCH HOMES TO BE A  
2 RESIDENTIAL USE OF PROPERTY.

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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.)

Declares that the establishment of group homes for the aged is a matter of statewide concern and that such a home for not more than 8 persons is a residential use of property for zoning purposes. Declares it to be the policy of this state to encourage the development of alternatives to skilled and intermediate care facilities.

---

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

4 SECTION 1. 31-23-303, Colorado Revised Statutes 1973, as  
5 amended, is amended to read:

6 31-23-303. Legislative declaration. (1) Such regulations  
7 shall be made in accordance with a comprehensive plan and  
8 designed to lessen congestion in the streets; to secure safety  
9 from fire, panic, floodwaters, and other dangers; to promote  
10 health and general welfare; to provide adequate light and air; to  
11 prevent the overcrowding of land; to avoid undue concentration of  
12 population; to facilitate the adequate provision of

1 transportation, water, sewerage, schools, parks, and other public  
2 requirements. Such regulations shall be made with reasonable  
3 consideration, among other things, as to the character of the  
4 district and its peculiar suitability for particular uses, and  
5 with a view to conserving the value of buildings and encouraging  
6 the most appropriate use of land throughout such municipality.

7 (2) THE GENERAL ASSEMBLY DECLARES THAT THE ESTABLISHMENT OF  
8 GROUP HOMES FOR THE EXCLUSIVE USE OF PERSONS SIXTY YEARS OF AGE  
9 OR OLDER IS A MATTER OF STATEWIDE CONCERN AND THAT A GROUP HOME  
10 FOR THE AGED WHICH SERVES NOT MORE THAN EIGHT PERSONS SIXTY YEARS  
11 OF AGE OR OLDER IS A RESIDENTIAL USE OF PROPERTY FOR ZONING  
12 PURPOSES. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT  
13 IT IS THE POLICY OF THIS STATE TO ENCOURAGE THE DEVELOPMENT OF  
14 ALTERNATIVES TO SKILLED AND INTERMEDIATE CARE FACILITIES AND TO  
15 ASSIST PERSONS SIXTY YEARS OF AGE AND OLDER TO LIVE IN NORMAL  
16 RESIDENTIAL SURROUNDINGS. AS USED IN THIS SUBSECTION (2), THE  
17 PHRASE "RESIDENTIAL USE OF PROPERTY FOR ZONING PURPOSES" INCLUDES  
18 ALL FORMS OF RESIDENTIAL ZONING, AND, SPECIFICALLY, ALTHOUGH NOT  
19 EXCLUSIVELY, SINGLE-FAMILY RESIDENTIAL ZONING.

20 SECTION 2. Safety clause. The general assembly hereby  
21 finds, determines, and declares that this act is necessary for  
22 the immediate preservation of the public peace, health, and  
23 safety.

COMMITTEE ON HEWI

BILL 50

A BILL FOR AN ACT

1 CONCERNING ADULT FOSTER CARE FACILITIES.

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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.)

Requires the department of social services to promulgate rules and regulations relating to the operation of adult foster care facilities.

---

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

3 SECTION 1. 26-1-111 (2), Colorado Revised Statutes 1973, is  
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 26-1-111. Activities of the state department. (2) (j)  
6 Promulgate rules and regulations relating to the operation of  
7 adult foster care facilities in cooperation with other state or  
8 federal agencies. Adult foster care is that care and service  
9 provided to individuals needing to reside in a supervised  
10 nonmedical setting on a twenty-four hour basis.

11 SECTION 2. Safety clause. The general assembly hereby  
12 finds, determines, and declares that this act is necessary for  
13 the immediate preservation of the public peace, health, and  
14 safety.



COMMITTEE ON HEWI

BILL 51

A BILL FOR AN ACT

1 CONCERNING GROUP HOMES FOR THE DEVELOPMENTALLY DISABLED, AND  
2 RELATING TO THE LICENSING THEREOF.

---

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 department of institutions to license group homes for the developmentally disabled. States that a community based home for the developmentally disabled is a nonmedical residence.

---

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

4 SECTION 1. 27-10.5-133 (1) (a) and (1) (b), Colorado  
5 Revised Statutes 1973, as amended, are amended to read:

6 27-10.5-133. Group homes for the developmentally disabled.

7 (1) (a) "Department" means the department of ~~social--services~~  
8 INSTITUTIONS.

9 (b) "Community based group home for the developmentally  
10 disabled" means a NON-MEDICAL residence or dwelling unit PROVIDING  
11 SUPERVISION AND TRAINING AND capable of housing no more than ten  
12 developmentally disabled persons. ~~and-appropriate-staff.~~

13 SECTION 2. Safety clause. The general assembly hereby

1 finds, determines, and declares that this act is necessary for  
2 the immediate preservation of the public peace, health, and  
3 safety.

LEGISLATIVE COUNCIL  
COMMITTEE ON TRANSPORTATION

Members of the Committee

Rep. Gerard Frank, Chairman	Rep. Robert Eckelberry
Sen. Robert Johnson, Vice-Chairman	Rep. Ronald Elliott
Sen. Tilman Bishop	Rep. William Flanery
Sen. Fay DeBerard	Rep. E. E. Hayes
Sen. Hugh Fowler	Rep. Bill Hilsmeier
Sen. Ray Kogovsek	Rep. Kay Munson
Sen. Don MacManus	Rep. Betty Neale
Sen. Vincent Massari	Rep. Robert Ore
Sen. Ruth Stockton	Rep. Betty Orten
Sen. Christian Wunsch	Rep. Carl Showalter

Council Staff

David Hite  
Principal Analyst

Charles Brown  
Research Assistant

## COMMITTEE ON TRANSPORTATION

The Committee on Transportation was directed by the General Assembly to study possible legislation relating to the development of a coordinated mass transportation system along the front range corridor of Colorado and possible legislative alterations to the statutes which govern, and define the role of, the Regional Transportation District.

The committee's schedule was divided evenly between the two subject areas: the needs for and impacts of a coordinated multi-modal mass transportation system along Colorado's front range and the necessity for altering the statutes governing the Regional Transportation District. The committee also toured the United States Department of Transportation's High Speed Ground Test Center near Pueblo.

### A Coordinated Mass Transportation System for the Front Range Corridor

Until recently, cheap land and energy, strong economic growth, and lack of concern about the environment, combined with relatively high personal income and widespread auto ownership, gave the issues of public transportation and alternative modes of transit a low priority among topics of concern to the public and most state and local officials. Environmental concerns, shortages of oil, inflation, urban congestion, and the threat of economic slowdown have now boosted transportation issues in the public's consciousness and elevated the issues at the decision-making levels of federal, state, and local governments.

State and local governments have considerable influence -- in many instances overriding influence -- over transportation decisions. State government has responsibility for environmental improvement as well as a primary concern for the economic health of the state. It also regulates the movement of people and goods, as well as traffic and public safety.

The interim committee recognizes that the shift in public attitudes about transportation and the debate that has accompanied this shift signal major responsibilities and potentials for decision makers.

The committee's treatment of the front range coordinated mass transportation topic began with an assessment of the general impacts of transportation facilities on land uses, the current patterns and intensities of front range travel, and the projected transportation needs of the corridor area for the future. As a second step in its study, the committee sought to apply its findings to the land use plans of the four front range councils of governments and subsequently

evaluate the modal mix of transportation facilities which would appear appropriate to best serve the desired land use and transportation needs of the corridor. The final step in the process was to implement the committee's findings through specific legislative proposals.

For purposes of the study, the front range corridor was designated as a thirty-mile-wide strip of land extending from Fort Collins to Trinidad and abutting the foothills. The population of the corridor, according to the 1970 census, is 1,646,186 or approximately 75 percent of the state's total population. The distribution of populations in the corridor is:

Greeley - Fort Collins.....	82,239
Loveland - Longmont.....	39,429
Denver SMSA.....	1,229,798
Colorado Springs Area.....	162,252
Pueblo.....	118,238
Trinidad - Walsenburg.....	<u>14,230</u>
Front Range Total.....	1,646,186

Land Use Impacts

The committee received testimony from the staff of the Colorado Land Use Commission and the land use planners of the four front range councils of governments in attempting to define the relationship of transportation to land use. It became apparent to the committee early in the study that land use planning and transportation planning are being conducted in Colorado without substantial consideration of their mutual impacts. Further, the committee discovered that such planning activities are being conducted by each of the front range councils of governments with neither a view toward coordination with planning activities in adjacent regions nor integration within the front range as a whole. As a result, the thrust of testimony presented to the committee was that state and regional land use and transportation planning need to be integrated into a single planning function and need to be coordinated at the state level.

Current Travel and Projected Needs

With the assistance of the Department of Highways, the Division of Planning, councils of governments, and representatives of bus companies and railroads, the committee was able to develop several maps depicting the present general patterns and intensities of travel, by mode, in the corridor, and the point at which the present highway system will reach peak capacity. The Department of Highways also developed a series of maps showing state-wide origins and destinations for trips which include travel in the front range corridor. According to the department's current estimates, 80 percent of all truck trips and 74 percent of all automobile trips in the state have either

origins or destinations in the front range corridor. In addition, the following table, compiled by the department, shows the anticipated numbers of new highway lanes which need to be added to segments of existing highways within the corridor prior to 1995, even if there is a significant increase in the amount of mass transit between cities along the corridor during the period.

<u>Anticipated Number of New Lanes Per Year Group</u>				
<u>Area</u>	<u>1975-80</u>	<u>1981-85</u>	<u>1986-90</u>	<u>1991-95</u>
Corridor from Ft. Collins-Greeley to State Highway 66 (Platteville area)	2	--	2	--
Corridor area between State Highway 66 and State Hwy. 7 (Brighton area)	4	--	2	--
Corridor area between State Highway 7 and 70th Avenue (North of Denver)	--	2	2	2
Corridor area between Arapahoe Road (South of Denver) and Castle Rock	6	--	--	--
Corridor area between Castle Rock and Colorado Springs	2	--	--	--
Corridor area between Colorado Springs and Pueblo	--	--	2	--
Sub Total per year groups	14	2	8	2
Total 1975-1995	26			

As a result of the graphic material and testimony presented, the committee came to the following conclusions regarding front range transportation: (a) presently, there is almost total dependence upon the automobile to transport people along the front range; (b) the transporting of people by train is virtually non-existent, air trans-

port is available but used lightly and primarily as a feeder service for flights to locations outside the state, and bus service is apparently adequate but not heavily used; (c) the capacity of the present highway system along the corridor seems likely to be exceeded by 1990, perhaps along significant stretches by 1980; (d) the alternative modes (bus, air, and renovated rail transportation) seem capable of handling the entire highway overflow, but a major impediment to the use of such alternatives appears to be lack of adequate intra-city public transportation networks to accommodate the mobility needs of those who travel from city to city without the use of a car; (e) there has been a precipitous decline in the use and availability of public and commercial transit over the past decade, but there is now growing public interest in restoring, improving, and expanding public transportation systems because of growing disadvantages of the private auto and deficiencies of existing commercial transit systems; (f) because of the present lack of coordinated interregional land use and transportation planning, transit planning for the next two decades should begin now; (g) any such planning must emphasize a system that is convenient, highly integrated, economical, well planned, and acceptable to the broadest sector of the citizenry; and (h) there is not common agreement among local governmental representatives that alternative modes need to be initiated to serve the transportation needs of the immediate future.

#### The Appropriate Modal Split

The committee was briefed by officials of the United States Department of Transportation concerning the state-of-the-art of various transportation technologies and their applicability with respect to service demand and objectives, economics, safety, energy efficiency, environmental impacts, and integration with other forms of transportation. They also articulated guidelines for urban area transit and emphasized a need for local areas to closely evaluate their present transportation systems in terms of integration and revitalization before requesting federal assistance for new, alternative transit modes. The federal officials noted that the future focus of federal assistance will probably be on funding completion of the interstate system and transportation planning grants.

The committee concluded that extensive professional transportation and land use planning need to be accomplished before any choice of the most suitable mixture of transportation modes to serve the corridor can be made. Outlined below are the kinds of criteria the committee found as governing the selection of an alternative mode of transportation.

(a) Technological Feasibility and Operational Effectiveness. The concern is over the choice of equipment, the level of technology, the degree of dependence on technology, levels of service, sensitivity to rider needs, safety, and coordination with other transportation capacities.

In evaluating the function that technology plays in the transportation mode being studied, attention is given to potential over-reliance on technology and the kinds of problems that can result: mistakes in planning and design; failure to apply "systems engineering" to the project so that operational problems can be anticipated; and management and maintenance of a little-tested system.

(b) Economic Feasibility. The common technique used for economic evaluation of alternatives is cost-benefit analysis -- an enumeration and evaluation of all relevant costs and benefits. Economic costs cover all expenses required to acquire, construct, operate, and maintain a system. Economic benefits include construction, maintenance, and capital costs avoided by providing a service in an efficient manner as well as social and environmental benefits.

(c) Environmental Impact. In this area the concern is to measure an alternative mode by at least three standards: the effectiveness of the system to fulfill the regional transportation objectives; the public's expectation of improved transit service; and the effects on people and the environment that would result from the transit alternative and its operation. The major areas of concern include: a) the degree of compatibility with the region's land use plan; b) the degree to which a transportation mode alters the visual environment; c) the impact a mode has upon the social characteristics of communities, including the regional economy; d) how each plan alters the total daily regional air pollution production; e) the degree to which the mode alters the noise environment; and f) the effect of the system on the geology of the area and ecological and resource conservations (hydrology and water quality, historical and archaeological sites).

(d) Political Acceptability. This category covers acceptability at three levels of government: local, state, and national. At each level, bureaucrats as well as elected officials are charged with the responsibility of studying criteria, digesting projections, incorporating public participation, weighing alternatives, assessing demands, evaluating the timing of the decision-making procedures, and considering the financial feasibilities.

Financial considerations form limitations on the amount of capital funds and the total operating budget and deficit that can be accrued. Inflation also has to be considered now as an important part of the capital budget constraints. Each alternative must be evaluated for its impact on various bond issue methods, taxation policies, and federal (primarily Urban Mass Transportation Administration) funding. The best estimate of the future availability of each financing mode must also be evaluated.



## Proposed Legislation

In view of the lack of integrated land use and transportation planning at the state level and the lack of coordinated interregional land use and transportation planning, the emphasis of the committee's work was directed toward the establishment of a structure for a comprehensive, coordinated, and continued planning process in lieu of recommending development of any specific transit technology for the front range.

To this end, the committee investigated the transit planning, decision making, and operating structures of the Southern California and Chicago areas. In addition, the committee held a round-table discussion with representatives of the Land Use Commission, the state Highway Department, the Division of Planning, the four front range councils of governments, and the RTD. The Region 12 council of governments, representing many of the state's recreational areas, was also included in the discussion. As a result of these meetings, the need was identified for a lead agency at the state level to coordinate the transportation policy planning of state, regional, and local agencies, and to ensure the progressive implementation of the plans. Also articulated was the need for a state department of transportation to consolidate highway, aviation, mass transit, and land use planning, and to assist coordination between the state's diverse regions, specifically with respect to the front range corridor.

The committee concludes, in view of the many distinct approaches to the funding, organization, and authority of a department of transportation that have characterized debate on this subject during past legislative sessions, that any final bill in this area can only be adopted after extended debate, amendment, and compromise during the 1976 legislative session. The committee also concludes that this subject should be placed on the Governor's call to allow the General Assembly to choose between this concept and the lead agency approach.

With respect to the lead agency concept, it became apparent that a system of cooperation and conflict resolution would be best embodied in a forum comprised of state and regional agencies. As no state agency currently has the expertise, personnel, authority, or funding to act as liaison between state and regional planning agencies and to prepare and revise comprehensive plans for the front range, the committee concluded that a new focal point is needed. It was also concluded that the focal point should be established at the highest policy level of state government and not directly be tied to any principal department.

Due to the advancing state-of-the-art in transportation and land use planning and the need to begin the process with a definite series of steps toward implementation, the committee resolved that the products of the front range planning process should entail a general twenty-year policy plan and a specific five-year implementation plan,

each of which is to be revised and updated annually. The committee's recommended bill is summarized below.

The Committee on Transportation recommends that the subject of the creation of a state department of transportation, to be established as a principal department within the executive branch, be placed on the Governor's call for consideration during the 1976 session.

#### Front Range Transportation Coordinator -- Bill 52

Bill 52 would provide for the creation of a front range transportation coordinator in the Office of the Governor and a twelve-member front range transportation policy committee to be comprised of the designees of the councils or associations of local governments within planning and management regions 2, 3, 4, 5, 7, and 12, the Departments of Highways, Local Affairs, and Natural Resources, the Land Use Commission, and any special transportation district, and with the coordinator as chairman. The coordinator would be required to act as transportation planning liaison between state and regional agencies and to prepare and annually revise twenty-year transportation policy plans and five-year transportation implementation plans for the front range. The committee would be required to establish front range transportation planning policies, to adopt twenty- and five-year plans prepared by the coordinator, and to make recommendations for resolution of transportation issues of concern to the front range. The bill would provide that its statutory authorization be repealed five years after enactment.

#### Proposed Changes to the RTD Act

The committee approached its study of possible alterations to the RTD statutes through two methods. First, the committee sought to evaluate the Regional Transportation District (RTD) as a transit operating and planning agency. Second, the committee requested that the RTD itself submit proposed amendments to the act which would augment its viability and effectiveness. The committee's findings resulting from the two procedures would, in a final step, be implemented through specific legislative proposals.

#### RTD As A Transit Operating and Planning Agency

The committee's evaluation of RTD as a transit operating and planning agency began with a comparison of the RTD system and plan to transit systems and plans in Atlanta, Minneapolis, Seattle, and Edmonton, Toronto, and Vancouver, Canada. The committee learned, in its comparison, that the Canadian systems tend to be significantly more productive than do the systems in American cities in terms of

their percentages of peak-hour passenger trips into the central business district and their revenue/cost ratios. The primary reasons for this difference, as detailed in testimony, are that the Canadian systems have operated continually since the beginning of the twentieth century and Canada has not developed an extensive freeway system in its cities. Both of these factors have caused the transit industry in Canada to grow, provide more thorough coverage geographically, and hence, easier access to and thorough public familiarity with the systems.

In general, American cities, to the contrary, only began to develop transit systems over the past few years. Thus, the coverage, access, and efficiency have been more primitive and initial costs have been greater. In addition, American cities have developed extensive freeway systems. For this reason, the American transit industry has had to compete with the private automobile for its share of the urban transportation market in a fashion that the Canadian systems have not.

In view of the fact that the RTD has only effectively operated an urban transit system since July of 1974, the committee concludes that any comparison to the Canadian systems is premature. The committee notes, however, that RTD compared more favorably with its American counterparts.

The committee's second step in assessing the RTD as a planning and operating agency dealt with the recent improvements and immediate plans of the district for upgrading transit service. In testimony from district representatives, the committee learned that in completion of its Bus Service Improvement Program during 1975, the district acquired 182 new buses to attain an active fleet size of 507. Approximately 80,000 weekly miles of service were added through new routes and increases on many existing routes.

To accommodate the increasing fleet and route mileage during 1975, the bus-related capital development program was expanded, and a major portion was funded through a \$23 million capital grant from the U. S. Department of Transportation. The district acquired several support and service vehicles, completed renovation improvements to its Alameda-Santa Fe maintenance and storage facility, began construction of a \$9 million garage and maintenance/office complex at its Platte Division, and acquired and improved a temporary maintenance/office facility in Boulder County.

Other activities of the district during 1975 included:

- (a) expansion of the "Park and Ride" program by the addition of three new sites;
- (b) expansion of the district's public information campaign, including the acquisition of a downtown information center;

- (c) the initiation of a transportation system management program to improve overall transit efficiency; and
- (d) the amendment of the district's rapid transit plan and the selection by the board of directors of the first useable 28-mile Littleton to Northglenn segment of the system which is estimated in 1974 dollars to cost \$450 million.

The district plans for 1976 include:

- (a) an evaluation of the effectiveness of service improvements added in the past two years;
- (b) replacement of 106 over-age buses;
- (c) addition of new exclusive bus lanes; and
- (d) addition of farebox passenger reporting, maintenance planning, vehicle monitoring, and mechanized revenue retrieval programs.

The final aspect of the committee's evaluation of RTD transit operations and plans concerned community perception of the level of service provided by the district. The consensus of testimony received by the committee from various segments of the community was that RTD has made significant improvements in transit service offered since its purchase of the numerous private operators within the district. Testimony from the handicapped community, however, indicated that although RTD has made a commendable attempt to serve the handicapped through the "landiride" service, such service needs to be greatly expanded if it is to provide a viable means of mobility for handicapped persons. Representatives of Boulder Valley also indicated that the district needs to more rigorously work to solve its legal impasse with Public Service Company so that the district could begin to provide transit service to the area. (As of the writing of this report, agreement between Public Service, Boulder, and the district has been reached.)

#### Statutory Amendments Suggested By RTD

The amendments suggested by RTD to the "Regional Transportation District Act" (section 32-9-101 et seq., C.R.S., 1973) deal primarily with minor alterations to the bonding provisions of the act. Specific election provisions enacted in 1969 which provide for conduct of an initial bonding election, which was subsequently held in 1973, also would be updated. Another proposed amendment would exempt the district from all state and local taxes while operating within its boundaries. Presently, the district is only exempt from ad valorem taxes.

As a result of the committee's study of proposed changes to the RTD statutes, a resolution and bill are recommended. In public hearings conducted by the committee and in extended committee discussions, no substantive amendments to the RTD legislative article were proposed for committee study or adoption.

Statement to RTD -- Joint Resolution -- Bill 53

Bill 53 is a resolution that would declare that the district has made an important contribution to the transit needs of the metropolitan area, that the General Assembly is concerned with the continuing increase in the district's deficit, that the General Assembly is not likely to increase the district's revenue sources, that the district assume responsibility for coordinating the delivery of transportation to the handicapped by various governmental agencies, that the district work with school districts to eliminate duplication of public expenditures in the area of pupil transportation, and that governmental agencies and businesses cooperate with the district in arranging work schedules to facilitate use of the transit system by their employees.

Amendments to the RTD Article -- Bill 54

Bill 54 would make miscellaneous changes to the bonding and election provisions of Article 9 of Title 32, C.R.S. 1973. In addition, the bill would provide that the district, within its boundaries, be exempt from all state and local taxes.

COMMITTEE ON TRANSPORTATION

BILL 52

A BILL FOR AN ACT

1 CONCERNING TRANSPORTATION PLANNING, AND PROVIDING FOR SUCH  
2 PLANNING IN THE FRONT RANGE.

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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.)

Provides for the creation of a front range transportation coordinator in the office of the governor and a front range transportation policy committee composed of representatives from certain state and regional agencies. Establishes such coordinator as chairman of such committee.

Requires the coordinator to act as a liaison between ongoing transportation planning of both councils or associations of local governments and state agencies and to prepare and update a twenty-year front range transportation policy plan and a five-year front range transportation implementation plan.

Requires the committee to establish broad policies concerning front range transportation planning, to adopt the transportation plans prepared by the coordinator, and to make recommendations for resolving transportation issues of concern to the front range.

---

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

4 SECTION 1. Title 24, Colorado Revised Statutes 1973, as  
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 44

7 Front Range Transportation Planning

8 24-44-101. Definitions. As used in this article, unless

1 the context otherwise requires:

2 (1) "Committee" means the front range transportation policy  
3 committee.

4 (2) "Coordinator" means the front range transportation  
5 planning coordinator.

6 (3) "Council or association of local governments" means any  
7 such council or association established pursuant to section  
8 29-1-203 or 30-28-105, C.R.S. 1973, which includes governmental  
9 members located within the front range.

10 (4) "Front range" means the areas contained within planning  
11 and management regions two, three, four, five, seven, and twelve  
12 which were created by the executive order dated November 17,  
13 1972, as amended on November 13, 1973, and entitled "The  
14 Establishment of Planning and Management Districts Within the  
15 State of Colorado".

16 24-44-102. Front range transportation planning coordinator  
17 - creation - duties. (1) There is hereby created within the  
18 office of the governor the front range transportation planning  
19 coordinator. The coordinator shall be appointed by the governor,  
20 and his term of office shall be coterminous with the tenure of  
21 office of the governor making said appointment, but he may be  
22 removed at the pleasure of the governor. The governor may  
23 appoint the executive director of any principal department within  
24 the executive branch or any division director within a principal  
25 department to serve as coordinator for front range transportation  
26 planning as a duty in addition to all other duties and functions  
27 of his office. The coordinator, with the approval of the

1 governor, shall appoint necessary staff in conformance with  
2 section 13 of article XII of the state constitution.

3 (2) The coordinator shall:

4 (a) Provide a liaison between the committee and all state  
5 agencies involved in transportation planning;

6 (b) Review the transportation systems plan prepared  
7 annually by each council or association of local governments;

8 (c) Provide technical support and coordination between such  
9 councils or associations and the organizations represented on the  
10 committee;

11 (d) Prepare and annually update for the approval of the  
12 committee a twenty-year multimodal transportation plan which  
13 presents goals, objectives, and policies for transportation in  
14 the front range consistent with identifiable regional, state, and  
15 national goals, objectives, and policies and which assures  
16 consideration of economic, social, and environmental effects of  
17 the plan; and

18 (e) Prepare and annually update for the approval of the  
19 committee a five-year multimodal transportation plan which  
20 details specific programs, including construction priorities, for  
21 all modes of transportation and transportation facilities within  
22 the front range.

23 24-44-103. Front range transportation policy committee.

24 (1) There is hereby created a front range transportation policy  
25 committee consisting of the following individuals or designees:

26 (a) The coordinator;

27 (b) The chairman of each council or association of local



1 governments;

2 (c) The chairman of the state highway commission;

3 (d) The executive director of the state department of  
4 highways;

5 (e) The executive director of the department of local  
6 affairs;

7 (f) The executive director of the department of natural  
8 resources;

9 (g) The chairman of the Colorado land use commission;

10 (h) The chairman of the board of any special transportation  
11 district within the front range.

12 (2) The coordinator shall serve as chairman of the  
13 committee.

14 (3) The committee shall:

15 (a) Establish broad policies concerning front range  
16 transportation issues;

17 (b) Provide overall program direction to the coordinator;

18 (c) Direct the coordinator in the preparation and annual  
19 updating of the twenty-year and five-year multimodal  
20 transportation plans, as specified in section 24-44-102;

21 (d) Adopt, no later than December 1, 1976, said twenty-year  
22 and five-year multimodal transportation plans and adopt, prior to  
23 December 1 of each succeeding year, revisions, if any, to said  
24 plans;

25 (e) Propose transportation-related legislation to the  
26 governor and the general assembly; and

27 (f) Make alternative recommendations for resolving

1 transportation issues of concern to the front range.

2 24-44-104. Status of the plans. The plans adopted by the  
3 committee shall govern the decisions of all state agencies in any  
4 manner relating to modes of transportation or transportation  
5 facilities within the front range. However, the general assembly  
6 may act to amend, reject, or otherwise revise the plans adopted  
7 by the committee.

8 SECTION 2. Effective date - repeal. This act shall take  
9 effect July 1, 1976, and shall be repealed effective July 1,  
10 1981.

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

COMMITTEE ON TRANSPORTATION

BILL 53

HOUSE JOINT RESOLUTION NO.

1           WHEREAS, The Regional Transportation District was  
2 established by the General Assembly to develop, operate, and  
3 maintain a public transportation system for the benefit of the  
4 District's residents; and

5           WHEREAS, By virtue of its creation of the District, the  
6 General Assembly is responsible to the citizens of this state for  
7 providing policy oversight with respect to the operation of the  
8 transit system by the Regional Transportation District; now,  
9 therefore,

10           Be It Resolved by the House of Representatives of the  
11 Fiftieth General Assembly of the State of Colorado, the Senate  
12 concurring herein:

13           (1) That the efforts of the Board of Directors of the  
14 Regional Transportation District, the District's administrative  
15 staff, and all other employees of the District be recognized as  
16 making an important and continuing contribution to the  
17 transportation needs of the metropolitan area and the general  
18 health and welfare of its citizens in helping to reduce not only  
19 highway and street congestion but air, noise, and visual  
20 pollution, the consumption of scarce resources, and inconvenience  
21 to people who do not have use of an automobile.

1           (2) That the Regional Transportation District be commended  
2 for making a valuable contribution to the mobility of its  
3 handicapped citizens, providing access for these persons to  
4 employment and educational and recreational activities and, in so  
5 doing, reducing the state's expenditure in the provision of these  
6 transportation services, and helping to increase the contribution  
7 of the District's handicapped citizens to the economic vitality  
8 of this state.

9           (3) That it is important the directors, administrators, and  
10 other employees of the District be apprised of the General  
11 Assembly's concern with the continuing increase in the District's  
12 deficit and the improbability of any acceptance by the General  
13 Assembly of broadened or increased revenue sources for support of  
14 the District.

15           (4) That the District board and administrators are to be  
16 applauded for setting, as their primary objective in 1976, an  
17 evaluation of the effectiveness of service improvements added in  
18 the past two years, and for making adjustments to provide a  
19 higher quality of service to the citizens of the District in an  
20 efficient and cost-effective manner.

21           (5) That the General Assembly desires to assist the  
22 District in every phase of its program and urges the District's  
23 board and administrators to communicate their needs to the  
24 General Assembly on a continuing basis.

25           (6) That the District use every effort to resolve the  
26 present legal impediments which now block new and expanded  
27 transit service for Boulder Valley, and that as increased service

1 is developed for the area there be significant consultation with  
2 citizens and local governmental officials including  
3 transportation and planning experts.

4 (7) That the District assume the responsibility for  
5 coordinating the delivery of transportation services to the  
6 handicapped currently offered within the District by various  
7 governmental agencies.

8 (8) That the District increase its efforts in providing an  
9 aggressive program of service to the handicapped and, in  
10 addition, cooperate with the State Advisory Council on the  
11 Handicapped by providing and developing any information which the  
12 Council requests relative to the transportation of handicapped  
13 persons within the District.

14 (9) That school districts within the District work with the  
15 District's administrative staff to eliminate the duplication of  
16 public expenditures where the District can provide adequate pupil  
17 transportation, and that said school districts and the District  
18 report to the General Assembly suggesting methods for alleviating  
19 this problem.

20 (10) That the District continue to encourage business and  
21 governmental agencies to cooperate with the District in arranging  
22 work schedules to facilitate use of the transit system by their  
23 employees.

24 Be It Further Resolved, that a copy of this Resolution be  
25 transmitted to the Chairman of the Board of Directors and the  
26 Executive Director of the Regional Transportation District for  
27 broad distribution to employees of the District.

COMMITTEE ON TRANSPORTATION

BILL 54

A BILL FOR AN ACT

1 CONCERNING THE REGIONAL TRANSPORTATION DISTRICT.

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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.)

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

3 SECTION 1. 32-9-103 (6), (7) (a), and (12), Colorado  
4 Revised Statutes 1973, are amended, and the said 32-9-103 is  
5 further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS,  
6 to read:

7 32-9-103. Definitions. (6) "Dominant eminent domain"  
8 means that the right of the district to condemn public property,  
9 real and personal, shall be superior in public necessity to that  
10 of any city, town, city and county, county, or other public  
11 corporation except a school district, but such right shall be  
12 superior only for the purpose of ~~acquiring-existing~~ CONSTRUCTING  
13 PUBLIC mass transportation facilities. ~~and--related--real--or~~  
14 ~~personal-property.~~ .

15 (6.3) "Elector" means a person who, at the designated time

1 or event, is qualified to vote in general elections in this state  
2 and is a resident of the district.

3 (6.7) "Federal securities" means direct obligations of, or  
4 obligations the principal of and the interest on which are  
5 unconditionally guaranteed by the United States of America.

6 (7) (a) "Mass transportation system" or "system" means any  
7 system of the district which transports the general public by  
8 bus, rail, air, or any other means of conveyance, or any  
9 combination thereof ~~along-prescribed-routes~~ within the district,  
10 except any railroad subject to the "Federal Railway Labor Act",  
11 Title 45, U.S.C.

12 (10.5) "Premium" means any prior redemption premium for the  
13 payment of which the net revenues or sales tax revenues are or  
14 shall be pledged.

15 (12) "Publication" means the publication once a week for  
16 three consecutive weeks in at least one newspaper having general  
17 circulation in the district. Publication need not be made on the  
18 same day of the week in each of the three weeks. ~~but--not--less~~  
19 ~~than--fourteen--days--shall--intervene--between--the--first--day--of~~  
20 ~~publication--and--the--last--day--of--publication.~~

21 SECTION 2. 32-9-107 (1), Colorado Revised Statutes 1973, is  
22 amended to read:

23 32-9-107. Mass transportation system - adoption of  
24 comprehensive plan. (1) The district, acting by and through the  
25 board, is authorized ~~subject--to--section-32-9-108~~ to develop,  
26 maintain, and operate a mass transportation system for the  
27 benefit of the inhabitants of the district.

1 SECTION 3. 32-9-109, Colorado Revised Statutes 1973, is  
2 amended to read:

3 32-9-109. Board of directors. The governing body of the  
4 district shall be a board of directors consisting of twenty-one  
5 electors of the district as follows: Ten directors from the city  
6 and county of Denver, two directors each from the counties of  
7 Adams, Arapahoe, Jefferson, and Boulder, one director from the  
8 county of Douglas, and two at-large directors. The board of  
9 directors shall be appointed as provided in sections 32-9-110 to  
10 32-9-112. All powers, duties, functions, rights, and privileges  
11 vested in the district shall be exercised and performed by the  
12 board; except that the exercise of any executive, administrative,  
13 or ministerial powers may be delegated by the board to officers  
14 and employees of the district. Except for the first board of  
15 directors appointed pursuant to section 32-9-110, and except for  
16 any director appointed to fill a vacancy pursuant to section  
17 32-9-112, the term of office of each director shall commence on  
18 July 1 next following his appointment or as soon thereafter as he  
19 may qualify and shall be for four years, OR UNTIL A SUCCESSOR IS  
20 APPOINTED AND APPROVED UNDER SECTION 32-9-110.

21 SECTION 4. 32-9-110 (1) (c), Colorado Revised Statutes  
22 1973, is amended to read:

23 32-9-110. Initial board. (1) (c) Initial and subsequent  
24 appointments to the district board by the individual boards of  
25 county commissioners shall require approval of a majority of the  
26 governing bodies of the cities and towns located within or  
27 partially within ~~the county~~ THAT PORTION OF THE COUNTY WITHIN THE



1 DISTRICT.

2 SECTION 5. 32-9-115, Colorado Revised Statutes 1973, is  
3 amended to read:

4 32-9-115. Records of board. All resolutions and orders  
5 shall be recorded and authenticated by the signature of the  
6 presiding officer of the board and the secretary. Every  
7 legislative act of the board of a general or permanent nature  
8 shall be by resolution. The book of resolutions and orders shall  
9 be a public record. A record shall also be made of all other  
10 proceedings of the board, minutes of the meetings, certificates,  
11 contracts, bonds given by officers, employees, and any other  
12 agents of the district, and all corporate acts, which record  
13 shall also be a public record. The ~~treasurer~~ DISTRICT shall keep  
14 an account of all moneys received by and disbursed on behalf of  
15 the district, which shall also be a public record. Any public  
16 record of the district shall be open for inspection by any  
17 elector of the district, or by any representative of the state,  
18 or of any county, city and county, city, or town within the  
19 district. All records are subject to audit as provided by law  
20 for political subdivisions.

21 SECTION 6. 32-9-119 (1) (n) and (2), Colorado Revised  
22 Statutes 1973, are amended to read:

23 32-9-119. Additional powers of district. (1) (n) To  
24 deposit any moneys of the district in any banking institution  
25 within or without the district WHICH, IN THE CASE OF TIME  
26 DEPOSITS, MAY BE EVIDENCED BY CERTIFICATES OF DEPOSIT INSURED BY  
27 THE FEDERAL GOVERNMENT;

1           (2) To provide revenue to finance the operations of the  
2 district, to defray the cost of construction of capital  
3 improvements and acquisition of capital equipment INCLUDING THE  
4 ESTABLISHMENT OF CAPITAL RESERVES THEREFOR, and to pay the  
5 interest and principal on securities of the district, the board  
6 ~~for-and-on-behalf-of-the-district-after-approval-by-election-held~~  
7 ~~pursuant--to--section--32-9-108~~; shall have the power to levy  
8 uniformly throughout the district a sales tax at the rate of  
9 one-half of one percent upon every transaction or other incident  
10 with respect to which a sales tax is now levied by the state,  
11 pursuant to the provisions of article 26 of title 39, C.R.S.  
12 1973. Such sales tax shall be collected, administered, and  
13 enforced as follows:

14           SECTION 7. 32-9-149, Colorado Revised Statutes 1973, is  
15 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16           32-9-149. Elections for bonds or other indebtedness. Bond  
17 or other indebtedness elections may be held separately at a  
18 special election or may be held concurrently with any primary or  
19 general election held under the laws of the state; but no  
20 election shall be held at the same time as any regular election  
21 of any city, town, or school district within the district.

22           SECTION 8. 32-9-150 (1) (a), Colorado Revised Statutes  
23 1973, is amended to read:

24           32-9-150. Election resolution. (1) (a) The objects and  
25 purposes ~~of--the-election~~ for which the indebtedness is proposed  
26 to be incurred;

27           SECTION 9. 32-9-151 (1) and (5), Colorado Revised Statutes

1 1973, are amended to read:

2 32-9-151. Conduct of election. (1) Except as otherwise  
3 provided in this article ~~an--election--held--pursuant--to--this~~  
4 ~~section~~ AND IN SECTIONS 32-1-106 AND 32-1-107, DISTRICT ELECTIONS  
5 shall be ~~opened-and~~ conducted in the manner then provided by the  
6 laws of the state for the conduct of general elections.  
7 Registration pursuant to the general election or any other  
8 statutes is not required.

9 (5) Application may be made for an absent voter's ballot no  
10 more than twenty nor less than ~~three~~ FOUR days before the  
11 election.

12 SECTION 10. 32-9-156, Colorado Revised Statutes 1973, is  
13 amended to read:

14 32-9-156. District, tax exempted. WITHIN ITS BOUNDARIES  
15 the district shall be exempted from any ~~general-ad-valorem~~ AND  
16 ALL STATE AND LOCAL taxes upon any property of the district  
17 ~~acquired--and--used~~ for purposes of this article AND UPON ANY  
18 SERVICES PROVIDED IN AND UNDER THIS ARTICLE.

19 SECTION 11. 32-9-161 (1), Colorado Revised Statutes 1973,  
20 is amended to read:

21 32-9-161. Eminent domain. (1) ~~Subsequent-to-approval-of~~  
22 ~~incurrence-of-debt-and-issuance-of-securities-in-an-election-held~~  
23 ~~pursuant-to-section-32-9-108~~; The power of eminent domain vested  
24 in the district shall include, but not be limited to, the power  
25 to condemn, in the name of the district:

26 SECTION 12. Repeal. 32-9-103 (15), 32-9-108, 32-9-113,  
27 32-9-150 (1) (d), 32-9-151 (7), and 32-9-157, Colorado Revised

1 Statutes 1973, are repealed.

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