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0236-2 Recommendations for 1979 Committees on: Finance — Tax Package, Local Government, Fire and Police Pensions, Judiciary — Inheritance and Gift Tax

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Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1979
COMMITTEES ON:

Finance--Tax Package
Local Government
Fire and Police Pensions
Judiciary--Inheritance and Gift Tax

VOLUME II

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 236

December, 1978

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 request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

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COLORADO LEGISLATIVE COUNCIL

RECOMMENDATIONS FOR 1979

Committees on:

Finance - Tax Package

Local Government

Fire and Police Pensions

Judiciary -- Inheritance and Gift Tax

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Report to the

Colorado General Assembly

Research Publication No. 236
December, 1978

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To Members of the Fifty-second Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1978. This year's report consolidates the individual reports of eight committees into two volumes of Research Publication No. 236. The reports of the Committees on School Finance (Research Publication No. 235); Air Pollution (Research Publication No. 237); Transportation and Energy (Research Publication No. 238); Health, Environment, Welfare, and Institutions (Research Publication No. 239); and Judiciary (Research Publication No. 240), are contained in separate volumes.

Respectfully submitted,

/s/ Representative Carl Gustafson
Chairman
Colorado Legislative Council

CG/pm

FOREWORD

The recommendations of the Colorado Legislative Council for 1979 appear in six separate volumes (Research Publication Nos. 235 through 240). The reports of the Committees on Corrections, Higher Education, Water and Coal Slurry, and Legislative Procedures are contained in Volume I of Research Publication No. 236. Reports in Volume II (this volume) of Research Publication No. 236 are from the Committees on Finance - Tax Package, Local Government, Fire and Police Pensions, and Judiciary -- Inheritance and Gift Taxes.

The Legislative Council reviewed the reports contained in this Volume II (Research Publication No. 236) at its meeting on November 27, 1978. The Legislative Council voted to transmit all bills included herein with favorable recommendation to the 1979 Session of the General Assembly, except for Bill 28 from the Committee on Local Government which was disapproved by the Legislative Council.

The committees and staff of the Legislative Council were assisted by the staff of the Legislative Drafting Office in the preparation of bills and resolutions contained in this Volume. Doug Brown, Becky Lennahan, and Gary Davis assisted the Committee on Finance - Tax Package; Gary Davis, Dave Doering and Matthew Flora, the Committee on Local Government; Sue Burch, the Committee on Fire and Police Pensions; Becky Lennahan, the Committee on Judiciary.

December, 1978

Lyle C. Kyle
Director

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LEGISLATIVE COUNCIL

COMMITTEE ON FINANCE - TAX PACKAGE

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COMMITTEE ON FINANCE - TAX PACKAGE

The Legislative Council directed the Committee on Finance - Tax Package to review the effects of five tax package bills enacted by the 1978 General Assembly. Specifically, the committee was charged to:

a) Monitor the indexing effects of House Bill 1194, which provides that the components of the personal income tax may vary according to an annual inflation factor;

b) Examine the potential effect of the repeal of the surtax as provided in House Bill 1181 (vetoed by the Governor, May 5, 1978);

c) Examine the effect of the income tax credit for property taxes paid on pollution control property -- House Bill 1111;

d) Examine the effect of the income tax credit for development of business facilities resulting in employment opportunities -- House Bill 1191; and

e) Examine the effect of deferring collection of ad valorem taxes on property owned by the elderly -- House Bill 1112.

In addition to the above areas of study, on August 4, the Legislative Council directed the committee to expand its study to include a review and clarification of provisions in House Bill 1452 (the comprehensive property tax law enacted in 1977) regarding the issue of whether personal property should be included in the base year concept used to establish real property valuations.

Committee Procedure

To study the effect of House Bills 1111, 1112, 1191, and 1194, the committee reviewed the provisions of each law, the administration of the measures, and their impact on state revenue. In addition, during each meeting the committee heard from the Office of State Planning and Budgeting (OSPB) regarding the latest projections on revenue receipts and available funds for future tax relief.

Summary of OSPB Reports

On May 8, shortly after the passage of the "tax package", OSPB distributed projections on the impact of the measures upon state revenue. These projections were reviewed by the committee at its first meeting. The projected revenue impact of the arts assigned to the committee reads as follows:

(In millions)

Act	1978-79	1979-80	1980-81	1981-82
H.B. 1194	$32.3	$54.2	$80.4	$110.7
Cash flow effect	13.5	8.7	10.3	12.0
H.B. 1181 (vetoed)	--	--	8.8	9.3
H.B. 1111	--	0.9	--	--
H.B. 1191	0.05	0.1	0.2	0.4
H.B. 1112	0.8	0.8	0.7	0.7
TOTAL	$46.65	$64.7	$91.6	$123.8

The remaining portions of the tax package were not included in the committee study; however, OSPB included the impact of those acts as they formulated projections for revenue receipts and future funds available for tax relief.

According to the May 8 report, the overview of general fund revenues and expenditures for the next four fiscal years resulted in the following projected additional funds available for tax relief;

1978-79: $ 2 million
1979-80: $-31 million
1980-81: $ -5 million
1981-82: $ 27 million

As the interim progressed, OSPB informed the committee of the strength of the state's economy and the increase over previous projections of income and sales tax receipts. By the committee's October meeting, OSPB presented the year-end revenue balances for FY 1978 and the latest revenue projections for FY 1979. The revised 1978-79 estimates were some $65 million higher due to exceptionally strong growth in the Colorado economy, higher inflation than anticipated, and somewhat conservative economic assumptions used for earlier estimates.

According to the October 17, OSPB estimates, the overview of general fund revenue and expenditures for the next four fiscal years resulted in the following projected additional funds available for tax relief:

1978-79: $101 million
1979-80: $ 66 million
1980-81: $ 66 million
1981-82: $ 81 million

Combining the $101 million from 1978-79 and the $66 million from 1979-80, allows approximately $167 million for tax relief by the 1979 General Assembly.

House Bill 1111 -- Tax Credit for Pollution Control Property

Provisions of the Act

This act gives an income tax credit equal to 30 percent of the ad valorem taxes paid by an individual, corporation, or public utility on certified pollution control property which is acquired after January 1, 1970. The benefit also applies to property used for testing, monitoring, or sampling, or gathering such data as required to be collected by pollution control agencies of government. Specifically excluded from the broad definitions of air and water pollution control property are motor vehicle emission control devices and residential sewage disposal systems. The act, as adopted during the 1978 Session, is only applicable for the taxable year 1979.

The deadline for filing a request with the state Department of Health for certification of pollution control property was September 30, 1978. The department is responsible for determining eligibility, but is allowed the discretion to certify all, a part, or none of the property, except that property required by governmental agencies or court order is to be certified for its entire value. The application fee for requesting certification is $25; and upon issuance of a certificate, the applicant pays any additional amount established by the department to cover its costs in determining eligibility.

If the health department denies a request, in whole or in part, the applicant may file a written objection, and the department must grant a hearing. Final determinations by the department are subject to judicial review.

Projected Fiscal Impact

Prior to enactment of the bill, the fiscal impact of the measure for FY 80 was projected to be $.9 million. The health department reported to the committee that by the September application deadline some 60 applications were made. The total value of the pollution control property upon which certification was requested exceeded $198.5 million. If the department certifies all of the requests, the fiscal impact could approach $400,000 or approximately one half of the initial fiscal note.

Proposed Amendments to the Act -- Bills 16, 17, and 18

The committee finds that several sections of the act should be amended and, as a result, recommends Bills 16, 17, and 18. The amendments make more specific the definitions of air and water pollution control property; more equitably distribute the cost of conducting the certification process; allow the taxpayer a choice of when he claims the credit provided by the act; and extends the life of the measure for more than one taxable year.

Bill 16 -- Definition of pollution control property. Although the administrators as well as businessmen who may benefit from the measure have experienced few problems with provisions of the act, both groups concluded that the definitions of air and water pollution control properties should be clarified and made more specific. While the amendment specifies what pollution control properties are, it also specifies what properties do not fall within the definition. The committee concludes that property that is voluntarily installed -- an internal exhaust fan, for example -- for the sole use of the businessman or his personnel, should not be certified. Neither should a facility which is only partially used to abate pollution be totally certified.

Bill 17 -- Extending the life of the act, and allowing credit on tax assessed. As adopted, the act took effect on July 1, 1978, and applies only to the taxable year beginning on January 1, 1979. The act further provides that the credit against the income tax is to be based on general property taxes paid for the taxable year. The net effect of such a provision, taking into account the timetable applied in Colorado for the assessment of property (during one year), the payment of taxes on that property (during the following year), and the claiming of an income tax credit (in the third year), results in an unnecessarily long delay in realizing a tax benefit. The amendment changes such a process by stating that, at the option of the taxpayer, the credit against income taxes may be based on taxes assessed for a certain year or on taxes actually paid. The amendment also extends the life of the bill for an indefinite period and provides that by January, 1981, the Department of Revenue, the Department of Health, and the Division of Property Taxation are to report to the General Assembly on their experience in implementing the act. These reports are to contain comments and recommendations on the law.

Bill 18 -- Sharing the costs of administering the act. For the first year's administration of the act, the Department of Health was appropriated $65,980 in cash funds. Acting on the advice of legal counsel, the department charged each applicant the single $25 fee set by statute, although in many instances a single application contained several sites and facilities. The statute provides that after inspection of the property for which certification is requested, an additional fee may be charged to cover expenses incurred by the department, but only if certification is granted. The statutes also provide that the department bear the entire cost of the appeal procedure set forth in the law. As a result of the first months of administrative experience with the act, and presuming the General Assembly will continue to cash fund the program, the committee recommends that the following changes be adopted as a means of sharing costs on a more equitable basis:

-- the $25 fee should apply to each plant site comprising the application for certification.

-- if an applicant appeals the department's decision to deny certification, he should pay the actual costs of the appeal process if

the denial is upheld, whether in whole or in part.

The act currently provides that the Department of Health notify county assessors when a request for certification is granted. With the agreement of the state's property tax administrator, the committee recommends that instead the Department of Health notify the property tax administrator of certifications. The administrator maintains a constant line of communication with local assessors.

House Bill 1112 -- Property Tax Deferral for Senior Citizens

Provisions of the Act

The act authorizes deferred collection of property taxes on homesteads owned by the elderly. A person 65 years of age or older may elect to receive the benefits of this act by filing a claim with the county treasurer between January 1 and April 1. To qualify for deferral: 1) the property must be the homestead of the taxpayer; 2) the taxpayer must own or be purchasing the fee simple estate; 3) the property must not be income-producing; 4) all property taxes for prior years must be paid; 5) the property must not be subject to any lien the terms of which are dictated by federal law, rule, or regulation prohibiting deferral; and 6) the value or equity of the property must be sufficient to pay the lien established by the deferral.

Under provisions of the law, deferred taxes are a first lien for the five years following execution of a mortgage. Deferred taxes become subordinate to the mortgagee's claims on mortgages dated more than five years prior to the year for which deferral is claimed. The act prohibits inclusion of a clause in any mortgage, deed of trust, or contract of sale which would bar the owner from deferring his property tax for any year beginning more than five years after the end of the calendar year in which the mortgage, deed of trust, or contract of sale was executed. However, the act does permit the mortgagee to execute a separate instrument which provides that the mortgagor promises not to defer his taxes for any year; although the mortgagor is authorized to rescind such an agreement within three days following its execution.

The act specifies the procedures by which the deferral mechanism operates, including payment by the State Treasurer to county treasurers. The law also specifies the conditions under which the deferred taxes become payable; the form of deferral notices which must be filed annually by the taxpayer; the procedure to be followed by the State Treasurer in maintaining deferral accounts and calculating interest (eight percent) thereon; and the process followed in foreclosing on deferred tax liens.

The act becomes effective on February 28, 1979. It requires that the State Treasurer submit, by May 1 of each year, a report to the General Assembly concerning the act. For FY 79, $800,000 was

appropriated to implement the measure.

Issues Discussed by the Committee

A majority of the committee's time during the 1978 interim was devoted to discussing the provision of House Bill 1112 and the issues raised by the act. The range of issues discussed included questions regarding the constitutionality of the act; whether private lending institutions would serve as mortgagees without changes to the law; the reaction of federal lenders and secondary purchasers of loans to the measure; whether the regulations of federal agencies requiring the escrowing of taxes would indirectly prohibit the deferral of taxes; the fiscal impact of the act; how receptive senior citizens are to the act; and whether the current state programs of property tax relief for senior citizens are more workable and appropriate than House Bill 1112.

Projected fiscal impact. The fiscal note that accompanied House Bill 1112 through the General Assembly projected the cost of the act to be $1.1 million for FY 79. Representatives of senior citizens groups that appeared before the committee during the interim stated that most senior citizens do not plan to take advantage of the opportunity to defer property taxes. Generally, older citizens are offended by the thought of a tax lien on their estate, and are confused over the provisions of the act. Also, a review of the impact of the state's aged and disabled property tax credit or refund law indicates that the low income elderly with incomes under $6,500 were receiving almost total property tax relief prior to the enactment of House Bill 1112.

The data obtained from other states authorizing deferred collection of property taxes (California, Florida, Oregon, and Virginia) indicates that the deferral program has not been used to a great extent in terms of either number of participants or the amount of property taxes deferred. In California, for the period 1977-78, 1.6 percent of the eligible elderly participated in the deferral program. In Oregon, less than two percent utilized the deferral provision in 1978.

Opinion on the constitutionality of the act and its relationship with other state and federal laws. Early in the interim the committee requested an opinion from the Attorney General on several issues:

1. May elderly persons who qualify for deferred property taxes and the state's income tax credit for property taxes law claim both benefits for a single year? The response was that qualified elderly persons are entitled to both benefits.

2. Does the deferral of taxes in effect constitute a loan by the state? If the state assumes the role as a lender, is the state in violation of Article XI, Section 1 of the state constitution, and are

consumer disclosure requirements of part 3, article 3, title 5, C.R.S. 1973, applicable? Finally, are any of the provisions of the federal Truth in Lending Act applicable? In response, the Attorney General reported that it does not appear that the act violates the state constitution since there is no pledge of credit or lending of credit. The second reason for its constitutionality is that there will be no mingling of public funds with private funds; and third, a valid public purpose is presumably being furthered by the act. It was suggested by the Attorney General that, in regard to the third point, a legislative declaration detailing the act's public purpose should be included in the law.

Under the Truth and Lending Act and the Uniform Consumer Credit Code, taxes are excluded because they are non-consentual obligations. However, House Bill 1112 does provide an option -- tax deferral. Therefore, deferred property taxes would constitute a debt and be subject to the Truth and Lending Act and the UCCC. Governmental agencies are subject to the Truth and Lending Act when they assume the role of creditor. However, there is another provision in the act that exempts governmental entities from liability for failure to comply with the act (there is no such exemption in the UCCC). Currently, House Bill 1112 cannot comply with the Truth and Lending Act. For example, there is no mechanism to allow a three day right of rescission.

In the opinion of the Attorney General, to comply with the UCCC, the state would have to conform to the disclosure requirements, including the three day right of rescission. In addition, if the effective annual interest rate exceeds 12 percent, the State Treasurer is required to be licensed as a creditor.

Regarding the eight percent annual interest rate in House Bill 1112, the State Treasurer is subject to the interest rates allowed under the UCCC. The maximum rates are 18 percent on large amounts and 36 percent on small amounts. The problem in the act is the number of months interest can accrue. For example, the deferral could be filed on March 31. The interest is retroactive to January 1. The taxpayer could receive a tax refund and decide to pay his property taxes May 1, which he deferred on March 31. The deferral would be in effect one month, but the interest would have accrued for four months. Therefore, the effective annual interest rate would be 32 percent. (Interest for one month equals 2/3 of one percent. Two-thirds of one percent accruing for 4 months, January - April, equals 2 2/3 percent interest actually charged for the one month the deferral was in effect. Two and two-thirds percent, times 12 months, equals 32 percent effective annual interest rate). To solve this problem, it was suggested that the interest should accrue upon the filing of a valid tax deferral claim or when the deferred taxes are paid by the state.

First lien provision. One of the main issues discussed by the committee was the priority of the state's lien for deferred taxes. The position of the lending institutions in Colorado, as was the case in Oregon prior to the amendment of their law in 1977, is that a

state's first lien for deferred taxes places in jeopardy the prior lien of the lender on a homestead. California and Oregon laws provide that the deferred taxes create a lien which is subordinate to the mortgage lien under the so-called "first in time, first in right" procedure. Virginia provides a first lien for deferred taxes, as long as the total tax lien does not exceed 10 percent of market value of the homestead. Florida grants the state a first lien for deferred taxes, but a homeowner must have at least 30 percent equity in the home and the total amount of all liens against the property, including the deferral lien, cannot exceed 85 percent of the property's assessed value.

In response to an inquiry from the committee, special counsel for the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, both purchasers of mortgages in the secondary market, stated that they did not believe that any law, rule, or regulation imposed by these institutions prohibits the deferral of real property taxes. They noted that while "some deeds of trust purchased by FHLMC or FNMA will be affected by the Act, neither Corporation feels that the fact alone should stand in the way of such legislation".

Escrowing requirements. Another question discussed by the committee was whether escrowing requirements on the part of some federal agencies would indirectly prohibit the deferral of taxes. Section 39-3.5-103 (1) (e) of House Bill 1112 provides that in order for property to qualify for tax deferral, such property "must not be subject to any lien, the terms of which are dictated by federal law, rule, or regulation prohibiting deferral of taxes".

The Department of Housing and Urban Development (HUD) requires escrowing of property taxes under FHA mortgages. However, this requirement was modified by HUD for tax deferral in Oregon. Annual escrow requirements were waived by HUD in Oregon, provided that the mortgagee holds an amount equal to one year's taxes in an escrow account as a protective measure against the possibility that tax deferral is terminated.

The Veteran's Administration (VA) does not require escrowing; however, all of their mortgages, deeds of trust and other standard forms provide for escrowing property taxes. Local savings and loans are governed by the Federal Home Loan Bank Board (FHLBB). The FHLBB requires escrowing when the loan-to-value ratio is greater than 80 percent. Although no written response was received from the FHLBB, representatives of the board indicated orally that this requirement may be modified to enable tax deferral.

Representatives of Colorado savings and loan institutions stated that the problem with escrowing is not restricted to the legal requirements of FHLBB but also concerns the availability of funds for home loans in the future. The institutions are of the opinion that waiving the escrow requirement may severely jeopardize the sale of Colorado loans on the secondary market. Colorado is a short capital

state, therefore it is necessary to sell mortgages on the secondary market. If Colorado mortgages become subordinate to a deferred tax lien and all the other states' mortgages are first liens, not subordinated by deferred taxes, the position of Colorado mortgages on the secondary market may not remain competitive.

Proposed Amendments to the act -- Bills 19 and 20. As a result of the testimony and committee discussion on House Bill 1112, the committee adopted a recommendation which states that if the beneficial changes provided for in Bill 19 are not adopted by the effective date of the act, February 28, 1979, the General Assembly should repeal the entire law (repeal is provided in Bill 20). The committee suggests that there may be better ways to relieve the property tax burden on senior citizens than deferral. The committee is concerned over the lack of support among those eligible to benefit from the law, and the attitude that implementation of House Bill 1112 erodes support for continued broadening of benefits under the state's property tax credit law.

The major provisions of Bill 19 are:

1) The act now provides that if the qualified taxpayer owns the property or owns the property as a joint tenant with a spouse, the property is entitled to deferral. The bill addresses the issue of joint ownership or tenancy in common between taxpayers otherwise qualified who are unrelated or are related other than as husband and wife, by stating that such property is also entitled to deferral.

2) The bill includes in the definition of "homestead" residents within a multiunit building (e.g., condominiums).

3) The bill repeals the state's first lien right for deferred taxes, thus making the state's lien for deferred taxes subordinate to the lender's mortgage lien under a "first in time, first in right" priority.

4) The law is amended to provide that interest shall accrue on deferred taxes beginning May 1 and that the interest shall be compounded annually. The act now provides that interest accrues from the beginning of the year. The law is currently silent on whether the interest is to be compounded annually.

5) The bill states that the State Treasurer shall pay the county treasurers the amount of deferred taxes due those local entities on or before April 30.

6) The annual notice to the taxpayer asking if he wishes to defer taxes for another year will, under provisions of the amendment, specify the amount of taxes (and interest) which the taxpayer has deferred to date.

7) The bill states that a qualified taxpayer who has continuously deferred taxes should not be required to pay his deferred taxes

and interest if he does any of the following:

a. subsequently decides not to continue deferral; or

b. has discontinued deferral because his property's net value or equity is not sufficient to pay off the state's lien; or

c. continuously defers taxes, then discontinues deferral and pays his current taxes, and then claims deferral again.

8) When a taxpayer dies, the bill states that even though a surviving spouse does not meet the age requirements of the act, a liability is not established for the previously deferred taxes until the spouse's death or any other event occurs which requires payment under the act.

Homestead Exemption for Senior Citizens and the Disabled

During the interim, the committee received permission from the Legislative Council to extend the scope of its original directive to include examination of the homestead exemption concept. This study was to be a part of the review of House Bill 1112, the property tax deferral act for senior citizens. As a result of its examination of the homestead exemption concept, the committee recommends Bill 21, a concurrent resolution. The resolution establishes an ad valorem property homestead exemption of $2,000 for residential property occupied by a person who is sixty-five years of age or older or who is disabled, and within specified income limits established by the General Assembly. Under provisions of the proposed constitutional amendment, the General Assembly would define "residential property" and "disabled", in addition to establishing income limits for those who receive the exemption.

House Bill 1191 - The Job Expansion and Investment Credit Act of 1978

Provisions of the Act

The act provides a ten-year income tax credit for the establishment of a "new business facility", "separate facility", or "new facility" as defined in the act. The credit is $50 per new business facility employee (minimum of five employees) and $50 per each $100,000 (or major fraction thereof) in new business facility investment. This credit is doubled in counties with less than 50,000 population. The credit cannot exceed 50 percent of the facilities' income tax liability. Neither may the credit be applied to the establishment or expansion of a public utility. The act permits a taxpayer to defer the commencement of his ten-year credit for up to three years. It also allows a taxpayer to pass any remainder of the credit to the state or distributee upon death.

Generally, a "new business facility" is defined as a revenue-producing enterprise acquired or leased to the taxpayer after July 1, 1978, and prior to December 31, 1981. Any facility in the hands of a taxpayer for the sole purpose of leasing the facility is not eligible for the credit. The facility cannot be a replacement business facility or be previously operating immediately prior to a transfer of title.

If a facility not constituted as a "new business facility" is expanded, the expansion is considered a "separate facility", eligible for the credit, if the investment exceeds one million dollars or, if less, it is 100 percent of the investment in the original facility and otherwise qualifies as a new business facility.

"Replacement business facilities" are not eligible for the credit. A "new facility" is called a "replacement business facility" if the taxpayer operated the old facility for three out of five preceding years and the new operation remains identical or similar to the previous operation. A "new facility" is eligible for the credit if it is not classified as a "replacement business facility" and the taxpayer's investment in the "new facility" exceeds three million dollars or, if less, 300 percent of the investment in the old facility.

A taxpayer entitled to the credit may elect to defer the commencement of the ten-year credit period up to three years following the start of commercial operations. If he elects to defer, the taxpayer notifies the Department of Revenue. The act also provides procedures for the transfer or retention of the credit if a new business facility is leased to or acquired by a related taxpayer. If a facility is closed during the ten-year period in which the credit is allowed, but the business resumes activities within the ten-year period, the act allows the Department of Revenue to grant the taxpayer the remainder of the credit for reasonable cause.

Issues Discussed by the Committee

Since House Bill 1191 is basically identical to a law enacted in Kansas, the committee was interested in receiving fiscal data on the implementation of that act. The data received from Kansas illustrated that in 1976, the first year of implementation, only 15 claims were filed, amounting to about $25,000. With incomplete figures for 1977, the number of claims has risen to 40, amounting to nearly $87,000. The projected revenue loss to Colorado as a result of the implementation of House Bill 1191 is $50,000 for FY 1979 and $100,000 for FY 1980.

Another issue discussed by the committee during the interim was the credit, both its need and its amount. During testimony before the committee, representatives of industry, independent business, and chambers of commerce recommended an increase in the $50 credit to provide additional incentive for new development and expansion. Some

committee members questioned the need of a larger credit, or the present credit, as an incentive to business development and expansion due to the growth and strength of Colorado's economy. Regardless of the size of the credit, the committee suggested that the adoption of House Bill 1191 created a renewed "pro-business attitude" in Colorado.

Proposed Amendments to the Act -- Bill 22

The committee did adopt several technical changes which are offered as Bill 22. The bill extends the termination date from December 31, 1981, to December 31, 1983; reduces the number of new business facility employees required to claim the credit from five to two; and revises the method used to calculate the "property factor" provided in the act.

The act was extended to allow more time to accommodate the mechanics of locating or expanding a business, particularly new construction. Testimony indicated that a taxpayer who becomes aware of the credit may not have enough time to construct or expand a facility and commence operations before December 31, 1981. The extension also provides additional time to assess the fiscal impact of the law.

Reducing the number of required new business facility employees from five to two was intended to allow more small businesses an opportunity to utilize the credit, although those who testified indicated a preference for eliminating the minimum employee requirement and allowing the credit for each new job created.

In the calculation of new business facility income, the committee approved a change from "average value" of the taxpayer's real and tangible personal property to "original cost", since "average value" would be difficult to calculate and continually fluctuate, whereas, "original cost" is a known amount that requires no calculation and will not fluctuate.

Assessment of Personal Property

Background

In 1977, the General Assembly passed House Bill 1452, a comprehensive bill concerning property taxation. The act created a four-year assessment framework (also referred to as the base year concept) within which county-wide revaluations of real and personal property are to be prepared and implemented. Generally, the concept freezes levels of value for real and personal property to a base year (currently 1973) in determining value for assessment purposes. The following four years, levels of value are set for the next base year.

Since personal property was included in the four-year assessment framework, the state property tax administrator and the majority

of county assessors stopped depreciating personal property after the base year. Because of the resulting confusion over the intent and application of the act, the state property tax administrator requested counsel from the Attorney General. The Attorney General concluded that personal property was not entitled to annual depreciation in the period between the base years. According to the provisions of House Bill 1452, real and personal property are entitled to depreciation only when the seven factors (one of which is "current replacement cost, new, less depreciation") are used to determine actual value. The Attorney General stated that the seven factors, including depreciation, cannot be applied between the base years.

During the second special session of 1978, the General Assembly attempted to define legislative intent regarding personal property and depreciation under the act by adopting Senate Joint Resolution 2. In part, the resolution

> That, in employing the words "level of value" in House Bill No. 1452 the General Assembly intended that the determination of actual value of personal property for all years would take into account depreciation in value (loss in value from all causes) including, but not limited to, functional and economic obsolescence and normal wear and tear.

After the adoption of S.J.R. 2, the state property tax administrator requested a second opinion from the Attorney General regarding the impact of the resolution upon the December 19 opinion. In response, the Attorney General reaffirmed his earlier statement.

The Issue

On August 4, 1978, the Legislative Council directed the committee to review and clarify the provisions of House Bill 1452 regarding personal property and the base year concept. The issue before the committee was whether to amend House Bill 1452 to allow annual depreciation of personal property between the base years. The committee was also concerned about where the tax burden would shift if personal property was removed from the base year concept.

Testimony supported the removal of personal property from the four-year assessment framework. The resulting effect of removing personal property from the base year concept would be to allow personal property annual depreciation. The move would benefit short life equipment which depreciates quickly.

Amendment to the Act -- Bill 23

To satisfy concerns over maintaining current exceptions of personal property from the base year concept and removing all personal property from the base year concept the committee recommends Bill 23

which amends House Bill 1452. The bill removes all reference to personal property in Sections 39-1-104 (9), (10), and (11) regarding the four-year assessment framework. In subsection (12), reference to personal property is removed when pertaining to the determination of actual value but is retained when it refers to the exceptions to the base year concept. In addition, the committee attempted to avoid any misunderstanding regarding personal property and the four-year assessment framework by adopting subsection (12.1) which states:

> (12.1) It is the intent of the general assembly that the actual value of personal property is not to be determined according to a specified year's level of value and manuals and associated data published by the administrator in said specified year and approved by the advisory committee to the administrator. The mention of personal property in the exclusions listed in subsection (12) of this section shall not be construed to mean that subsections (9), (10), and (11) of this section apply to personal property.

House Bill 1194 -- Indexation of the Individual Income Tax

Provisions of the Act

The act requires that the General Assembly, prior to May 1 of each year, determine an "Annual Inflation Factor" (AIF) to be applied against the income tax rates, standard deduction, low income allowance, personal exemption, minimum filing thresholds for taxpayers, and other components of the individual income tax structure. (The AIF for the 1978 taxable year is 106 percent.) The act provides that if the General Assembly fails to determine the AIF prior to May 1, the AIF shall be presumed to be 106 percent. Adjustments in the tax rates, standard deduction, personal exemption, and low income allowance, based on the AIF each year are cumulative.

The act also implements the following:

1) the individual personal exemption is raised from $750 to $850;

2) the exemption for estate or trust income is raised from $750 to $850; and

3) the income levels which require the filing of an income tax return were raised for all categories including single, married jointly or separately, over age 65, and resident estates or trusts.1/

1/ See following page for footnote.

In monitoring the effect of House Bill 1194, the committee found that the act decreases the tax liability of all Colorado taxpayers but does not jeopardize the revenue position of the state. The committee concludes therefor that the act should continue in its present form.

The following table is a prediction by the Department of Revenue of the reduction in the tax liability for the next several years.

Indexation of the Income Tax
Estimated Effect on Income Tax Liability 2/

Tax Year	State Fiscal Year	Total Tax Liability Without Indexing	Total Tax Liability With Indexing	Total Reduction
		...............Millions of Dollars.............		
1978	1978/79	423.0	394.7	28.3
1979	1979/80	512.1	457.9	54.2
1980	1980/81	589.9	509.5	80.4
1981	1981/82	676.3	565.6	110.7
.	.	.	.	.
.	.	.	.	.
.	.	.	.	.
1987	1987/88	1,401.9	991.9	410.0

1/ Single individuals -- from $1,750 to $1,850; single individuals over age 65 -- from $2,500 to $2,700; married filing jointly -- from $2,500 to $2,700; married filing jointly one spouse over age 65 -- from $3,200 to $3,500; married filing jointly both spouses over age 65 -- from $4,000 to $4,400; married filing separately -- from $750 to $850; married filing separately over age 65 -- from $1,500 to $1,700; and resident estates or trusts -- from $750 to $850.

2/ Based on the assumption used in Indexation of the Income Tax, The Colorado Alternative, as presented to the National Association of Tax Administrators by the Department of Revenue. The factors assumed annual growth rates as follows: income - 8%; population - 2.5%; inflation factor 6%.

The committee found that the act allows lower income taxpayers to benefit slightly more, as a group, than do higher-income taxpayers. The effect of House Bill 1194 upon selected adjusted gross income levels is illustrated below in a table compiled by the Department of Revenue.

Comparisons of Old and New
Tax Distributions

Family Adjusted Gross Income Brackets	Difference In Tax Liability (000)	Difference Average Tax	Percentage Savings Tax	Percent of Tax Burden Old Tax	Percent of Tax Burden New Tax
Less than $ 5,000	$ 1,167	$ 6.62	13.84%	1.99%	1.84%
$ 5,000 to 10,000	2,839	13.73	9.23	7.27	7.08
10,000 to 15,000	4,411	27.41	9.36	11.14	10.08
15,000 to 20,000	5,721	40.03	8.67	15.59	15.26
20,000 to 25,000	4,957	47.08	7.65	15.32	15.17
25,000 to 50,000	7,979	53.48	5.52	34.17	34.60
50,000 to 100,000	1,055	59.58	2.67	9.35	9.75
100,000 and over	220	56.02	1.00	5.17	5.48
TOTALS	$28,349	$29.42	6.70%	100.00%	100.00%

The overall effective tax rate for all households with taxable income declines from 2.85 percent of adjusted gross income to 2.65 percent of adjusted gross income. This represents an average tax "savings" of $29.42 or 6.7 percent of average liability. The act also means that approximately 20,000 households are switched from a tax liability status to a nontax liability status.

Committee Recommendation -- Bill 24

The committee recommends Bill 24 which attempts to simplify the present individual income tax structure by eliminating the low income allowance and the percent standard deduction in favor of a $1,000 standard deduction.

Presently, the Colorado standard deduction is the percentage standard deduction or the low income allowance, whichever is greater, plus a deduction for federal income tax. The percentage standard deduction is 10 percent of Colorado adjusted gross income or $1,000 whichever is the lesser. The low income allowance consists of a basic allowance and an additional allowance; however, the calculation is very difficult.3/

3/ See following page for footnote.

According to the Department of Revenue, eliminating the low income allowance and the percentage standard deduction in favor of a flat $1,000 standard deduction, would simplify the income tax tables, make them more accurate, and provide a less complicated method of claiming the standard deduction for all Colorado taxpayers. By providing a flat $1,000 standard deduction, (multiplied yearly by the Annual Inflation Factor according to House Bill 1194), the percentage standard deduction, the basic allowance, and the additional allowance can be eliminated.

Currently, taxpayers with Colorado adjusted gross incomes (AGI) of over $10,000 would claim the $1,000 standard deduction as the lesser of 10 percent of their Colorado adjusted gross income or $1,000. Those taxpayers below the $10,000 Colorado AGI level either claim the 10 percent deduction (the lesser of 10 percent of their AGI or $1,000), or the low income allowance.

Under Bill 24, those Colorado taxpayers over $10,000 AGI would not be affected; they would still receive the $1,000 standard deduction. However, those taxpayers below $10,000 AGI would benefit because they would receive a $1,000 standard deduction rather than the percentage standard deduction or low income allowance. The $1,000 standard deduction would be larger than the deduction allowed under the percentage standard deduction or the low income allowance unless the low income allowance received was the maximum -- $1,000.

The Department of Revenue estimates the revenue decrease of Bill 24 to be about $5.4 million.

House Bill 1181 -- Concerning the Income Tax

House Bill 1181 was vetoed by the Governor. Its major provision repealed the two percent surtax on income over $5,000 derived from dividends or interest. The remainder of the bill's provisions are contined in House Bill 1194, which was signed by the Governor.

The committee did not review the impact of this measure during the interim.

3/ The basic allowance is $200 plus $100 for each exemption. The additional allowance is the excess, if any, of $800 over the number of exemptions multiplied by $100 and the aggregate of 1/2 of the Colorado adjusted gross income in excess of $1,000 plus the number of exemptions multiplied by $750. The low income allowance cannot exceed $1,000.

COMMITTEE ON FINANCE - TAX PACKAGE

BILL 16

A BILL FOR AN ACT

1 CONCERNING THE DEFINITION OF "AIR POLLUTION CONTROL PROPERTY" FOR
2 THE PURPOSES OF THE INCOME TAX CREDIT RELATING TO SUCH
3 PROPERTY.

Bill Summary

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

Amends the definition of "air pollution control property", for purposes of the income tax credit relating to such property, to clarify what property may or may not be eligible for certification by the division of administration of the department of health.

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4 Be it enacted by the General Assembly of the State of Colorado:
5
6 SECTION 1. 39-1-102 (12.1), Colorado Revised Statutes 1973,
7 as amended, is amended to read:
8 39-1-102. Definitions. (12.1) (a) "Pollution control
9 property" means all owned or leased property acquired or first
10 utilized after January 1, 1970, which is INSTALLED, CONSTRUCTED,
11 OR used:
12 ~~(a)~~ (I) For the PRIMARY purpose of eliminating, reducing,
13 or preventing the emission INTO THE ATMOSPHERE of air

1 contaminants, as defined in section 25-7-103 (1), C.R.S. 1973, to
2 the extent that such property is certified as pollution control
3 property in accordance with the provisions of section 39-4-110 or
4 39-5-131. The term includes any treatment works, control
5 devices, disposal systems, machinery, equipment, BUILDINGS,
6 structures, LAND, or OTHER REAL OR PERSONAL property, or any part
7 or accessories thereof, installed, ~~or-acquired~~ CONSTRUCTED, OR
8 USED for the PRIMARY purpose of reducing, controlling, or
9 disposing of air contaminants. It does not include any motor
10 vehicle emission control device OR ANY MOTOR VEHICLE UNLESS IT IS
11 INCLUDED IN THE ASSESSMENT FOR GENERAL PROPERTY TAXES.
12 ~~(b)~~(II) For the PRIMARY purpose of eliminating, reducing,
13 or preventing the release of pollutants, as defined in section
14 25-8-103 (11), C.R.S. 1973, into state waters to the extent that
15 such property is certified as pollution control property in
16 accordance with the provisions of section 39-4-110 or 39-5-131.
17 The term includes any treatment works, control devices, disposal
18 systems, machinery, equipment, BUILDINGS, structures, LAND, or
19 OTHER REAL OR PERSONAL property, or any parts or accessories
20 thereof, installed, ~~or-acquired~~ CONSTRUCTED, OR USED for the
21 primary purpose of reducing, controlling, or disposing of
22 pollutants which if released into state waters could cause water
23 pollution. It does not include any residential sewage disposal
24 system.
25 ~~(c)~~(III) For testing, monitoring, or sampling or to gather
26 such data as is required to be collected by pollution control

1 agencies of state, federal, or local government.

2 (b) THE TERM "POLLUTION CONTROL PROPERTY" DOES NOT INCLUDE:

3 (I) ANY PROPERTY WHICH IS USED IN OR ON ANY RESIDENTIAL

4 BUILDING OR STRUCTURE;

5 (II) ANY PROPERTY WHICH IS VOLUNTARILY INSTALLED,

6 CONSTRUCTED, OR USED SOLELY FOR THE SAFETY, HEALTH, PROTECTION,

7 OR BENEFIT OF PERSONNEL OF THE OWNER OR LESSEE OR SOLELY FOR THE

8 BENEFIT OF THE OWNER OR LESSEE.

9 (c) IN THE EVENT ANY POLLUTION CONTROL PROPERTY ALSO SERVES

10 ANOTHER BENEFICIAL PURPOSE OR USE, THE DIVISION OF ADMINISTRATION

11 OF THE DEPARTMENT OF HEALTH SHALL CERTIFY ONLY THAT PORTION

12 THEREOF AS MAY BE REASONABLY CALCULATED TO BE NECESSARY FOR AND

13 DEVOTED TO THE PRIMARY USE OF ELIMINATING, REDUCING, OR

14 PREVENTING THE EMISSION INTO THE ATMOSPHERE OF AIR CONTAMINANTS

15 OR THE RELEASE OF POLLUTANTS INTO STATE WATERS.

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 FINANCE - TAX PACKAGE

BILL 17

A BILL FOR AN ACT

1 CONCERNING THE CREDIT AGAINST INCOME TAX BASED ON TAXES
2 ATTRIBUTABLE TO POLLUTION CONTROL PROPERTY.

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 the credit against income taxes based on taxes attributable to pollution control property may be based on taxes assessed for a certain year or taxes actually paid, at the option of the taxpayer and that a taxpayer may qualify for said credit in more than one taxable year. Also provides that the agencies responsible for implementation of the credit will report to the general assembly concerning the credit.

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3 Be it enacted by the General Assembly of the State of Colorado:
4 SECTION 1. 39-22-508, Colorado Revised Statutes 1973, as
5 amended, is amended to read:
6 39-22-508. Credit for property taxes attributable to
7 pollution control property. (1) There shall be allowed to all
8 taxpayers as a credit against the income taxes imposed by this
9 article a tax credit equal to thirty percent of: The amount of
10 general property taxes; that portion of lease payments providing
11 revenue for payments in lieu of taxes; or payments in lieu of

1 taxes paid in Colorado for the taxable year on pollution control
2 property, as defined in section 39-1-102 (12.1), certified as
3 such under the provisions of section 39-4-110 or 39-5-131; except
4 that no credit shall be allowed for general property taxes
5 assessed on pollution control property which is used in or on any
6 residential structure or building.
7 (2) SAID CREDIT AGAINST INCOME TAXES MAY BE BASED, AT THE
8 OPTION OF THE TAXPAYER, ON GENERAL PROPERTY TAXES ASSESSED DURING
9 THE TAXABLE YEAR OR PAID DURING THE TAXABLE YEAR, AND THE SAME
10 OPTION SHALL BE ALLOWED IN THE CASES OF PAYMENTS IN LIEU OF TAXES
11 AND LEASE PAYMENTS PROVIDING REVENUE FOR PAYMENTS IN LIEU OF
12 TAXES. IF THE CREDIT CLAIMED UNDER THIS SECTION IS BASED ON AN
13 ESTIMATE OF PROPERTY TAXES ASSESSED FOR A TAXABLE YEAR AND THE
14 PROPERTY TAXES ACTUALLY PAID DIFFER FROM SAID ESTIMATE OR ARE NOT
15 PAID, THE TAXPAYER SHALL FILE AN AMENDED INCOME TAX RETURN FOR
16 THE APPROPRIATE TAXABLE YEAR REFLECTING SAID DIFFERENCE OR
17 NONPAYMENT; THE REQUIREMENT OF FILING AN AMENDED RETURN SHALL
18 ALSO APPLY IN THE CASES OF PAYMENTS IN LIEU OF TAXES AND LEASE
19 PAYMENTS PROVIDING REVENUE FOR PAYMENTS IN LIEU OF TAXES.
20 (3) If the tax credit provided by this section exceeds the
21 amount of income tax due for the taxable year, the excess amount
22 may be carried over and applied against the income tax due in
23 each of the five succeeding years, but such carry-over credit
24 shall be applied against the tax due for the earliest of the
25 taxable years to which such credit may be carried. The portion
26 of such credit which may be applied to each succeeding year to

1 which such credit is applicable shall be the excess, if any, of
2 the amount of such credit over the income tax due for each of the
3 prior taxable years from which such credit may be carried. Any
4 tax credit claimed under this section shall be deducted from
5 those property taxes allowed as a deduction in determining
6 taxable income.
7 (4) ON OR BEFORE JANUARY 1, 1981, THE DEPARTMENT OF REVENUE
8 SHALL REPORT TO THE GENERAL ASSEMBLY ON THE EFFECT ON REVENUES OF
9 THE CREDIT FOR PROPERTY TAXES ATTRIBUTABLE TO POLLUTION CONTROL
10 PROPERTY, AND THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF
11 HEALTH AND THE DIVISION OF PROPERTY TAXATION IN THE DEPARTMENT OF
12 LOCAL AFFAIRS SHALL REPORT TO THE GENERAL ASSEMBLY ON THEIR
13 EXPERIENCE IN IMPLEMENTING THE PROVISIONS OF SECTIONS 39-1-102
14 (12.1), 39-4-110, AND 39-5-131. SUCH REPORTS SHALL CONTAIN SUCH
15 OTHER COMMENTS AND RECOMMENDATIONS AS THE REPORTING AGENCIES DEEM
16 APPROPRIATE.
17 SECTION 2. 39-5-131 (1), (3), and (4), Colorado Revised
18 Statutes 1973, as amended, are amended to read:
19 39-5-131. Certification and valuation of pollution control
20 property. (1) On or before September 30, ~~1978~~ OF EACH YEAR, a
21 person owning or leasing pollution control property, as defined
22 in section 39-1-102 (12.1), may file with the division of
23 administration of the department of health, on forms prescribed
24 by such division, a request for certification of such property as
25 pollution control property, which certification shall issue for
26 the useful life of said property and shall remain effective for

1 the benefit of all succeeding owners or lessees.

2 (3) On or before March 31 ~~1979;-with-reference-to-each-such~~
3 ~~request~~ OF THE FIRST YEAR FOLLOWING FILING OF A REQUEST, the
4 division of administration shall determine the eligibility or
5 noneligibility of such property as pollution control property and
6 certify such determination to both the assessor of the
7 appropriate county, or, in the case of property leased pursuant
8 to section 29-3-120, C.R.S. 1973, the county treasurer, and the
9 owner or lessee of such property by certified mail with return
10 receipt requested. The division may determine and certify as
11 pollution control property all of the property included in any
12 request, specified portions of such property, any part thereof,
13 or none of such property; except that any property which is
14 acquired as the result of an order of or agreement with any
15 federal, state, or local regulatory agency for any of the
16 purposes set forth in section 39-1-102 (12.1) or which is
17 acquired as the result of a judicial decision or decree for such
18 purposes shall be certified as pollution control property for its
19 entire value. In making its determination, the division shall
20 consider all available pertinent information. For the purposes
21 of this section, "appropriate county" means the county in which
22 the property is permanently located or, if portable or movable
23 equipment, the county in which the principal office of the owner
24 or lessee is located.

25 (4) If the determination of the division of administration
26 denies a request for certification in whole or in part, the

1 applicant may file, within ten days after receipt of written
2 notice of such determination, a written objection to such
3 determination with the division, and, if a written objection is
4 so filed, the division shall grant the applicant, within thirty
5 days after receipt of such written objection, a full hearing held
6 in accordance with the provisions of section 24-4-105, C.R.S.
7 1973, and make its final determination on the basis of such
8 hearing. The final determination shall be certified to both the
9 assessor of the appropriate county, or, in the case of property
10 leased pursuant to section 29-3-120, C.R.S. 1973, the county
11 treasurer, and the applicant no later than May 31 ~~1979~~ OF THE
12 FIRST YEAR FOLLOWING FILING OF A REQUEST.
13 SECTION 3. Section 6 of chapter 102, Session Laws of
14 Colorado 1978, is amended to read:
15 Section 6. Effective date - applicability. This act shall
16 take effect July 1, 1978, and shall apply ~~only~~ to ~~the-first~~
17 taxable ~~year~~ YEARS ~~of-the-taxpayer~~ beginning on or after January
18 1, 1979.
19 SECTION 4. Safety clause. The general assembly hereby
20 finds, determines, and declares that this act is necessary for
21 the immediate preservation of the public peace, health, and
22 safety.

COMMITTEE ON FINANCE - TAX PACKAGE

BILL 18

A BILL FOR AN ACT

1 CONCERNING THE ADMINISTRATION OF THE CREDIT AGAINST INCOME TAX
2 BASED ON TAXES ATTRIBUTABLE TO POLLUTION CONTROL PROPERTY.

Bill Summary

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

Makes miscellaneous changes concerning the administration of the income tax credit for taxes paid on pollution control property including, among others, the following: Provides that the application fee shall be paid for each plant site certified; provides that any additional fee cover the costs of determining eligibility or noneligibility and that if denial of certification is objected to or appealed, that the costs thereof shall be paid by the applicant if the denial is upheld; extends the time within which the division of administration of the department of health must hold a hearing if objection is made to a denial of certification; and provides that the division may give advice to an applicant as to the estimated total cost of certification.

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3 Be it enacted by the General Assembly of the State of Colorado:
4 SECTION 1. 39-5-131 (2), (3), (4), and (8), Colorado
5 Revised Statutes 1973, as amended, are amended to read:
6 39-5-131. Certification and valuation of pollution control
7 property. (2) At any time after the filing of a request for
8 certification and prior to its determination, the division of
9 administration may schedule a conference OR OTHERWISE CONSULT
10 with the applicant in order to obtain further information

1 relevant to its determination of eligibility for certification as
2 pollution control property OR TO RENDER ITS ADVICE AS TO THE
3 ESTIMATED TOTAL COST OF CERTIFICATION.
4 (3) On or before March 31, 1979, with reference to each
5 such request, the division of administration shall determine the
6 eligibility or noneligibility of such property as pollution
7 control property and certify such determination to both THE
8 ADMINISTRATOR, WHO SHALL NOTIFY the assessor of the appropriate
9 county, or, in the case of property leased pursuant to section
10 29-3-120, C.R.S. 1973, the county treasurer, and the owner or
11 lessee of such property by certified mail with return receipt
12 requested. The division may determine and certify as pollution
13 control property all of the property included in any request,
14 specified portions of such property, any part thereof, or none of
15 such property; except that any property which is acquired as the
16 result of an order of or agreement with any federal, state, or
17 local regulatory agency for any of the purposes set forth in
18 section 39-1-102 (12.1) or which is acquired as the result of a
19 judicial decision or decree for such purposes shall be certified
20 as pollution control property for its entire value. In making
21 its determination, the division shall consider all available
22 pertinent information. For the purposes of this section,
23 "appropriate county" means the county in which the property is
24 permanently located or, if portable or movable equipment, the
25 county in which the principal office of the owner or lessee is
26 located.

1 (4) If the determination of the division of administration
2 denies a request for certification in whole or in part, the
3 applicant may file, within ten days after receipt of written
4 notice of such determination, a written objection to such
5 determination with the division, and, if a written objection is
6 so filed, the division shall grant NOTIFY the applicant, within
7 thirty days after receipt of such written objection, OF THE TIME
8 AND PLACE AT WHICH a full hearing WILL BE held in accordance with
9 the provisions of section 24-4-105, C.R.S. 1973. and THE HEARING
10 SHALL BE HELD WITHIN SIXTY DAYS AFTER RECEIPT OF SUCH WRITTEN
11 OBJECTION AND THE DIVISION SHALL make its final determination on
12 the basis of such hearing. The final determination shall be
13 certified to both the ADMINISTRATOR, WHO SHALL NOTIFY THE
14 assessor of the appropriate county or, in the case of property
15 leased pursuant to section 29-3-120, C.R.S. 1973, the county
16 treasurer, and the applicant no later than May 31, 1979.
17 (8) Any owner or lessee of pollution control property
18 filing with the division of administration of the department of
19 health a request for certification as to the eligibility of such
20 property for assessment as pollution control property shall pay a
21 minimum nonrefundable fee of twenty-five dollars FOR EACH PLANT
22 SITE to the division. Upon--issuance--of--such-certification
23 pursuant-to-this-section-or-section--39-4-118 AFTER MAKING ITS
24 DETERMINATION OF ELIGIBILITY OR NONELIGIBILITY, the owner or
25 lessee shall pay to the division an ANY additional fee determined
26 by the division to cover the actual costs thereof, INCLUDING

1 INSPECTION COSTS. THE OWNER OR LESSEE SHALL ALSO PAY TO THE
2 DIVISION THE ACTUAL COSTS DETERMINED BY THE DIVISION OF ALL
3 HEARINGS AND APPEALS ON THE DENIAL, IN WHOLE OR IN PART, OF A
4 REQUEST FOR CERTIFICATION IF THE DENIAL, IN WHOLE OR IN PART, IS
5 UPHELD.
6 SECTION 2. 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.

BILL 19

A BILL FOR AN ACT

1 CONCERNING DEFERRED COLLECTION OF AD VALOREM TAXES ON PROPERTY

2 OWNED BY THE ELDERLY.

Bill Summary

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

Makes several changes in the law authorizing deferral of property taxes by the elderly in order: (1) To clarify that tax deferral is available to persons whose homestead is in a multiunit building and is available to persons of the specified age who jointly own property but aren't related as husband and wife; (2) To provide that net value or equity of a homestead is determined with reference to the assessor's actual value; (3) To provide, with regard to the state's lien for deferred taxes, that: (a) That state's lien includes interest on deferred taxes; (b) The state's lien for deferred taxes is subject to mortgages, deeds of trust, or contracts of sale recorded prior to the attachment of the state's lien; and, concomitantly; (c) Waiver of deferral is prohibited; (4) To change the date upon which interest on deferred taxes begins to accrue and to clarify that said interest is compounded annually; (5) To limit the effect of the provision that recordation of a certificate of deferral is conclusive evidence of the validity of deferral; (6) To specify the time by which the state treasurer must make payment of deferred taxes to county treasurers; (7) To insert a notice to the taxpayer of the amount of taxes previously deferred and the interest accrued thereon; (8) To specify certain events which do not require payment of deferred taxes and interest and to provide that a surviving spouse who cannot continue deferral because of age does not have to pay deferred taxes and interest merely because of the taxpayer's death; and (9) To make additional technical amendments.

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1 Be it enacted by the General Assembly of the State of Colorado:
2 SECTION 1. 39-3.5-101 (1) and (4), Colorado Revised
3 Statutes 1973, as amended, are amended to read:
4 39-3.5-101. Definitions. (1) "Homestead" means the
5 owner-occupied residence of the taxpayer. IF THE HOMESTEAD IS
6 LOCATED IN A MULTIUNIT BUILDING, THE HOMESTEAD IS THE PORTION OF
7 THE BUILDING ACTUALLY USED AS THE RESIDENCE AND ITS PERCENTAGE OF
8 THE VALUE OF THE COMMON ELEMENTS AND OF THE VALUE OF THE LOT UPON
9 WHICH IT IS BUILT. THE PERCENTAGE IS THE VALUE OF THE UNIT
10 CONSISTING OF THE HOMESTEAD COMPARED WITH THE TOTAL VALUE OF THE
11 BUILDING EXCLUSIVE OF THE COMMON ELEMENTS, IF ANY.
12 (4) "Taxpayer" means a person who has filed or whose
13 guardian, conservator, or attorney-in-fact has filed a claim for
14 deferral pursuant to this article, OR INDIVIDUALS WHO HAVE
15 JOINTLY FILED A CLAIM FOR DEFERRAL UNDER THIS ARTICLE.
16 SECTION 2. 39-3.5-103 (1)(b) and (1)(f), Colorado Revised
17 Statutes 1973, as amended, are amended to read:
18 39-3.5-103. Property entitled to deferral. (1) (b) The
19 taxpayer claiming the deferral must, by himself or together with
20 his spouse, own the fee simple estate or be purchasing the fee
21 simple estate under a recorded instrument of sale, OR TWO OR MORE
22 PERSONS MUST TOGETHER OWN OR BE PURCHASING THE FEE SIMPLE ESTATE
23 WITH RIGHTS OF SURVIVORSHIP UNDER A RECORDED INSTRUMENT OF SALE
24 IF ALL OWNERS LIVE IN THE HOMESTEAD AND IF ALL OWNERS APPLY FOR
25 THE DEFERRAL JOINTLY.
26 (f) The property for which the deferral is claimed must

1 have a net value or equity sufficient to pay the lien provided
2 for in section 39-3.5-105 (3). NET VALUE OR EQUITY SHALL BE
3 DETERMINED BY REFERENCE TO ACTUAL VALUE OF THE PROPERTY AS
4 ENTERED ON THE ASSESSOR'S RECORDS IN THE NORMAL COURSE OF
5 BUSINESS.

6 SECTION 3. 39-3.5-104 (1) (e), Colorado Revised Statutes
7 1973, as amended, is amended to read:

8 39-3.5-104. Claim form - contents. (1) (e) Include a
9 certificate from the assessor as to the actual value of the
10 property as shown-by ENTERED ON the assessor's records IN THE
11 NORMAL COURSE OF BUSINESS;

12 SECTION 4. 39-3.5-105 (3), (4), (5), and (6), Colorado
13 Revised Statutes 1973, as amended, are amended to read:

14 39-3.5-105. Listing of tax-deferred property - tax as lien
15 - interest accrual. (3) The deferred taxes AND THE INTEREST
16 ACCRUED THEREON shall be a lien against the property, but the
17 lien shall not be foreclosed except as provided in sections
18 39-3.5-110 to 39-3.5-112. Except-for-mortgages;-deeds-of--trust;
19 or--contracts-of-sale-dated-more-than-five-years-prior-to-the-end
20 of-the-calendar-year-for-which-the-deferral-is-claimed;-the--lien
21 of--deferred-taxes-shall-be-a-first-lien-upon-the-property.--When
22 a-person-purchasing-a-homestead-gives-a-mortgage-or-deed-of-trust
23 or-enters-into-a-contract-of-sale-relating-to-said-homestead;--he
24 may--be--required--by--the--mortgagee;-beneficiary-of-the-deed-of
25 trust;-or-seller-under-contract-to-execute;--separate--and--apart
26 from-any-other-papers-or-instruments-relating-to-purchase-of-said

1 homestead;--an--instrument--containing-a-promise-not-to-claim-tax
2 deferral-under-this-article-with-regard-to-the-subject-homestead.
3 The-purchaser-shall-have-the-right-to-rescind-said-promise--until
4 12--midnight-of-the-third-business-day-following-execution-of-the
5 instrument-containing-said-promise. THE LIEN FOR DEFERRED TAXES
6 AND INTEREST SHALL HAVE THE SAME PRIORITY AS THE LIEN FOR GENERAL
7 TAXES DESCRIBED IN SECTION 39-1-107; EXCEPT THAT THE LIEN OF
8 MORTGAGES OR TRUST DEEDS OR CONTRACTS OF SALE WHICH ARE RECORDED
9 PRIOR IN TIME TO THE ATTACHMENT OF THE LIEN FOR DEFERRED TAXES
10 AND INTEREST SHALL BE PRIOR TO THE LIEN FOR DEFERRED TAXES AND
11 INTEREST.
12 (4) Interest shall accrue on deferred taxes at the rate of
13 eight percent per annum from-the beginning MAY 1 of the calendar
14 year in which the deferral is claimed until paid. SAID INTEREST
15 SHALL BE COMPOUNDED ANNUALLY.
16 (5) The recordation of the certificate of deferral shall be
17 conclusive evidence of the validity of the claim for deferral
18 upon which it is issued; except as-against-persons-who-have THAT
19 RECORDATION OF THE CERTIFICATE OF DEFERRAL SHALL NOT BE
20 CONCLUSIVE EVIDENCE OF THE VALIDITY OF THE CLAIM IF THE CLAIM IS
21 CHALLENGED BY A PERSON HAVING actual knowledge of the invalidity
22 of said claim OR IF A PERSON WHO KNOWINGLY PROVIDED WRONGFUL
23 INFORMATION TO QUALIFY FOR DEFERRAL ATTEMPTS TO USE SAID
24 RECORDATION TO HIS BENEFIT.
25 (6) The real property taxes shall be deferred only to the
26 extent that net value or equity is sufficient to satisfy the lien

1 for deferred taxes AND INTEREST after payment of prior liens as
2 provided in subsection (3) of this section. NET VALUE OR EQUITY
3 SHALL BE DETERMINED AS PROVIDED IN SECTION 39-3.5-103 (1) (f).
4 SECTION 5. 39-3.5-106, Colorado Revised Statutes 1973, as
5 amended, is amended to read:
6 39-3.5-106. County treasurer to receive amount equivalent
7 to deferred taxes from state. (1) ~~Upon~~ AFTER receipt of the
8 certificate of deferral, the state treasurer shall pay to the
9 county treasurer the amount certified as deferred. THE AMOUNT
10 CERTIFIED AS DEFERRED SHALL BE PAID IN FULL ON OR BEFORE APRIL
11 30. This amount shall be distributed by the county treasurer in
12 the same manner the tax would have been if regularly paid.
13 (2) The state treasurer shall maintain an account for each
14 tax-deferred property and shall accrue interest BEGINNING MAY 1
15 on the amount paid to the county treasurer pursuant to this
16 section.
17 SECTION 6. 39-3.5-108, Colorado Revised Statutes 1973, as
18 amended, is amended to read:
19 39-3.5-108. Notice to taxpayer regarding duty to claim
20 deferral annually. At the time the treasurer sends the annual
21 real property tax notice to any taxpayer who has claimed a
22 deferral of property taxes in the previous calendar year, he
23 shall enclose a deferral notice. The deferral notice shall be
24 substantially in the following form:
25 To: (name of taxpayer)
26 If you want to defer the collection of ad valorem property

1 taxes on your homestead for the assessment year ending on
2 December 31, ____, you must file a claim for deferral not later
3 than April 1, ____, in the office of the county treasurer. Forms
4 for filing such claims are available at the county treasurer's
5 office.
6 If you fail to file your claim for deferral on or before
7 April 1, ____, your real property taxes will be due and payable
8 in accordance with the schedule set out in the enclosed tax
9 notice.
10 THE AMOUNT OF TAXES WHICH YOU HAVE DEFERRED UP TO AND
11 INCLUDING ______, THE MOST RECENT TAXABLE YEAR, IS $________;
12 INTEREST ACCRUED THEREON IS $________.
13 If you change your permanent address at any time during the
14 assessment year ending on December 31, ____, you must notify the
15 county assessor promptly.
16 SECTION 7. 39-3.5-110 (1) (d), Colorado Revised Statutes
17 1973, as amended, is amended to read:
18 39-3.5-110. <u>Events requiring payment of deferred tax and</u>
19 <u>interest - notice to state treasurer</u>. (1) (d) The tax-deferred
20 property no longer meets the requirements of section 39-3.5-103
21 (1) (c). ~~and (1) (d).~~
22 SECTION 8. Article 3.5 of title 39, Colorado Revised
23 Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW
24 SECTION to read:
25 39-3.5-110.5. <u>Events not requiring payment of deferred tax</u>
26 <u>and interest</u>. (1) Unless one of the events specifically

1 described in section 39-3.5-110 occurs, the events described in
2 this subsection (1) do not require payment of deferred taxes and
3 interest:
4 (a) If a taxpayer qualified under this article defers taxes
5 and later elects to discontinue deferral, if he does not allow
6 subsequent taxes to become delinquent;
7 (b) If a taxpayer qualified under this article defers taxes
8 until he must discontinue deferral because the tax-deferred
9 property's net value or equity is not sufficient to pay the lien
10 provided for in section 39-3.5-105 (3), if he does not allow
11 subsequent taxes to become delinquent;
12 (c) If a taxpayer qualified under this article defers
13 taxes, elects to discontinue deferral, does not allow subsequent
14 taxes to become delinquent, and validly resumes deferral.
15 (2) If a taxpayer qualified under this article defers taxes
16 and dies and the surviving spouse, while meeting the other
17 requirements of section 39-3.5-112, does not qualify to continue
18 tax deferral under section 39-3.5-112 (1) (a) because not sixty
19 years of age or older, the previously deferred taxes and interest
20 shall not become due and payable until the surviving spouse dies
21 or the occurrence of any other event requiring payment of
22 deferred taxes and interest under section 39-3.5-110. If the
23 surviving spouse otherwise qualified under section 39-3.5-112
24 reaches the age prescribed in section 39-3.5-112 (1) (a), said
25 spouse may then continue deferral of taxes under the terms of
26 section 39-3.5-112.

1 SECTION 9. 39-3.5-111 (1) (b), Colorado Revised Statutes
2 1973, as amended, is amended to read:
3 39-3.5-111. Time for payment - delinquencies. (1) (b) All
4 deferred taxes and accrued interest shall be due and payable
5 ninety days after the circumstance occurs, except as provided in
6 ~~subsections~~ SUBSECTION (2) ~~and (3)~~ of this section and in section
7 39-3.5-112.
8 SECTION 10. The introductory portion to 39-3.5-112 (1) and
9 39-3.5-112 (2), Colorado Revised Statutes 1973, as amended, are
10 amended to read:
11 39-3.5-112. Election by spouse to continue tax deferral.
12 (1) Notwithstanding the provisions of section 39-3.5-110, when
13 one of the circumstances listed in section 39-3.5-110 (1) (a) ~~to~~
14 OR (1) (c) occurs, the spouse of the taxpayer may elect to
15 continue the property in its tax-deferred status if:
16 (2) The election granted under subsection (1) of this
17 section shall be filed in the same manner as a claim for deferral
18 is filed under section 39-3.5-102, not later than ninety days
19 from the date the circumstance occurs. Thereafter, the property
20 shall continue to be treated as tax-deferred property, and the
21 treasurer and state treasurer shall withdraw any action taken
22 under section 39-3.5-111. When the property has been continued
23 in its tax-deferred status by the spouse of the taxpayer, the
24 spouse may continue the property in its tax-deferred status in
25 subsequent years by filing ~~a~~ AN ANNUAL claim as provided in
26 section 39-3.5-104 if the property continues to be eligible for

1 tax-deferred status.

2 SECTION 11. 39-3.5-116, Colorado Revised Statutes 1973, as
3 amended, is amended to read:

4 39-3.5-116. Deed or contract clauses preventing application
5 for deferral prohibited - clauses void. On and after February
6 28, 1979, it shall be unlawful for any mortgage, deed of trust,
7 or contract of sale to contain a clause or statement which
8 prohibits the owner from claiming a real property tax deferral on
9 his homestead. ~~for--any--year-which-begins-more-than-five-years~~
10 ~~after-the-close-of-the-calendar-year-in-which-such-mortgage;-deed~~
11 ~~of-trust;-or-contract-for-sale-is-executed.~~ Any such clause or
12 statement in a mortgage, deed of trust, or contract for sale
13 executed on and after February 28, 1979, is void.

14 SECTION 12. 39-3.5-117, Colorado Revised Statutes 1973, as
15 amended, is amended to read:

16 39-3.5-117. Report. No later than May 1, 1979, and each
17 May 1 thereafter, the state treasurer shall submit to the general
18 assembly a report concerning tax deferral for the elderly as set
19 forth in this article. Such report shall include data concerning
20 the number of taxpayers establishing claims for deferral, the
21 amount of taxes deferred in each county, the relationship of
22 deferred taxes to the amount of outstanding mortgages, and deeds
23 of trust, AND CONTRACTS OF SALE, and such other data as the state
24 treasurer may deem useful.

25 SECTION 13. Effective date. This act shall take effect
26 February 28, 1979.

1 SECTION 14. 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 FINANCE - TAX PACKAGE

BILL 20

A BILL FOR AN ACT

1 CONCERNING THE REPEAL OF ARTICLE 3.5 OF TITLE 39, COLORADO
2 REVISED STATUTES 1973, AS AMENDED, CONCERNING PROPERTY TAX
3 DEFERRAL FOR THE ELDERLY.

Bill Summary

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

Repeals House Bill No. 1112 enacted in 1978; since House Bill No. 1112's effective date is February 28, 1979, this bill will prevent House Bill No. 1112 from taking effect by repealing all the provisions of House Bill No. 1112 effective February 28, 1979.

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4 Be it enacted by the General Assembly of the State of Colorado:
5 SECTION 1. Repeal - effective date. (1) Article 3.5 of
6 title 39, Colorado Revised Statutes 1973, as amended, as enacted
7 by section 1 of chapter 103, Session Laws of Colorado 1978, is
8 repealed effective February 28, 1979.
9 (2) Sections 2, 3, and 4 of chapter 103, Session Laws of
10 Colorado 1978, are repealed effective February 28, 1979.
11 SECTION 2. Safety clause. The general assembly hereby
12 finds, determines, and declares that this act is necessary for

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

COMMITTEE ON FINANCE - TAX PACKAGE

BILL 21

SENATE CONCURRENT RESOLUTION NO.

1 SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AN
2 AMENDMENT TO SECTION 3 OF ARTICLE X OF THE CONSTITUTION OF
3 THE STATE OF COLORADO, CREATING AN AD VALOREM PROPERTY TAX
4 HOMESTEAD EXEMPTION FOR RESIDENTIAL PROPERTY OCCUPIED BY A
5 PERSON WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER OR WHO IS
6 DISABLED AND WHO IS WITHIN SPECIFIED INCOME LIMITS
7 ESTABLISHED BY LAW.

Resolution Summary

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

Establishes an ad valorem property homestead exemption of a base amount for residential property occupied by a person who is sixty-five years of age or older or who is disabled and who is within specified income limits established by law. Provides that the general assembly define "residential property" and "disabled", establish income limits for persons who may receive the exemption, and otherwise provide for the implementation of the exemption.

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8 Be It Resolved by the Senate of the Fifty-second General
9 Assembly of the State of Colorado, the House of Representatives
10 concurring herein:
11 SECTION 1. At the next general election for members of the

1 general assembly, there shall be submitted to the qualified
2 electors of the state of Colorado, for their approval or
3 rejection, the following amendment to the constitution of the
4 state of Colorado, to wit:
5 Section 3 of article X of the constitution of the state of
6 Colorado is amended to read:
7 Section 3. Uniform taxation - exemptions. (1) All taxes
8 shall be uniform upon each of the various classes of real and
9 personal property located within the territorial limits of the
10 authority levying the tax, and shall be levied, assessed, and
11 collected under general laws, which shall prescribe such methods
12 and regulations as shall secure just and equalized valuations for
13 assessments of taxes upon all property, real and personal,
14 located within the territorial limits of the authority levying
15 the tax; ~~provided;-however;~~ EXCEPT that the general assembly may,
16 by law, exempt from taxation household furnishings and personal
17 effects which are not used for the production of income at any
18 time.
19 (2) Ditches, canals, and flumes owned and used by
20 individuals or corporations for irrigating land owned by such
21 individuals or corporations, or the individual members thereof,
22 shall not be separately taxed so long as they shall be owned and
23 used exclusively for such purposes.
24 (3) (a) THERE SHALL BE AN AD VALOREM PROPERTY TAX HOMESTEAD
25 EXEMPTION OF TWO THOUSAND DOLLARS OF THE VALUATION FOR ASSESSMENT
26 FOR RESIDENTIAL PROPERTY OCCUPIED BY A PERSON WHO IS SIXTY-FIVE

1 YEARS OF AGE OR OLDER OR WHO IS DISABLED AND WHO HAS AN INCOME
2 WITHIN LIMITS SPECIFIED BY THE GENERAL ASSEMBLY BY LAW.
3 (b) THE GENERAL ASSEMBLY, BY LAW, SHALL DEFINE "RESIDENTIAL
4 PROPERTY" AND "DISABLED" FOR THE PURPOSES OF THIS SECTION, SHALL
5 ESTABLISH INCOME LIMITS FOR PERSONS WHO MAY RECEIVE THE
6 EXEMPTION, AND SHALL OTHERWISE PROVIDE FOR THE IMPLEMENTATION OF
7 THE HOMESTEAD EXEMPTION.
8 (c) THE GENERAL ASSEMBLY, BY LAW, MAY INCREASE THE AMOUNT
9 OF SAID HOMESTEAD EXEMPTION.
10 (d) THIS SUBSECTION (3) SHALL TAKE EFFECT JANUARY 1, 1981,
11 AND SHALL APPLY TO ALL TAXABLE YEARS COMMENCING ON OR AFTER SAID
12 DATE.
13 SECTION 2. Each elector voting at said election and
14 desirous of voting for or against said amendment shall cast his
15 vote as provided by law either "Yes" or "No" on the proposition:
16 "An amendment to section 3 of article X of the constitution of
17 the state of Colorado, creating an ad valorem property tax
18 homestead exemption for residential property occupied by a person
19 who is sixty-five years of age or older or who is disabled and
20 who is within specified income limits established by law."
21 SECTION 3. The votes cast for the adoption or rejection of
22 said amendment shall be canvassed and the result determined in
23 the manner provided by law for the canvassing of votes for
24 representatives in Congress, and if a majority of the electors
25 voting on the question shall have voted "Yes", the said amendment
26 shall become a part of the state constitution.

COMMITTEE ON FINANCE - TAX PACKAGE

BILL 22

A BILL FOR AN ACT

1 CONCERNING THE "JOB EXPANSION AND INVESTMENT CREDIT ACT OF 1978".

Bill Summary

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

Makes changes and revisions to the act including, among others, the extension of the tax credit for facilities acquired or leased prior to December 31, 1983, the reduction of the number of new business facility employees required in order to claim the credit, and the revision of the method used to calculate the "property factor".

Repeals an effective date provision to remove obsolete language.

---

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

3 SECTION 1. 39-22-508.1, Colorado Revised Statutes 1973, as
4 amended, is amended to read:

5 39-22-508.1. Short title. Sections 39-22-508.1 to
6 ~~39-22-508.7~~ 39-22-508.6 shall be known and may be cited as the
7 "Job Expansion and Investment Credit Act of 1978".

8 SECTION 2. The introductory portion to 39-22-508.2, and
9 39-22-508.2 (3) (b) and (5) (b), Colorado Revised Statutes 1973,
10 as amended, are amended to read:

11 39-22-508.2 Definitions - construction of terms. As used

1 in sections 39-22-508.2 to ~~39-22-508.7~~ 39-22-508.6, unless the
2 context otherwise requires:

3 (3) (b) Such facility is acquired by, or leased to, the
4 taxpayer on or after July 1, 1978, and within those taxable years
5 ending on or before ~~December 31, 1981~~ DECEMBER 31, 1983. A
6 facility shall be deemed to have been acquired by, or leased to,
7 the taxpayer within said dates if the transfer of title to the
8 taxpayer, the transfer of possession pursuant to a binding
9 contract to transfer title to the taxpayer, or the commencement
10 of the term of the lease to the taxpayer occurs within said dates
11 or, if the facility is constructed, erected, or installed by or
12 on behalf of the taxpayer, such construction, erection, or
13 installation is completed within said dates.

14 (5) (b) The "property factor" is a fraction, the numerator
15 of which is the ~~average value~~ ORIGINAL COST of the taxpayer's
16 real and tangible personal property owned or rented and used in
17 connection with the operation of the new business facility during
18 the tax period and the denominator of which is the ~~average value~~
19 ORIGINAL COST of all the taxpayer's real and tangible personal
20 property owned or rented and used in this state during the tax
21 period. The ~~average value~~ ORIGINAL COST of all such property
22 shall be determined as provided in articles 1 to 13 of this
23 title.

24 SECTION 3. 39-22-508.3 (1), Colorado Revised Statutes 1973,
25 as amended, is amended to read:

26 39-22-508.3. Special credit available - new business

1 facility - new employees. (1) Any taxpayer who establishes a
2 new business facility, as defined in section 39-22-508.2 (3),
3 shall be allowed a credit, in an amount determined under
4 subsection (2) of this section, against the tax imposed by this
5 article for the taxable year during which commencement of
6 commercial operations, as defined in section 39-22-508.2 (1),
7 occurs at such new business facility and for each of the nine
8 succeeding taxable years. No credit shall be allowed under this
9 section unless the number of new business facility employees, as
10 determined under section 39-22-508.2 (4), engaged or maintained
11 in employment at the new business facility for the taxable year
12 for which the credit is claimed equals or exceeds ~~five~~ TWO
13 persons.

14 SECTION 4. Repeal. 39-22-508.7, Colorado Revised Statutes
15 1973, as amended, is repealed.

16 SECTION 5. 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 FINANCE - TAX PACKAGE

BILL 23

A BILL FOR AN ACT

1 CONCERNING PROPERTY TAXATION.

Bill Summary

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

Removes personal property from the previously established framework for revaluation and implementation of revaluation of taxable property.

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

3 SECTION 1. 39-1-104 (9), (10), and (11)(a) and the

4 introductory portion to 39-1-104 (12), Colorado Revised Statutes

5 1973, as amended, are amended, and the said 39-1-104 is further

6 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

7 39-1-104. Valuation for assessment. (9) (a) For the years

8 1977 through 1982, the 1973 level of value and the manuals and

9 associated data published in the year 1973 by the administrator

10 shall be utilized for determining actual value of real ~~and~~

11 ~~personal~~ property in any county of the state as reflected in the

12 abstract of assessment for each such year.

13 (b) During the years 1979 through 1982, in preparation for

14 its implementation in the year 1983, the respective assessors

1 shall conduct revaluations of all taxable real ~~and-personal~~
2 property utilizing the 1977 level of value and the manuals and
3 associated data published for the year 1977 by the administrator
4 and approved by the advisory committee to the administrator.
5 (c) For the purposes of articles 1 and 9 of this title,
6 "level of value" means the actual value of taxable real ~~and~~
7 ~~personal~~ property as ascertained by the application of the
8 applicable factors enumerated in section 39-1-103 (5) for the
9 calendar year immediately preceding the "base year", which is the
10 year for which the administrator is required by this article to
11 publish manuals and associated data.
12 (10) (a) For the years 1983 through 1986, the 1977 level of
13 value and the manuals and associated data published in the year
14 1977 by the administrator and approved by the advisory committee
15 to the administrator shall be utilized for determining actual
16 value of real ~~and-personal~~ property in any county of the state
17 as reflected in the abstract of assessment for each such year.
18 (b) During the years 1983 through 1986, in preparation for
19 its implementation in the year 1987, the respective assessors
20 shall conduct revaluations of all taxable real ~~and-personal~~
21 property utilizing the 1981 level of value and the manuals and
22 associated data published in the year 1981 by the administrator
23 and approved by the advisory committee to the administrator.
24 (11) (a) It is the intent of the general assembly, as
25 manifested in subsections (9) and (10) of this section, that
26 every four years new manuals and associated data will be

1 published by the administrator, after approval by the advisory
2 committee to the administrator, and that said manuals and
3 associated data and the level of value for the year which said
4 manuals and associated data are published shall be utilized by
5 assessors in the manner described in subsections (9) and (10) of
6 this section for determining the actual value of real ~~and~~
7 ~~personal~~ property in each county of the state.
8 (12) The requirement stated in subsections (9), (10), and
9 (11) of this section that the actual value of real ~~and--personal~~
10 property be determined according to a specified year's level of
11 value and manuals and associated data published by the
12 administrator in said specified year and approved by the advisory
13 committee to the administrator shall not apply to the assessment
14 of the following classes of real or personal property:
15 (12.1) It is the intent of the general assembly that the
16 actual value of personal property is not to be determined
17 according to a specified year's level of value and manuals and
18 associated data published by the administrator in said specified
19 year and approved by the advisory committee to the administrator.
20 The mention of personal property in the exclusions listed in
21 subsection (12) of this section shall not be construed to mean
22 that subsections (9), (10), and (11) of this section apply to
23 personal property.
24 SECTION 2. Applicability. This act shall apply to taxable
25 years commencing on or after January 1, 1979.
26 SECTION 3. 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 FINANCE - TAX PACKAGE

BILL 24

A BILL FOR AN ACT

1 CONCERNING INCOME TAX, AND RELATING TO THE COLORADO STANDARD

2 DEDUCTION.

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 the Colorado standard deduction shall be a set sum multiplied by the annual inflation factor rather than the greater of the percentage deduction or the low income allowance. The deduction for federal income taxes is retained as part of the Colorado standard deduction.

---

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

4 SECTION 1. 39-22-112 (1), Colorado Revised Statutes 1973,

5 as amended, is amended to read:

6 39-22-112. Colorado standard deduction of a resident

7 individual. (1) The Colorado standard deduction for a resident

8 individual or a husband and wife whose Colorado taxable income is

9 determined jointly as though one taxpayer shall be the-percentage

10 standard--deduction--or--the--low-income--allowance;-whichever-is

11 greater; ONE THOUSAND DOLLARS MULTIPLIED BY THE AIF, OR, IN THE

12 CASE OF A MARRIED TAXPAYER FILING SEPARATELY, FIVE HUNDRED

1 DOLLARS MULTIPLIED BY THE AIF, plus the deduction for federal
2 income tax as defined in section 39-22-113 (4) (a).
3 SECTION 2. 39-22-103.5 (1) (a), (1) (b), (2) (b), and (2)
4 (c), Colorado Revised Statutes 1973, as amended, are amended to
5 read:
6 39-22-103.5. Annual inflation factor - purpose.
7 (1) (a) That the income tax laws of this state, in combination
8 with economic inflation, have caused inequitable treatment of the
9 taxpayer because the application of the inflexible, statutorily
10 prescribed rates of tax, **percentage** standard deduction, ~~or~~
11 ~~low-income---allowance,~~ and personal exemption to increasing
12 personal incomes has resulted in increasing the taxpayer's
13 taxable income although the taxpayer's purchasing power has
14 remained the same or decreased;
15 (b) That it is the purpose of this section to adopt a
16 practicable method of mitigating the inequity described in
17 paragraph (a) of this subsection (1) by providing flexibility in
18 said rates of tax, **percentage** standard deduction, ~~or-low-income~~
19 ~~allowance,~~ and personal exemption through the development and use
20 of an annual inflation factor.
21 (2) (b) The general assembly shall determine the annual
22 inflation factor as a percentage, and the department of revenue
23 shall multiply said percentage by the rates of tax, **percentage**
24 standard deduction, ~~or--low-income--allowance,~~ and personal
25 exemption. After the taxable year 1978, the department of
26 revenue shall multiply the annual inflation factor for the

1 current taxable year by the rates of tax, **percentage** standard
2 deduction, ~~or low income allowance,~~ and personal exemption as
3 adjusted by multiplication by the annual inflation factor for the
4 previous taxable years so that the application of the annual
5 inflation factor will be cumulative. The rates of tax,
6 **percentage** standard deduction, ~~or low income allowance,~~ and
7 personal exemption, adjusted by application of the annual
8 inflation factor as provided in this section and rounded to the
9 nearest one dollar, shall be incorporated into the income tax
10 forms and instructions of the department of revenue for each
11 taxable year.
12 (c) From taxable year to taxable year, the application of
13 the annual inflation factor to the rates of tax, **percentage**
14 standard deduction, ~~or low income allowance,~~ and personal
15 exemption may cause said rates, deduction, ~~or allowance,~~ and
16 exemption to increase, remain the same, or decrease.
17 SECTION 3. Repeal. 39-22-112 (2) and (3), Colorado Revised
18 Statutes 1973, as amended, are repealed.
19 SECTION 4. Applicability. This act shall apply to all
20 taxable years commencing on or after January 1, 1979.
21 SECTION 5. Safety clause. The general assembly hereby
22 finds, determines, and declares that this act is necessary for
23 the immediate preservation of the public peace, health, and
24 safety.

LEGISLATIVE COUNCIL

COMMITTEE ON LOCAL GOVERNMENT

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COMMITTEE ON LOCAL GOVERNMENT

Senate Joint Resolution No. 29 directed that the Legislative Council appoint committees to undertake several studies during the 1978 interim. Pursuant to this resolution the Council directed that an interim Committee on Local Government conduct the following studies:

(1) A study of the adequacy and problems associated with rural health care in Colorado;

(2a) A study of the differences between the "Colorado Mined Land Reclamation Act" and the "Federal Surface Mining Control and Reclamation Act" to determine what changes, if any, should be made in the Colorado statutes for the state to continue the administration and enforcement of reclamation of mined lands in this state;

(2b) A review of the "Federal Mine Safety and Health Amendments Act of 1977" to determine the interrelationship between said act and the current laws of the State of Colorado with regard to safety and health in the mines of this state and determine what changes, if any, should be made in Colorado statutes to conform to the provisions of said act.

(3) A study of all aspects and forms of federal regional governance including, but not limited to, its origins, development, function, purpose, and goals.

Further, the Legislative Council prioritized these studies in order of importance. The listing above reflects that order.

Rural Health

Initial testimony brought to the committee's attention the effort undertaken by the Governor's Study Commission on Rural Health Manpower Solutions formed in 1977. This commission was made up of a wide variety of individuals concerned with rural health matters, including consumers, health care providers, and representatives of the executive and legislative branches. The commission reviewed a number of issues in the course of its study, and held four regional hearings in order to obtain greater citizen input. Its final report, which was issued in February of 1978, contained several recommendations intended to improve rural health. In light of this previous study, the committee agreed that it should concentrate its efforts around the issues and the recommendations contained in this final report.

In addition, during the course of the interim, the committee heard testimony from a variety of witnesses involved in the rural health field. Included were the Colorado Medical Association, the Rural Health Association, the Governor's Office on Rural Health, various state agencies, Mountains/Plains Outreach Program, and University of Colorado Medical Center.

Areas of Concern

Based on its review of this report and additional testimony received, it appears that there is an inadequate level of health care being provided in several rural areas of Colorado, particularly the Eastern Plains, San Luis Valley, and on the Western Slope. This appears to be attributable to several causes which, while related to one another, may nevertheless be individually identified. Included among these causes are the following:

1) Maldistribution of health care personnel - doctors, nurses, dentists, technicians, etc. - resulting in inadequate numbers located in rural areas;

2) Training of inadequate numbers of family practitioners or primary care personnel which are needed most in rural areas;

3) Poor coordination of services by both public and private agencies providing health care and inadequate mechanisms on the local level to identify needed health services and develop effective remedies;

4) Inadequate education of the rural population in matters of health maintenance;

5) Environmental factors - such as sanitary water supplies - which have not been adequately addressed; and

6) Absence of hard data relative to rural health matters, particularly with respect to service-related needs.

This listing does not exhaust the issues in rural health matters which may be identified, but does include those key items which the committee discussed.

The lack of primary health care providers, or more appropriately their maldistribution, is perhaps the area which was cited most frequently as the major cause of the lack of adequate rural health within the State of Colorado. A 1971 study stated that "...in 1970 there were 3,303 physicians -- non-federal doctors of medicine and osteopathy, including interns and residents -- reported to be provid-

ing patient care either in their offices or as part of a hospital medical staff in Colorado." 1/ The report went on to emphasize, however, the uneven distribution in the state. It reported that the physician-population ratio in 1970 varied from 37 per 100,000 in Region 5 (the Eastern Plains) to 192 per 100,000 in Region 3 (the Denver Metro area). In addition, there were four rural counties in Colorado without a physician in 1970. While these figures are dated, the current disparities in intrastate manpower ratios are apparently on the same order.

It should be emphasized that this maldistribution within areas of the state extends to other medical personnel as well. Again referring to 1970 figures, there were 51 non-federal dentists per 100,000 people in Colorado. However, this ratio varied from a high of 58 per 100,000 people in Region 3 to 27 per 100,000 people in Region 5. There were 14 counties without a dentist in 1970. In addition, in 1970, while the ratio of registered nurses (RN's) was 506 per 100,000 statewide, this ranged from a high of 604 RN's per 100,000 people in Region 3 to 214 RN's per 100,000 in Region 10 (Southwest Colorado). There were two rural counties in 1970 without an RN and seven rural counties with only one each.

These figures are more illustrative than quantitively correct. The committee found current definitive figures in rural health matters difficult to secure. Some caution should be exercised in utilizing any manpower ratios when discussing the need for health care personnel. It would appear that no widely accepted optimum manpower to population ratios have been developed with which these figures might be compared. Further, questions regarding the quality of manpower presently in rural areas has been cited as an important factor which affects the actual number of individuals who are delivering effective health care to rural residents. Finally, the ratios above do not take into account the type of health service which may be demanded by any given group of individuals.

Several factors were suggested to explain this maldistribution. In many instances a physician, upon arriving and practicing in a rural setting for a particular time period, may become discouraged as a result a lack of sufficient support -- professionally, economically, and from the community -- and consequently leave the area.

1/ Mueller, Heinz: Colorado Health Consumer Survey: A Regional Analysis, page 24; Colorado-Wyoming Regional Medical Program; May, 1971.

Because rural physicians and other health personnel are, in many instances, working without backup assistance, and their workload is heavier than in an urban setting, these individuals are often restricted from pursuing any continuing educational opportunities. Further, because in many instances communication systems are not adequate, health personnel are restricted in the amount of outside consultation which would ordinarily occur in an urban setting. In connection with this, health personnel and particularly physicians are cutoff from outside professional stimulation. These elements are particularly important to a physician who, having been trained to seek out the advice of specialists in order to provide the "best" medical care, must function in a rural setting without such advice.

Personal considerations may also enter into the problem. The increased workload and lack of support result in the reduction of time-off for vacations and family outings. Many physicians also receive considerably less in wages for an equal amount of work when compared with their urban counterparts. The family members of the health personnel may also feel isolated and miss some of the cultural amenities offered in an urban setting. Taken together, the health personnel in some cases may feel isolated and economically disadvantaged. While these considerations are difficult to measure in objective terms, it would appear that they do have an effect on the ability of local communities to attract adequate numbers of health personnel.

Governor's Study Commission Report

As noted above, the committee agreed to utilize the final report of the Governor's Study Commission as a means of identifying those various problems affecting the provision of health care in rural areas and possible recommendations to rectify them.

The commission's report contained a total of 35 recommendations which were divided into three basic areas: state role; University of Colorado Medical Center role; and other solutions. The commission argued that state government can have a very major role in the redistribution of health manpower within the state, as well as stimulating health personnel to settle in rural sites. The commission also found that the University of Colorado Medical Center can and should play a very major role in the redistribution of health manpower.

Only a small number of the recommendations contained in the final report would apparently require the passage of some legislation in order to implement them. It is contemplated that the remainder of these recommendations could be implemented through the funding process or by means of administrative action.

Of these "legislative" recommendations, the proposal to create a rural health institute was discussed most often by the committee. This institute, as envisioned by the commission, would function as a clearinghouse for all state programs affecting rural health matters and, consequently, would promote increased coordination of effort

among the state agencies involved in rural health. It would also serve as a central employment service for health workers and potential employers, and develop information and data on rural health services.

The committee, however, did not choose to endorse this concept. The committee felt that currently functioning programs appeared to carry out many of the suggested functions of this Institute. In addition, members believed that creation of a separate agency would not ensure cooperation among the many actors in this area. Questions were raised regarding the practical authority of such an agency to effect greater coordination, particularly with respect to private agencies.

Current Programs

Testimony before the committee indicated that there have recently been created a large number of state and federal programs which are intended to affect rural health matters. At the state level, five executive departments, the Office of the Governor, and five statutorially created commissions and councils are involved in rural health matters. These agencies carry on a total of approximately 30 programs. These programs include:

Community public health nurses. Utilizing federal funds, the Department of Health pays approximately one-fourth of the salaries of the local community nurses in 41 counties without organized health departments. The remainder of the nurses' salaries are paid by county funds. In these counties, community nurses carry out a number of functions including the prevention of illness, disability, and identification of health problems and assistance to persons in obtaining medical care.

Public health sanitarians. The Department of Health also pays one-fourth of the salaries of sanitarians, who conduct food service inspections and perform other environmental health duties in 14 rural counties (the county pays the other three-fourths of the salary). This year's appropriation for this program totaled $61,966, of which $32,910 was provided by general fund monies and $29,056 was provided by the federal government. This program employs a total of 16 sanitarians.

Local and regional boards of health. Section 25-1-516, C.R.S. 1973, requires the Department of Health to provide support on a per capita basis of 95 cents to assist local departments of health. Local departments of health perform a wide variety of environmental health duties, including disease control, collection of vital statistics, distribution of emergency medical supplies, etc.

Emergency medical services. The Department of Health assists local governments in planning and implementing emergency medical services in local areas, pursuant to S.B. 454 passed in 1977. This program also includes the provision of a WATS telephone line to the Poison Control Center ($15,000).

Women, Infants, and Children (WIC) program. This program provides federal funds to purchase nutritious foods to low-income pregnant and nursing women, infants and youngsters. All of the monies are apparently being spent outside of the City and County of Denver.

Local hospitalization. This program transfers a total of $75,000 for this fiscal year from the Colorado General Hospital budget, for the purpose of providing the delivery costs for approximately 250 pregnant women. In this manner, necessary services can be provided locally, rather than at Colorado General Hospital.

Family practice training - University of Colorado. This program provides for a three-year residency to train doctors in a wide range of medicine so that they may provide medical care for all members of the family and meet most of their medical needs. It was funded a total of $670,710 and 34 FTE positions. This program operates the primary training program for Family Practice Residents at the CU Medical Center with satellite centers in Fort Collins, Weld County, and Grand Junction. This program currently has 26.0 FTE residents in training. If the third year is funded for Grand Junction, Weld County, and Fort Collins, the program will have 32.0 FTE residents in training, with from 10 to 12 completing training each year.

Family Medicine Center - University of Colorado. Located in Denver near the CU Medical Center, this is a "model" family practice clinic or center which provides family practice residents with experience in organizing medical services and treating patients using the family practice concepts. It was funded $112,712 for FY 1979, and 5.5 FTE positions.

Community Medical Program - University of Colorado. A program involving the cooperative efforts of the CU Medical Center, Colorado State University, and Rose Medical Center is intended to provide technical assistance in the planning, development, and delivery of medical care in rural communities. It was funded $120,131 for FY 1979 and 3.0 FTE. The program serves Phillips, Washington, Yuma, and Sedgwick Counties and is also called Mountain/Plains Outreach Program. Operating through two primary care centers at Julesburg and Haxtun, the program has recruited two physicians and an additional physician was recruited for Sterling/Bailey. These are backed up by five family practice residents from the School of Medicine to provide coverage to these physicians for vacation and continuing education.

Health profession loan matching. This program appropriated $40,330 in FY 1979 to provide the required 1/9 match of funds for student loans to those qualifying institutions offering health profession programs in pharmacy, nursing, veterinary medicine, dentistry, and the practice of medicine. The amount of student loan monies available to each individual institution is based on their needs as determined by an evaluation of a grant application. Student eligibility for this loan program is based primarily on financial need.

Rural health education - Colorado State University. The cooperative extension service is currently involved in efforts to improve the health delivery services in a variety of rural areas through the organization of and the development of health education, and health promotion programs in local communities. Currently, the extension service has received requests from 16 counties for assistance in establishing these programs.

The Advisory Commission on Family Medicine. Created in 1977, this 12-member commission is directed to assure high standards of family medicine, to identify areas of the state underserved by family physicians, to monitor the state's family medicine residency programs, and to recommend to the General Assembly appropriate funds for that program. The commission is scheduled to be terminated on July 1, 1979, unless continued by the General Assembly.

The State Advisory Council on Emergency Medical Services. As part of the provisions of the "Emergency Medical Services Act" [Article 3.5 of Title 25, C.R.S. 1973, (1977 Supp.)], a 15-member council was created in order to: 1) advise the Department of Health on all matters relating to emergency medical services; 2) make recommendations concerning the development of a statewide emergency medical services program; 3) determine the statewide emergency medical services needs; and 4) make recommendations concerning guidelines and standards for the delivery of emergency medical services. Members of this advisory council are reimbursed only for necessary expenses related to their activities on the council.

Finally, the Statewide Area Health Education Centers Program (SEARCH) deserves special mention. The SEARCH program is an effort to improve health manpower education, the geographic and specialty distribution of health manpower, and health services in Colorado by decentralizing the educational process. This effort will utilize four area health education centers and their associated satellites to create a statewide educational network in Colorado. The area health education centers will be semiautonomous with local, incorporated boards of directors, staffs, and advisory committees. Each center will have a separate budget which will be spent on a work program developed by the center on the basis of performance contracts approved by the University of Colorado Medical Center.

The initial phase of the SEARCH program includes the development of four area health education centers, three serving rural regions and one serving Metropolitan Denver. During subsequent phases, additional satellite centers will be developed in the rural regions and the scope of activities within each region may broaden.

The basic requirements and ingredients of an area health education center's program are: (1) health student and resident primary care education; (2) continuing education and consultation for health professionals; and (3) assisting the communities in the development of community health practices if necessary. Each of these component programs will be directed toward responding to regional needs with a

major emphasis on primary care. The SEARCH program has also been directed to develop data regarding the number of medically underserved persons in the state.

The mission of SEARCH is to catalyze the development of area health education centers serving rural Colorado and to support such centers as a means of improving health manpower education, the environment for health professionals in rural areas, the geographic distribution of health manpower, and ultimately the health of rural residents.

Federal Programs

The federal government has also initiated a variety of programs designed to improve rural health services. The Rural Health Initiative has been developed by the U.S. Public Health Service and is intended to integrate a number of existing federal programs and assist in the development of health care systems in rural areas. These programs involved are: The National Health Service Corps Program, the Migrant Health Program; Community Health Centers Program; Appalachian Health Program, and the Health Underserved Rural Areas Program. It is the intent of the Initiative to enhance the coordination of these programs. Four of these programs relevant to Colorado are described below:

The National Health Service Corps is a health system development program directed toward the recruitment, placement, and retention of health care personnel in areas which are medically underserved. It has the authority to assign physicians and other health care professionals (as needed and feasible) in those areas which are designated as Critical Health Manpower Shortage Areas. Such areas must meet specific criteria dealing with total population and the types and numbers of health care providers delivering health care services in the particular areas.

The Community Health Centers Program is directed toward providing primary health care services and supplemental health care services necessary for the adequate support of primary health care services to medically underserved populations. It also encourages coordination and integration of other health care resources. Community Health Centers must serve an area designated as a Medically Underserved Area.

The Migrant Health Program is directed toward providing primary health care services and supplemental health care services necessary for the adequate support of primary health and environmental services to migrant and seasonal agricultural workers and their families. Coordination and integration of other resources and health care activities are among its program activities. A Migrant Health Center serves its target population in a High Migrant Impact Area or a High Impact Area.

The Health Underserved Rural Areas Program is primarily a development and research program interested in new concepts and methods of delivering and financing health care services in rural areas, with the specific goal of improving availability of services to persons eligible for Medicaid. This Program will encourage existing self-sufficient health care providers to develop efficient and effective health care systems for medically underserved rural areas. The Health Underserved Rural Areas Program seeks to determine the most effective approaches to and management systems for the delivery of health care services in rural areas.

The federal government has also adopted the "National Health Planning and Resources Development Act of 1974" which established mechanisms for the creation of health systems agencies within the states. These agencies are to serve primarily as planning agencies for its respective area of a state. These health systems agencies are also to establish an annual implementation plan which describes the objectives which are to achieve the goals of the health systems plan. These health systems agencies will also be responsible for the distribution of federal funds in their respective areas upon their certification by the federal government.

This summary of current state and federal programs is by no means comprehensive, nor does it include the several private programs which are also intended to enhance rural health. Nevertheless, it does indicate the expanding nature of public involvement and interest in this area.

Committee Recommendations

Throughout the committee's review of this matter, a variety of witnesses have indicated that a number of mechanisms have been created to deal with the problems cited above, and are now undertaking specific programs in this regard. For example, the SEARCH Program, implemented by the University of Colorado Medical Center, is developing programs to assure the availability of continuing education programs in the state. This is intended to reduce the sense of professional isolation experienced by health personnel. The Mountain/Plains Outreach Program is providing health care personnel and local communities with an increasing level of support and planning services. Colorado State University, through its extension service, and the Department of Education, are providing health education programs to educate consumers about health maintenance. In addition, other state, federal, and private agencies have undertaken additional programs to improve rural health services.

This is not to say that the problems posed in the rural health area will be promptly resolved. However, the committee was impressed with the number of programs and agencies which are addressing these problems. Witnesses before the committee generally agreed that few additional governmental mechanisms are necessary in this area. They were primarily concerned with the effective implementation of cur-

rently functioning programs. The committee agrees with this assessment and accordingly has restricted the nature of its recommendations.

Testimony brought to the committee's attention recently adopted federal legislation, "Rural Health Clinic Services Act of 1977", which is apparently intended to enhance the operation of health clinics established in medically underserved areas.

As noted in the report of the House Committee on Ways and Means: 2/

> Many isolated rural communities which have not been able to attract or retain a physician have come to rely on clinics which do not follow the traditional model of physician delivery of medical services. These rural clinics are staffed, not by physicians, but by specially trained nurse practitioners and physician assistants -- often referred to as primary care practitioners -- who are trained to provide primary medical care services traditionally performed only by physicians. Although there is physician supervision of the services provided by primary care practitioners, it is indirect rather than "over the shoulder."

Under the original Medicare and Medicaid statutes, services of physicians practicing in a clinic setting are covered. Services provided in the clinic by personnel other than physicians and certain medical supplies are also covered when provided as incident to a physician's service.

Over the years, however, this "incicent to" requirement has been interpreted to mean that two requirements must be met. The first is that there must be direct physician supervision of the services provided by the non-physician personnel. The second is that the services provided by the nonphysician personnel cannot be physician-type services; that is, they cannot be actual medical services.

Primary care practitioners, whether they practice in clinics where there is a physician present full-time, or in clinics where only the backup services of a physician are available, meet neither of these requirements. The services they provide are medical care services of the type ordinarily performed only by physicians, and the physician supervision of these services is only indirect. The services provided by these individuals were not therefore reimbursible under federal statutes.

The Rural Health Clinic Services Act amended these provisions, authorizing Medicare and Medicaid coverage for services furnished at clinics staffed by these primary care practitioners. Colorado's current Medicaid statute, however, does not authorize reimbursements for

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2/ H.R. Rep. No. 95-548 (1), 95th Cong., 1st sess. 3 (1977)

such services and consequently rural clinics may only receive Medicare coverage. The committee believes it is desirable to authorize such reimbursements in order that reimbursements may be made directly to these clinics for these services. Such reimbursements would provide these clinics which an additional source of funds.

Bill 25 will include as a reimbursable item under the Medicaid statute those services provided by nurse practitioners, physician assistants, and nurse midwives at these rural clinics. There are presently three clinics in Colorado which have been certified by the Department of Health as eligible for these payments. These three are located in Kiowa, Ft. Lupton, and Dove Creek. An additional seven to eight clinics have also asked for the necessary certification.

Mined Land Reclamation

Background

The federal "Surface Mining Control and Reclamation Act of 1977" is intended to "...establish a nationwide program to protect society and the environment from the adverse effect of surface coal mining;". Its primary purpose is to require the operators of both surface and underground coal mining operations to reclaim or rehabilitate surface areas disturbed by mining operations. In doing so the act establishes a number of specific environmental performance standards with which operators must comply. This act was signed by President Carter on August 2, 1977, and was the culmination of a five-year effort to adopt federal legislation in this area.

The Act provides for and encourages the participation of the state in the administration and enforcement of the environmental performance standards imposed by the act. Any state which wishes to maintain or assume exclusive jurisdiction over the administration of the act on non-federal lands must submit and have approved a state program by the end of an eighteen-month period beginning on the date of enactment (February 2, 1979)*. In order that the state program be approved, Section 503 (a) of P.L. 95-87 provides that the state must have developed:

(1) a state law which provides for the regulation of surface coal mining and reclamation according to the provisions of the Federal Act;

(2) a state law which provides sanctions for violations of the act and the conditions of permits, which sanctions must include provisions covering civil and criminal actions, forfeiture of bonds, suspensions, revocations and withholding of permits, and cease and desist orders;

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* This date may be extended six months (i.e., to August 2, 1979) in the event states must adopt conforming legislation.

(3) a state regulatory authority with sufficient personnel and sufficient funding to enable the state to regulate surface coal mining and reclamation operations;

(4) a state law which provides for the implementation and administration of a permit system in accordance with the provisions of the act;

(5) a process or program for the designation of areas as unsuitable for mining. This program would apparently deal with only non-federal lands (the Federal government would conduct this process on federal lands); and

(6) a process to coordinate the permit system, and to avoid duplication in the permit process.

If no state program is submitted, or the state's application is disapproved, a federal program is to be prepared and implemented within 34 months of the enactment of the act (June 3, 1980). No state law or regulation in effect on August 2, 1978 may supercede the act unless that law is at least as stringent as the federal act and not inconsistent with any aspect of the federal act.

As noted above, Section 503 (a) of PL 95-87 requires that in order to be approved, a state program must include a state law regulating surface coal mining and reclamation according to the requirements of the federal act. Several basic features of the current state program are similar to that envisioned by the federal act. However, several apparent discrepencies appear to exist between the current state act and PL 95-87.

Findings

Present compliance. Based on its initial review of the federal "Surface Mining Control and Reclamation Act of 1977", and a comparison of it with the current Colorado Mined Land Reclamation Act, the committee concluded that the current state statutes do not contain provisions sufficient to comply with the federal act. In an attempt to confirm this finding, the committee forwarded a letter to the Office of the Solicitor, Department of the Interior, requesting an opinion regarding the adequacy of the current Colorado act vis-a-vis the federal act. The committee received a response which read in part:

> In answer to your question, the Statute does not contain the necessary and adequate provisions to satisfy the requirements of Section 502 of the Act (Initial Regulatory Procedures) nor Section 503 of the Act (State Programs). For the Interim program (Section 502), the Office of Surface Mining (OSM) is working cooperatively with the Colorado Division of Mined Land Reclamation and the Colorado Mined Land Reclamation Board to develop a

voluntary program of compliance for Colorado operators with the Interim Performance Standards of the Act. For the Permanent State Program (Section 503), we look forward to working with you and your committee in developing acceptable legislation which will be one of the criteria for an approved State Program.

The Office of the Solicitor, in the same letter, refused to elaborate on those areas of the current Colorado act which are deficient. It was the position of the Solicitor's Office that a further explanation of deficiencies may unduly influence the development of necessary state legislation.

A comparison of the federal and state reclamation acts, however, revealed that both statutes envision the use of similar regulatory mechanisms. Both acts utilize a permit system requiring approval and issuance of a permit prior to commencement of a mining operation. Approval is based upon the review of an application which is to specify the manner in which an operator will achieve certain reclamation performance standards. Submission of a performance bond is also required, and legal and administrative sanctions may be imposed upon operators for failing to comply with the requirements of the permit and its accompanying reclamation plan.

The federal act, however, appears to enumerate several reclamation standards and procedural requirements which are either in addition to, or more stringent than Colorado's act. These include the following:*

506 (b) Permits issued for a five-year period; Section 34-32-109 (5), C.R.S. 1973, allows a permit to be valid for the "life of the mine".

507 (b)(14) Application to contain cross-sectional maps of land; Section 34-32-112, C.R.S. 1973, does require information on ore bodies and overburden, but does not require information regarding test borings or core samplings, data on subsurface water, rider seams, the stratum beneath the coal, existing or previous mining limits, aquifers, natural drainage, discharges, etc.

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* In reviewing these comparisons note that the initial citation refers to the federal act, and the second, the Colorado Statutes.

508 (a)(13) Application to contain reclamation plan in part describing measures to protect water systems, rights and quantity; Section 34-32-116 of Colorado's statutes requires disturbances to the hydrologic balance to be minimized, but the act seems not to require a statement of steps to be taken in the reclamation plan, and no provision for protection of water rights is evident.

509 (b) With regard to performance bonds, operators to be liable through liability and revegetation period of five years (ten years in some cases); Colorado's act requires reclamation to be completed in phases, each five-year period to be considered a phase. It does not, however, clearly require a similar liability period.

515 (b)(13) Operator to backfill and compact, restore approximate original contour, bury acid and toxic materials, prevent slides, erosion, pollution, revegetate; 34-32-116 (g), of Colorado's act requires backfilling, but apparently not compaction; 34-32-116(b), requires grading the topography consistent with final land uses, rather than approximate original contour and has no specific provisions for elimination of high walls and depressions; 34-32-116 (j), provides that spoil piles are to be protected; 34-32-116 (d), provides that acid forming or toxic producing material be handled so as to prevent pollution but does not provide for burial.

515 (b)(10) Minimize disturbance to hydrologic balance; In Colorado, 34-32-116 (1) (h), provides that disturbances to the prevailing hydrologic balance in surface and groundwater system be minimized, but does not extend to off-site areas, nor does it incorporate the specificity of the federal act.

515 (b)(16) Contemporaneous reclamation efforts, exemptions for combined underground/surface mines; 34-32-116 (1) (r), of Colorado's act provides that reclamation be carried out with all reasonable diligence. Seems adequate, but the state act contains no specific provisions for underground/surface operations.

515 (b)(20) Assume the responsibility for successful revegetation. The Colorado act contains no similar provision. In addition, 34-32-116 (r) (II), (III), C.R.S. 1973, allows for alternate revegetation when vegetation cannot be established, and is not authorized in the federal act.

515 (b)(24) Consideration of fish, wildlife and environmental values; 34-32-116 (1) (k), requires consideration of food, shelter and ground cover for wildlife. Implies, but does not specify enhancement of environmental resources.

515 (c)(3) Approval of various post-mining uses; 34-32-116 (1) (k) does not require proposed use to be equal to or better than the current economic or public use as does PL 95-87; applicant need not provide assurance of adequate financial capability or that proposed use be consistent with adjacent land uses.

516 (b)(9) Avoid acid mine drainage; 34-32-116 (1) (d), "acid forming or toxic producing material ... shall be handled in a manner to protect the drainage system from pollution." This appears more general than the federal statute which includes requirements for casing, sealing, and otherwise managing bore holes, shafts, and wells.

516 (b)(11) Best technology to minimize disturbance to fish, wildlife and related environment; 34-32-112 (3) (d), requires reclamation plan to describe proposed rehabilitation of wildlife, but the state law does not have the specific requirements of the federal act.

Section 520 of PL 95-87 also allows any citizen having an interest which is or may be adversely affected to begin a civil action to compel compliance with the act. These suits may be brought against the United State government, the appropriate state agency, or against any other person who is alleged to be in violation of any rule, regulation, order or permit. Any person who is injured through the violation of any rule, regulation, order, or permit by any operator may also bring an action for damages in the appropriate judicial district. In Colorado, sections 34-32-114 and 115 allow for citizen objections to permit applications, but do not appear to specifically vest the citizen with the right to compel compliance.

In addition, in order to assume regulatory authority of the federal act, each state program must include procedures to designate areas of land as unsuitable for coal mining operations. These areas may be designated as unsuitable for mining upon a determination that the reclamation of the disturbed area would not be technologically or economically feasible, or if a coal mining operation would:

- be incompatible with existing state or local land use plans or program;
- result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

- affect renewable resource lands in such a manner as to result in the substantial loss or reduction of long-range productivity of water supply or of food or fiber;

- affect natural hazard areas including areas subject to frequent flooding and areas of unstable geology.

The federal act also establishes those administrative procedures to be utilized in making these determinations.

Colorado's act does not provide any similar mechanisms for the designation of areas as unsuited for mining. Section 34-32-115 does allow the Mined Land Reclamation Board to disapprove a permit application if the area to be affected includes areas similar to those listed above. However, this is not a process designed for the prior designation of exempt areas.

Constitutional Issues

It should also be emphasized that throughout its examination of the federal "Surface Mining Control and Reclamation Act of 1977", the committee has been aware of a continuing debate relative to the constitutionality of this act, and particularly the various provisions contained in Title V. Several committee members have questioned the propriety of the act, and the authority of the federal government to regulate mining activities within the states, particularly those conducted on non-federal lands.

It has also come to the committee's attention that a suit has been filed in the U.S. District Court for the Southern District of Indiana (brought by the Indiana Coal Association and other plaintiffs), challenging the provisions of the act on the grounds that it represents unconstitutional intrusion upon states' prerogatives. In addition, the Commonwealth of Virginia is a plaintiff in a separate suit filed in the U.S. District Court for the District of Columbia in which the same issues are raised.

The Federal statutes appear to base much of their authority to claim overriding jurisdiction on the provisions of the Commerce Clause of the federal Constitution. Title I of the act, for example, states:

> (g) surface mining and reclamation standards are essential in order to insure that competition in interstate commerce among sellers of coal produced in different states will not be used to undermine the ability of the several states to improve and maintain adequate standards on coal mining operations within their borders;

Witnesses before the committee, however, have challenged this basis of authority, contending that the regulation of coal mining operations, and particularly the regulation of their environmental effects, does

not substantially affect interstate commerce to a degree that would allow congressional intervention.

They concede that if activities which in and of themselves are usually considered to be intrastate activities are found to have such a close and substantial relationship to interstate commerce that their control is essential to protect that commerce from burdens and obstructions, Congress may undertake measures to control these activities. However, the production of coal, and the regulation of its environmental impact are activities quite separate from the interstate sale of that material. Witnesses contend that the necessary relationship between interstate commerce and the reclamation of mined land was not established by Congress nor is such a relationship readily apparent.

Committee Recommendations

If one accepts the Federal supremacy declaration, it would seem apparent then that Colorado's statutes must be modified in order to afford this state the opportunity to assume primary administrative control of the federal surface mining and control act. The committee, however, has also been concerned about the need for or desirability of this assumption of responsibility. The consensus of the committee appears to support efforts toward the state's assumption of this program. The rationale for this support stems primarily from testimony which characterized a state regulatory program as more conducive to the production of coal. State programs are more responsive to local conditions, needs, and situations, while national or federal programs are often unable to recognize the unique geologic, economic, or environmental features of a state. Additionally, time delays and other procedural problems frequently encountered in federally administered programs may hamper the development of Colorado's coal resources and achievement of effective reclamation. Further, implementation of an approved state plan will result in the receipt of federal funds for the reclamation of abandoned mined lands in the state. The state could therefore receive an estimated $2 million per year for this purpose. These funds may later be utilized to construct public facilities impacted by coal development.

During its initial meeting on June 20, it was brought to the committee's attention that a committee under the sponsorship of the Colorado Mining Association (CMA) had been formed to develop a proposal to comply with the requirements of the federal act. The committee concluded that this proposal could serve as a useful vehicle for the development of the appropriate legislation to comply with the federal act. This proposal was later transmitted to the committee at its August 22 meeting. Unfortunately, this proposal could not be reviewed by other groups or agencies concerned with this topic prior to its submission to the committee.

Subsequent examination and analysis of this proposal at its September 19 meeting revealed several areas of deficiency which were

generally agreed to fatally flaw the bill. Indeed, correspondence with the Office of Surface Mining confirmed this conclusion that the CMA draft was inadequate.

In order to develop the necessary revisions to this proposal, it was suggested that an ad hoc advisory committee be formed to serve as a forum for discussion of the CMA draft and the necessary revisions. This advisory committee was to be made up of representatives of the Colorado Department of Natural Resources, the Office of Surface Mining, the environmental community and representatives of the coal industry. The interim committee agreed with this suggestion and urged that these revisions be developed as quickly as possible.

The ad hoc committee divided itself into two sections -- one to deal with procedural questions, and one to deal with performance standards. Both sections worked to insure that the CMA bill would meet the federal requirements, while accommodating existing state laws, regulations, and programs.

Unfortunately, the ad hoc committee was able to complete the revision of only part to the CMA draft in time for consideration by the interim committee at its final two meetings. This delay was attributed to the complexity of the federal act and the problems encountered in integrating the requirements of the federal law into a pre-existing state regulatory framework. The ad hoc committee did, however, forward these partial revisions to the committee for its consideration. It also requested that the interim committee specifically endorse the concept of amending state law in order to obtain a federally approved state program for reclamation of lands affected by coal mining.

The committee did not believe that recommendation of either the CMA draft bill, or the partially amended proposal was appropriate at this time. The committee was not afforded an adequate opportunity to review the recommended amendments prior to its final meeting and hence it felt that their approval would be premature. Further, the recommendation of the CMA draft was thought to be inappropriate because of its inadequacies. The committee therefore recommends no legislation at this time. The committee does endorse the concept of a state program rather than the use of a federal program in order to implement this federal act. It also supports the current efforts of the ad hoc committee and urges that this process continue in order to develop the necessary legislation.

At the same time, however, the committee continues to question the propriety of the federal act itself. Witnesses have suggested that this act represents an unconstitutional intrusion into an area of state authority, and have urged that it be challenged. The committee agrees that while the development of necessary legislation should continue as outlined above, the matter of the federal act's constitutionality should be pursued. In this effort, the committee has asked Mr. Hamlet Barry, Director, Division of Mined Land Reclamation, to examine the manner in which the state may continue the development of

legislation without restricting its abilities to challenge the federal act. It urges that while the General Assembly proceeds with the development of legislation, it should continue to pursue this examination of the federal act's constitutionality.

Mine Health and Safety

Introduction

Prior to the enactment of the Federal Mine Safety and Health Amendments Act of 1977 (PL 95-164), federal health and safety laws were composed of two separate statutes: The Federal Metal and Non-Metallic Mine Safety Act of 1966 (The Metal Act) and The Federal Coal Mine Health and Safety Act of 1969 (The Coal Act). While the Coal Act contained considerably more comprehensive regulatory structures and more stringent standards than the Metal Act, both acts included as part of their regulatory scheme, measures to encourage a cooperative effort between state and federal regulatory agencies.

The Metal Act (30 U.S.C.A. 735) authorized states to undertake the enforcement of the federal program under broad federal supervision, and further authorized any state to submit a state plan which, if approved, enabled it to develop and enforce health and safety standards in the metal and non-metallic mines of the state. In addition, the Coal Act (30 U.S.C.A. 437) directed the Secretary of the Interior to cooperate with state mine inspection and safety agencies, and further authorized him to utilize the services of such agencies in connection with the administration of the act. These efforts were intended to "... promote sound and effective coordination of Federal and local activities within the field covered by this title." Colorado had prior to the enactment of these amendments cooperated with the federal government in administering its safety program.

Prompted by several deaths which occurred in two mining accidents in 1976, the Senate Committee on Human Resources initiated a review of these two safety acts. As a result of this review, that committee drew a number of conclusions regarding enforcement and administration of these laws:

- The Metal Act did not provide effective protection for miners from health and safety hazards, and enforcement sanctions under that act were insufficient to encourage compliance;

- Enforcement of safety and health laws should be the responsibility of agencies which are generally responsible for the needs of workers;

- Both the Coal Act and the Metal Act did not provide means to react quickly enough to newly manifested health hazards;

- The procedures by which safety and health standards were

promulgated under both the Coal Act and the Metal Act were much too slow in order to keep pace with developments in the industry;

- The assessment and collection of civil penalties under the Coal Act had been too low to encourage compliance, and were paid too long after the violation had occurred; and

- Enforcement sanctions under the two acts were insufficient to deal with chronic violators.

In addition, these hearings revealed that critics of the existing federal laws were dissatisfied with the performance of state-administered inspection programs. These individuals urged that the federal government assume a more active role in this field.

The amendments contained in PL 95-164 were adopted as a response to these findings. They combined the provisions of the Coal Act and the Metal Act in order to create a common regulatory program for all operators. The Coal Act was amended to make it applicable to all mines, and the Metal Act was repealed. All functions and responsibilities of the Secretary of the Interior in the area of mine safety and health were transferred to the Secretary of Labor. The Mine Enforcement and Safety Administration was transferred to the Department of Labor and renamed the Mine Safety and Health Administration. An independent agency, the Mine Safety and Health Review Commission was also established to review orders, citations, and penalties. In addition, certain regulatory provisions of the previous Coal Act were altered in order to impose more stringent penalties and to speed enforcement and standard setting procedures.

Findings

Based upon testimony and review, the committee concludes that the federal act, PL 95-164 does not appear to authorize state participation in the enforcement of the federal mine health and safety program as did the previous federal acts. In other words, it would appear that the federal act envisions the establishment and maintenance of a separate mine health and safety inspection program conducted independently of any that is carried on by the state government.

Indeed, correspondence with federal officials confirmed this finding. Responding to questions forwarded to it by the committee, the regional office of the Mine Safety and Health Administration states:

> The Federal Mine Safety and Health Act of 1977 does not provide for any delegation of authority to the States to conduct inspections as an alternative to Federal inspections. The inspections and investigations required and the enforcement of Federal standards are entirely the responsibility of Department of Labor. Mine Safety and

Health Administration, Department of Labor, is currently expanding its staffing in Colorado and other States to accomplish the requirements of PL 95-164.

In brief, there is no provision for authorizing the State of Colorado or any other State to assume, under general Federal supervision, exclusive administrative control of Federal mine safety and health statutes and rules and regulations. State Plan Agreements as exist under OSHA or as previously existed under the Metal and Nonmetallic Mine Safety Act of 1966 are not authorized.

Committee Recommendations

Based on this testimony the committee has concluded that it is unnecessary to amend Colorado's mine safety and inspection statutes so as to comply with the federal act.

Witnesses before the committee, however, have suggested that the effort be made to encourage the amendment of the federal act in order to allow for the state's participation in the federal program. As in the case of the administration of mined land reclamation statutes, these witnesses argued that state enforcement of mine safety and health statutes is preferable to federal enforcement. This is because state enforcement is more responsive to the local conditions, needs, and situations of mining operations. And again, time delays and other procedural problems posed by federal enforcement are reduced.

The committee therefore recommends Bill 26, which is a joint memorial urging the United States Congress to amend the federal act to allow the states to participate in the administration of federal statutes.3/

Federal Regional Governance

Given the study priorities established by the Legislative Council, and the resulting time limitations imposed upon it, the committee's review of this topic was limited in scope. The committee did, however, receive testimony from a variety of individuals regarding federal regional governance and its impact on state and local governmental authority. Generally, these witnesses objected to the administration of federal programs through regional organizations. It was suggested that such an administrative structure undermined the constitutional authority of state government and violated the principles of federalism. It was further suggested that such administrative structures be "outlawed" in this state.

3/ This same memorial has been recommended by the Interim Committee on Transportation and Energy.

The committee concurs with the general observations made by these witnesses that the federal government has implemented a variety of programs which impinge on the flexibility of the state to develop programs most suited to its needs. Such federal programs have contributed to the further growth in governmental bureaucreacy which is increasingly and unnecessarily impacting upon various areas of state government and private activity. The committee therefore recommends Bills 27 and 28, which are joint memorials.

Bill 27 is a joint memorial which urges the United States Congress to refrain from enacting legislation that goes beyond those specific, enumerated, and limited powers delegated to it by the Constitution.

Bill 28 is a joint memorial which expresses the General Assembly's disapproval of the manner in which federal regional agencies were established and presently function.4/

4/ This joint memorial was disapproved by the Legislative Council at its November 21 meeting.

COMMITTEE ON LOCAL GOVERNMENT

BILL 25

A BILL FOR AN ACT

1 INCLUDING RURAL HEALTH CLINIC SERVICES IN THE PROGRAM OF BASIC
2 SERVICES FOR THE CATEGORICALLY NEEDY.

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 rural health clinic services are included in the basic services for the categorically needy in order to conform to federal law.

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3 Be it enacted by the General Assembly of the State of Colorado:
4 SECTION 1. 26-4-105 (1), Colorado Revised Statutes 1973, as
5 amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:
6 26-4-105. Basic services for categorically needy.
7 (1) (m) Rural health clinic services.
8 SECTION 2. Effective date. This act shall take effect July
9 1, 1979.
10 SECTION 3. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

COMMITTEE ON LOCAL GOVERNMENT

BILL 26

JOINT MEMORIAL NO. 1

1 MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT
2 AMENDATORY LEGISLATION TO RETURN TO STATES THE RIGHT TO
3 REGULATE OR PARTICIPATE IN REGULATING MINES RELATING TO MINE
4 SAFETY AND HEALTH STANDARDS.

5 WHEREAS, The General Assembly of the State of Colorado
6 recognizes the ongoing importance of the mining industry to the
7 State of Colorado, as well as to the entire nation; and

8 WHEREAS, The existence of the small mine operator, who plays
9 an important part in the mining industry, is endangered by the
10 impact of the "Federal Mine Safety and Health Act of 1977" (P.L.
11 95-164); and

12 WHEREAS, Said act defines a mine as any area of land from
13 which any minerals are extracted, both on the surface and
14 underground, including the lands, excavations, and other
15 facilities used in the work of extracting such minerals, which
16 definition not only covers the commonly thought of mining
17 activities such as coal, silver, and molybdenum operations, but
18 also includes activities such as sand and gravel excavation; and

19 WHEREAS, Said act has caused a further erosion of basic
20 states' rights by excluding any participation by a state in the
21 regulation and inspection of mines relating to safety and health
22 standards; and

23 WHEREAS, There are distinct differences in mining operations
24 across the nation which are best understood and regulated on a
25 state level rather than the national level through national
26 legislation which is often inflexible or incompatible with state
27 needs and conditions; and

28 WHEREAS, The right of a state to develop its own regulatory
29 program and to perform its own inspections of mines relating to
30 safety and health standards should be preserved; and

31 WHEREAS, Mining industry accident statistics have shown
32 significant improvement under cooperative programs with state
33 agencies, private industry, and labor; now, therefore,

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

4 That we, the members of the Fifty-second General Assembly of
5 the State of Colorado, urge the Congress of the United States to
6 enact amendatory legislation which would return to states the
7 right to regulate or participate in the regulation of mines
8 relating to mine safety and health standards.

9 Be It Further Resolved, That copies of this Memorial be sent
10 to the President of the United States, to the President of the
11 Senate and the Speaker of the House of Representatives of the
12 Congress of the United States, and to each member of the Congress
13 of the United States from the State of Colorado.

COMMITTEE ON LOCAL GOVERNMENT

BILL 27

JOINT MEMORIAL NO. 2

1 MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO REFRAIN FROM
2 ENACTING LEGISLATION GOING BEYOND ITS DELEGATED POWERS.

3 WHEREAS, The Constitution of the United States of America
4 delegates specific, enumerated, and limited powers to the federal
5 government and, more specifically, to the Congress of the United
6 States; and

7 WHEREAS, All other sovereign power remaining beyond that
8 specifically delegated to the federal government is reserved to
9 the states respectively or to the people pursuant to the tenth
10 amendment to the Constitution; and

11 WHEREAS, The federal government and specifically the
12 Congress of the United States has taken action on several
13 occasions which intrudes upon the sovereign power reserved to the
14 states and which extends beyond those powers it may
15 constitutionally perform; and

16 WHEREAS, The Congress of the United States should take the
17 initiative to restrain and limit its legislation to that which
18 comes within the specific, enumerated, and limited powers which
19 it has been delegated by the Constitution, rather than continuing
20 to enact officious legislation which extends beyond its
21 constitutional power; now, therefore,

22 Be It Resolved by the ______________ of the Fifty-second
23 General Assembly of the State of Colorado, the ______________
24 concurring herein:

25 That we, the members of the Fifty-second General Assembly of
26 the State of Colorado, urge the Congress of the United States of
27 America to refrain from enacting legislation which is beyond the
28 specific, enumerated, and limited powers delegated to it by the
29 Constitution of the United States of America, thereby eliminating
30 officious legislation which intrudes upon the sovereign powers
31 reserved to the states.

32 Be It Further Resolved, That copies of this Memorial be sent
33 to the President of the United States, the President of the

1 Senate and the Speaker of the House of Representatives of the
2 Congress of the United States, and to each member of the Congress
3 of the United States from the State of Colorado.

COMMITTEE ON LOCAL GOVERNMENT

BILL 28

JOINT MEMORIAL NO. 3

1 EXPRESSING TO THE CONGRESS OF THE UNITED STATES THE STATE OF
2 COLORADO'S DISAPPROVAL OF FEDERAL REGIONAL GOVERNMENT.

3 WHEREAS, Pursuant to a Presidential Executive Order issued
4 in 1972, the federal government established and implemented
5 federal regional government; and

6 WHEREAS, It is beyond the constitutional power of the
7 federal government, specifically the President, to establish and
8 implement federal regional government in the manner as has been
9 done; and

10 WHEREAS, This State disapproves of the manner in which
11 federal regional government functions and the powers it
12 exercises; now, therefore,

13 Be It Resolved by the ______ of the Fifty-second
14 General Assembly of the State of Colorado, the ______
15 concurring herein:

16 That we, the members of the Fifty-second General Assembly of
17 the State of Colorado, express our disapproval of federal
18 regional government in that it was established and implemented
19 and presently functions in a manner which is beyond the power of
20 the federal government, specifically the President, under the
21 Constitution of the United States of America.

22 Be It Further Resolved, That copies of this Memorial be sent
23 to the President of the United States, to the President of the
24 Senate and the Speaker of the House of Representatives of the
25 Congress of the United States, and to each member of the Congress
26 of the United States from the State of Colorado.

POLICEMEN'S AND FIREMEN'S PENSION REFORM COMMISSION

Members of the Commission

Sen. Les Fowler,
Chairman
Rep. Carl Gustafson,
Vice Chairman
Sen. Robert Allshouse
Sen. Eldon Cooper
Sen. Don Sandoval
Sen. Joseph Schieffelin

Rep. George Boley
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Rep. Charles DeMoulin
Rep. Robert DeNier
Rep. Steve Durham
Rep. John Hamlin
Rep. E. E. "Casey" Hayes
Rep. Leo Lucero
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Council Staff

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REPORT OF THE COLORADO
POLICEMEN'S AND FIREMEN'S PENSION REFORM COMMISSION, 1979

Background

In 1978 the General Assembly adopted Senate Bill 46, the "Policemen's and Firemen's Pension Reform Act". Senate Bill 46 (Parts 8 and 9 of Article 30, Title 31, Colorado Revised Statutes 1973) resulted from a 1977 interim committee study which recognized that the issues surrounding firemen's and policemen's pensions, and the costs thereof, were of such an extensive nature that more detailed study was needed in order to fully address these matters, but that based upon the information then available, the General Assembly could address in a limited fashion, the matter of the proper funding of these retirement plans.

The committee recommended the adoption of a policy to fund a public retirement system on a sound actuarial basis, as contrasted with pay-as-you-go financing. Funding on an actuarial basis seeks to assure: 1) that level contributions will be made over a prolonged period; 2) that present taxpayers and employees pay for the benefits earned by present employees for the services they render; 3) that assets will be accumulated in a manner sufficient (at some point) to fulfill the benefit commitments if further contributions to the retirement system were to be discontinued; and 4) that it will be possible to estimate the long-term cost of proposed plan modifications.

The committee recommended that funding of policemen's and firemen's pension plans should be based, at a minimum, on payment of the fund's normal cost (the annual contribution from all sources which is necessary to fund each year's share of the ultimate retirement benefit), plus at least a share of the unfunded liabilities. Additionally, the committee recommended procedures to be implemented in 1978 to prevent further increases in unfunded liabilities and to begin to provide funds to pay off the present outstanding liabilities.

Senate Bill 46, 1978 Session

As a means of achieving the above policies, the 1977 committee recommended a bill which became Senate Bill 46, 1978 Session. As enacted, Senate Bill 46:

(1) Requires that full funding of fire and police pension funds be implemented in 1979 to cover both the unfunded accrued liability and current normal service costs of active members.

(2) Allows local governments which find the contribution levels for full funding required in (1) above to be too costly, to

gradually increase their level of contributions over a period of years. This approach will allow more time for the local governments to adjust to the necessary increases in employee and employer contributions.

(3) Provides two methods to increase the level of employer contributions based on the size of the municipality or fire protection district. For local governments under 500,000 population, contributions will begin at a level of 50 percent of the sum of pension costs beginning in January, 1979 and increase 5 percent per year until full funding is achieved. For local governments over 500,000 population based on the 1970 census (Denver), contributions will begin in January 1979 at a level of 20 percent of pension costs, and increase 10 percent per year until full funding is accomplished in 1987.

(4) Requires, for the first time, an actuarial study of all pension funds using a common funding method and uniform assumptions to determine the actuarial liability of each fund and to provide a comprehensive statewide profile of the financial characteristics of all plans. These reports were submitted to each entity on or before September 1, 1978, and contain a determination of the minimum annual rate of contribution each local government must produce to reestablish their pension funds on an actuarially sound basis.

(5) Provides procedures to be used in selecting the actuarial firms to conduct these studies, and charges the State Auditor with establishing the actuarial methods and assumptions to be used.

(6) Prohibits any modification by local action of any pension plan after December 1, 1978. Member contribution rates must be increased to a minimum of 5 percent unless a plan is currently funded and rates may be increased to a maximum of 10 percent and shall be increased by statutorily established minimums over a seven-year period. New employees are to be temporarily covered by existing plans but they may not be vested therein. It was intended that they are to be covered by new pension plans that are to be developed by the Policemen's and Firemen's Pension Reform Commission.

(7) Creates a statutory Policemen's and Firemen's Pension Reform Commission to study legislation relating to the funding of pensions and benefit designs. The commission is composed of 15 legislators -- 5 Senators and 10 Representa-

tives -- appointed by the Leadership of the General Assembly.

(8) Increases the state's contribution to both fire and police pension funds by $2 million.

(9) Includes a repealer effective January 1, 1981 which is intended to provide an incentive to the commission and employer and employee groups to design a new pension benefit plan for submission to the General Assembly that could be fully funded on a continuing basis.

The provisions of Senate Bill 46 are primarily concerned with limited matters of the adequate funding of pension plans. The act does not address other important issues such as the appropriate standards of benefits for newly hired policemen and firemen.

As the 1977 report stated:

> The committee concluded that the development of new packages for policemen and firemen (and, perhaps revisions to existing laws) should be delayed pending completion of a detailed actuarial study of all pension plans in 1978.... The issues not yet resolved, but which should be addressed by the commission, include maximum benefit levels, funding, retirement ages and length of service requirements, vesting and refunds of benefits, disability benefits, post-retirement increases and consolidation of pension plans into a statewide system.1/

In order to address these issues, Senate Bill 46 created the Policemen's and Firemen's Pension Reform Commission and directed the commission to:

> ...study and develop proposed legislation relating to funding of policemen's and firemen's pensions in this state and benefit designs of such pension plans. The commission study shall include a review of, and the proposed legislation may include, among other subjects, the following:

1/ Report to the Colorado General Assembly, Committee on Fire and Police Pensions, Colorado Legislative Council Research Publication No. 229, December, 1977, p. 8.

(a) Normal retirement age and compulsory retirement; (b) Payment of benefits prior to normal retirement age; (c) Service requirements for eligibility; (d) Rate of accrual of benefits; (e) Disability benefits; (f) Survivors' benefits; (g) Vesting of benefits; (h) Employee contributions; (i) Postretirement increases; (j) Creation of an administrative board; (k) Creation of a consolidated statewide system; (l) Distribution of state funds; (m) Coordination of benefits with other programs; (n) The volunteer firemen's pension system.2/

Finally, while the statute establishing the commission does not expire until January 1, 1981, the commission was to develop cost analyses of any benefit proposals and to report on its progress to the General Assembly by January 1, 1979.

Results of Actuarial Studies

Senate Bill 46 required that an actuarial study of all policemen's and firemen's pension funds be conducted under the supervision of the State Auditor. The act permitted each municipality and fire protection district to elect to use the services of its own actuary in conducting the valuation (based on the method and assumptions adopted by the State Auditor) or to use the services of the Martin E. Segal Company, the actuarial firm designated by the State Auditor to conduct or review all of the studies required. Fifty plans elected the use of local actuaries and a total of five actuarial firms were utilized.

The purpose of the actuarial valuations was two-fold -- to determine the 1979 contribution rates necessary for each pension plan to meet the minimum funding standards established under Senate Bill 46 and to determine the actual status (assets and unfunded liabilities) of all such pension funds.

At the commission's October meeting, the Martin E. Segal Co., consulting actuaries, presented a preliminary report showing the results of 138 police pension funds and 43 firemen's pension funds. Data was not yet available on about 25 additional small pension plans; these will be included in the final actuarial report, and a separate report will be submitted on volunteer firemen's pension plans. Due to the very small size of the 25 uncompleted plans, their inclusion is not expected to significantly alter any of the preliminary findings.

2/ Section 31-30-901 (2) Colorado Revised Statutes, 1973, as enacted by S.B. 46, 1978 Session.

The preliminary actuarial report indicated that:

> The total contribution rate based on the minimum funding standards varies dramatically among the plans - from about 14% to 65% of payroll for police plans, and from about 18% to 78% for firemen's plans. In anticipation of this, S.B. 46 contains a hardship provision which allows municipalities and fire protection districts to gradually phase in the bulk contribution rate over a period of years.
>
> Municipalities and fire protection districts - except those in excess of 500,000 - electing this hardship provision will contribute fifty percent of the rate determined according to the minimum funding standards in 1979, and will annually increase this percentage by five percentage points until 1989 when they will contribute the full minimum contribution rate.
>
> Municipalities in excess of 500,000 electing the hardship provision will contribute twenty percent of the rate determined according to the minimum funding standards in 1979, and will annually increase this percentage by ten percentage points until 1987 when they will contribute the full minimum contribution rate.
>
> It is important to understand that the percentage rate which increases each year under the hardship provision will be applied to an amount which also increases each year. Because full payment of the minimum contribution rate will not occur for about a decade, the unfunded past service liability will continue to grow during the same period. Thus, the dollar amount of the contribution required under the hardship provision will grow each year due to increases in both the percentage contribution rate and the unfunded past service liability.3/

In terms of actual dollars, the report indicates that, as of January 1, 1978, total payroll for policemen and firemen amounted to nearly $96 million -- $56.5 million for police and $39.4 million for firemen. Total assets for all policemen's and firemen's pension funds

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3/ "Preliminary Report, Actuarial Valuations of Policemen's and Firemen's Pension Plans in Colorado As of January 1, 1978", Martin E. Segal Co., October, 1978, pp. 2 and 3.

amounted to nearly $70 million -- $32.2 million for police and $37.6 million for firemen. Unfunded liabilities (projected to December 31, 1978) amount to nearly $430 million -- $227.3 million for police and $201.5 million for firemen. A complete breakdown of the above data, by individual fund, is to be presented separately in the final report of the Martin E. Segal Company.

Committee Procedures

The Auditors Pension Advisory Committee (APAC). At the outset of its study, the commission elected, as a means of receiving maximum input and cooperation, to ask the State Auditor to reappoint an advisory committee composed of interested employee and employer representatives. Such a committee had been in existence during the 1977 study. The committee thus appointed, commonly called the "Auditors Pension Advisory Committee" (APAC), met between the regular commission meetings in an attempt to develop specific suggestions and comments upon the commission's actions and reported regularly to the commission throughout the study. Appendix A contains a listing of the Auditors Pension Advisory Committee's membership. APAC eventually developed a specific proposal for the provisions of pensions for newly hired officers. While that proposal was not incorporated in its entirety in the commission recommendations many of the suggestions were adopted. Table 1 contains a comparison of the APAC benefit proposal, the commission's basic recommendation, the existing pension benefits provided by law to firemen in cities over 100,000, and the benefits offered to members of the state patrol under the Public Employees Retirement System (PERA).

Issues before the commission. In addressing the specific questions raised in Senate Bill 46, the commission began its deliberations by considering a number of broad policy issues. Among these were such questions as:

(a) What should be the role of the state as regards local firemen's and policemen's pension plans?

(b) How should pension plans be administered?

(1) By a statewide consolidated system;

(2) by independent local systems; or

(3) by a combination of the above, e.g., a statewide system for small localities and individual systems for large entities.

(c) How should such pension systems be managed? By a central state board; through contract with the state's Public Employees Retirement Association; or by local boards?

(d) How should such pension programs be funded?

(1) By employee or employer contributions only;

(2) by a combination of employee-employer contributions; or

(3) by a combination of employee, employer, and state contributions.

(e) How should future retirement programs be handled?

(1) By eliminating mandatory retirement programs for all new employees beginning work after April 7, 1978, and supplementing purely local plans therefor;

(2) by freezing all existing retirement programs at current levels, and placing all new employees under a new program;

(3) by closing all existing retirement programs permanently in 1979, granting existing employees proportional vesting, and drafting a new program for all employees; or

(4) by drafting a new statewide program for officers hired after April 7, 1978 (the effective date of S.B. 46) and allowing existing employees to continue under existing programs.

(f) If a new system is developed is it to be a minimum standard? That is, are local additions (options) to be allowed?

As previously indicated, Senate Bill 46 provides that any person employed after the effective date of the act (April 7, 1978) is to be temporarily covered by existing pension plans, but he cannot earn any vested benefits therein. This, in effect, freezes the total unfunded liability as of that date, and the act establishes a means to put all existing systems on a full funding basis. The consensus of most members of the commission appeared to be that the methods which would alternately be developed for handling the existing liabilities would depend, perhaps significantly, on the pensions established for new officers. With this in mind, the commission focused its attention on developing pension proposals for newly hired officers.

Committee Findings and Recommendations

In answer to the above outlined problems and issues, the commission recommends the following three bills for consideration by the 1979 General Assembly.

Bill 29 establishes a comprehensive statewide benefit program for all officers hired after April 7, 1978.

Bill 30 creates a state funded death and disability benefit program (pool) for all employees -- both for existing officers and for newly hired officers.

Bill 31 makes an appropriation of not more than 30 million dollars to provide for the payment of the unfunded liability over not more than forty years.

Bill 29. Concerning a Benefit Plan for Colorado Firemen and Policemen. In brief, Bill 29 proposes to:

1) Establish a statutory statewide system of benefits for all non-volunteer, full-time members hired after April 7, 1978.

2) Creates a state firemen's and policemen's pension association, governed by an 11-member board, comprised of employee and employer representatives appointed by the Governor and confirmed by the Senate. The firemen's and policemen's pension association will be established as an independent "public corporation" similar to the Housing Finance Authority; as such it will not be an agency of state government.

3) Some specific powers and duties of the board of the association are:

a) Administer or provide for the administration and investment of the fire and police members' benefit fund and, at the request of any local employer, handle such employer's pension funds for investment.

b) To provide actuarial valuations and set standards therefor.

c) To serve as the single entity empowered to establish criteria for the determination of, and rule upon disabilities, both for those within the statewide plan and for those in locally administered plans. (See also the discussion of Bill 30, below).

d) To promulgate a set of uniform rules and regulations including, but not limited to:

(i) standards for disclosure and operation of elections for withdrawal from the state system; and

(ii) standards for review and submission of biennial reports.

e) To enter into agreements with employers for the transfer of accumulated service credits and contributions between various pension plans.

f) To establish rules and regulations allowing any employer or member which formally withdrew from the state system to re-enter the state system.

g) Review or initiate proposed legislation affecting or related to the provision of pension plans covered by the bill.

4) All existing pension plans of 50 employees or less will be required to participate within the state system, but they may manage the investment of funds at the local level. Pension plans with 50 or more employees may withdraw from the state system if 65 percent or more of active and retired employees approve and a one-year notice of intent to withdraw is given to the board. The opportunity to withdraw will expire in five years after which no withdrawal may occur. Any individual member of the withdrawing plan will have the option of participating.

5) Any new police or fire department established after the creation of the state system must join the state system.

6) Departments currently utilizing social security or which presently have opted out of the statewide plans will be excluded from participation in the new system.

7) The basic benefit package for new employees (those hired after April 7, 1978) is outlined below:

Normal retirement age. Age 55.

Years of Service. 25 years.

Basic retirement benefit. Age 55 with 25 years of service, the award will be 50 percent of final average salary.

Early retirement benefit. Age 50 or 25 years service, award to be reduced by 1/2 of 1 percent for each month less than age 55.

Deferred retirement or annuity. (1) When an eligible person reaches age 55 he may defer receipt of his pension until any age up to 65 and receive a higher pension; the award to be the increased actuarial value thereof.

Final average salary (FAS). FAS defined as the average salary paid during the highest three years preceding retirement.

Covered employee. Limited to full-time employment in uniformed services.

Cost of living adjustment. A statutory maximum of 3 percent per year subject to the funds being determined to be prefunded and availabile on an actuarial basis.

Termination prior to retirement. Upon termination prior to retirement the employee may: (1) withdraw 100 percent of his contributions at 5 percent interest. (Refund must be made within 120 days of termination); or (2) after 10-years service leave his contributions and vest at a rate of 2 percent a year.

Death benefits. A retiring officer may select survivor benefits from three options (a retiree can actually select from four options, but one option does not provide any survivor benefits). For active employees, and employees eligible to retire, the plan assumes the selection of the 100 percent joint survivor benefit option.

Disability. The bill differentiates between occupational and total disability. Offsets are included for workmen's compensation (one-half of the compensation award) and earnings ($1 for every $4 earned). Social Security benefits are to be offset dollar for dollar if the benefit is from the same employment.

Total disability is equal to 35 percent of final average salary (FAS) for a single member; 15 percent additional for a member's spouse; and 15 percent additional for a member's children (a 65 percent maximum).

Occupational disability is equal to 30 percent of FAS for a single member; 10 percent additional for a member's spouse; and 10 percent additional for a member's children (to a 50 percent maximum).

The above outlined bill does not propose to change any of the benefits currently provided to existing officers. At one point in the commission's study, the commission considered a proposal to freeze all existing statutory benefits and grant existing employees a vested accrued benefit based upon their length of service and years of retirement eligibility. All employees would have been placed under the new benefit plan for the remainder of their career except that age and length of service requirements would remain the same as under the current plans. At retirement the total benefit payable would be a combination of the proportion of benefits earned under the old plan plus the proportion of benefits earned under the new plan.

The commission was aware that any proposal to substantially modify current benefit plans raises several legal questions, the primary issue being whether or not current law, by mandating specific benefits, results in setting forth a contractual pension obligation with the employee at the time of his employment. This issue is not addressed in current statutes nor have any specific court decisions been rendered in Colorado to clarify the situation. The consensus of the commission appeared to be that such an obligation may exist and the adoption of any proposals to curtail existing benefits might only result in extensive litigation which could effectively delay pension

reform for a number of years and only cause the unfunded liability to continue to increase annually. It should be noted that not all of the commission members agree with this position. See particularly Representative McElderry's dissenting comments and alternative proposal which is included in this report.

Funding of Bill 29. The benefits provided in Bill 29 are to be funded entirely by employee and employer contributions. Contributions are to be a specified percentage of salary. At this point, because final estimates of the program's cost have not been developed by the auditor's actuarial consultants (the Martin E. Segal Co.), the amounts (as a percentage of salary) of employee and employer contributions are left blank in the bill. These blanks may be filled when final costs estimates are available. However, preliminary verbal estimates of staff members of the Martin E. Segal Co. suggest that the benefit program probably will cost between 12 to 15 percent of salary (this does not include costs of death and disability benefits).

Bill 30. Concerning Funding for Fire and Police Death and Disability Benefits.

Because death and disability benefit formulas are generally awarded over a much wider range of age and service than normal retirement benefits they usually comprise a significant portion of a retirement systems cost. This is particularly true in small plans where the costs and experience factors cannot be spread over a large group, e.g., where the death or disability of only a few individuals at the same or within a short period of time (a major fire or explosion for example) can, in effect, bankrupt a fund. Additionally, disability benefits are often cited as being widely abused for any number of reasons.

To meet these problems, the commission proposes that the state assume the responsibility for funding all death and disability benefits for both existing and new members. This proposal, by pooling the cost and experience factors (when combined with the definitions of occupational and total disability and with the administrative procedures outlined in Bill 29) may not only result in a program costing less statewide than if local programs were continued, but may also release additional local funds for reduction of existing unfunded liabilities.

Estimated cost of funding Bill 30. While final actuarial valuations of the commission's proposal are not complete, preliminary estimates suggest that the initial cost of death and disability for newly hired officers will probably be about 6 percent of payroll. The actual total cost of covering existing officer and new hires is not yet available. Since the death and disability program will include currently employed officers, the cost will include some of the unfunded liability of current programs. There is some indication that death and disability may approach 30 percent of current costs and the existing total needed to fund the unfunded liability (in Bill 31) may be reduced by a corresponding amount.

Bill 31. Making an Appropriation to the Fire and Police Members' Benefit Fund.

Bill 31 proposes that the state agree at this point in time that (because of the cost impact of the unfunded liability on local governments) it should assist in the payment of the estimated $430 million statewide unfunded liability. The bill appropriates an amount of not more than $30 million annually until the liability is fully met for that purpose. Note that it may be possible to reduce the actual total amount by that portion of the unfunded liability that will be covered by the state's assumption of death and disability benefits.

TABLE I

COMPARISON OF FEATURES OF TWO EXISTING PENSION PLANS WITH THE AUDITOR'S PENSION ADVISORY COMMISSION PROPOSAL AND THE RECOMMENDATIONS OF THE POLICEMEN'S AND FIREMEN'S PENSION REFORM COMMISSION

Basic Provision	Current Law -- Firemen in Cities Over 100,000	Auditor's Pension Advisory Committee Proposal (APAC)	Commission Recommendations	Public Employees Retirement Association (State Patrol)
Normal retirement age	Age 50 with 25 years of service in such department. Payment to be made regardless of other income.	Age 55	Age 55	Age 55
Years of Service	25 Years	(1) 25 years (2) 30 years or more, can retire at any age.	(1) 25 years	(1) 20 years (2) 30 years or more, can retire at any age.
Early retirement	No specific provisions	(1) Age 50-54 with 25 years service, award to be reduced by 1/2 of 1% for each month less than age 55.	(1) With 25 years service, award to be reduced by 1/2 of 1% for each month less than age 55.	(1) Age 50-54 with 20-29 years service, amount reduced by 1/2 of 1% per month less than age 55.
Final average salary (FAS)	50% of final salary (monthly salary at retirement) plus one-half of any salary increases granted, during his retirement, to the rank he previously occupied.	Average salary paid during last 18 months.	(1) FAS defined as the average salary paid during the highest 3 years preceding retirement.	(1) FAS defined as the average of the highest 5 consecutive years during career. (2) 2.5% FAS for each of first 20 years resulting in 50% of FAS. (3) 1% FAS for each year above 20. (4) Maximum entitlement is 70% FAS.
Mandatory retirement age	Statutes imply mandatory retirement at normal retirement.	Local option: to be left to discretion of each local unit of government.	Not addressed but amount of pension will not increase if person continues employment beyond age 65.	Not addressed.

Basic Provision	Current Law -- Firemen in Cities Over 100,000	Auditor's Pension Advisory Committee Proposal (APAC)	Commission Recommendations	Public Employees Retirement Association (State Patrol)
Deferred retirement	No provisions	Not addressed but see refund of deferral of benefit.	(1) Eligible person may defer receipt of pension until age 65. (2) Award to be determined by actuarial study; at age 55 the award will be 50% of FAS.	(1) Deferred annuity, 5 years service, may leave deposit with PERA until age 65 with award made per formula. (2) 20 years service, can receive annuity at age 60 with no reduction.
Covered employee	Uniformed officers.	(1) To be defined by local unit of government with the following basic requirements: a) Policemen defined as a full-time paid, sworn police officer. b) Firemen defined as a full-time paid individual designated by the local government as in the fire service.	Limit to uniformed services.	Member Colorado State Patrol.
Contributions	Prior to S.B. 46, 1978 session, employees not to exceed 3 3/4 of salary; local government shall levy 1 mill. S.B. 46 establishes a phase-in formula with employee allowable maximum of 10% (8% effectively mandated by 1985). Local governments are to phase-in funding of current costs and unfunded liability by 1987 or 1989.	(1) Employer at least equal to employees but established by actuarial calculations to insure benefits. Amounts not resolved. Employee and employer contributions will depend on the final actuarial estimated costs -- total, excluding death and disability, projected to be around 12 to 14% of payroll.	(1) Amounts not resolved. Employee and employer contributions will depend on the final actuarial estimated costs -- total, excluding death and disability, projected to be around 12 to 14% of payroll.	(1) 7.75% of salary, plus a one time, non-refundable administrative fee of $5. (2) 11.64% of salary, employee share.
Cost of Living adjustment	Rank escalation	3% maximum determined at local level based on cost of living and ability to fund -- funds are actuarially available.	Up to 3% if pre-funded moneys actuarially available	3%; cannot be reduced below original benefit if CPI decreases.

Basic Provision	Current Law -- Firemen in Cities Over 100,000	Auditor's Pension Advisory Committee Proposal (APAC)	Commission Recommendations	Public Employees Retirement Association (State Patrol)
Refund or deferral of benefit	At retirement	Upon termination prior to retirement the employee may: 1) withdraw 100% of his contribution at 5% interest. Refund must be made within 90 days of termination; or 2) leave his contributions and vest at a rate of 2% a year after 10 years credited service.	Same as APAC	(1) Refund of his contribution. (2) 5 years or more service -- elect deferred annuity. (3) Retained membership option for less than 5 years. (4) No interest on contributions.
Local board option	Current plans administered at local level.	(1) Permit additional benefits provided they are paid for on an actuarial reserve basis; (2) Present employee may join new plan with concurrence of employer; (3) Local Board may opt out if the governing board initiates the action, provides full disclosure on all actuarial information to all interested parties and affected employees consent to the new plan pursuant to future vote similar to that incorporated in H.B. 1406 -- 65% current and retired employees approve. (4) Minimum standards will be applied to define benefit plans.	Benefits to be the same statewide except that departments with 50 or more employees may withdraw and establish their own benefit programs with the approval of 65% of current and retired employees (same as APAC procedure -- see Column 2). Funds may be locally managed under rules established by the state association.	Not applicable.

Basic Provision	Current Law -- Firemen in Cities Over 100,000	Auditor's Pension Advisory Committee Proposal (APAC)	Commission Recommendations	Public Employees Retirement Association (State Patrol)
Portability	No provisions	(1) Limited to members within the state. (2) Member may transfer from one fund to another within 90 days of termination. (3) Money to follow man; however, fund liquidity needs must be recognized.	Provided automatically for those within the state association. The board of the association is to develop procedures (rules) for transfers between it and other plans and between other plans.	Not applicable.
Survivor benefits	Dependent widow, dependent mother, and/or dependent children under eighteen, of a deceased active or retired fireman. Widow receives one-third of salary at deceased member's death plus one-third of any salary increases granted, while she receives such benefit, to the rank the deceased member previously occupied, plus $30 to each child until age 18. If no surviving spouse, children receive spouse's benefit equally divided among them, not to exceed 1/2 current salary of first grade fireman or $30 whichever is greater.	Assumes active employee retired the day before he died and that he selected the 100% joint survivors option; and retirees may select from three survivor options.	Assumes active employee retired the day before he died and that he selected the 100% joint survivors option; and retirees may select from three survivor options.	Assumes active employee retired the day before he died and that he selected the 100% joint survivor benefit; retirees may select from three survivor options; also provides additional annuity benefits to widows of active employees with dependent children.

Basic Provision	Current Law -- Firemen in Cities Over 100,000	Auditor's Pension Advisory Committee Proposal (APAC)	Commission Recommendations	Public Employees Retirement Association (State Patrol)
Disability	No specific provisions for temporary but if, after periodic examination the member is deemed recovered, and is under 50 years of age, he shall be returned to active duty, defined as physical or mental disablement while on active duty whereby member is unable to perform his duties. A member who has 5 years of service and is unable to perform his duties due to heart or lung disease contracted while on duty is also eligible (Policemen do not now have heart and lung coverage). 50% of salary at date of such disability, plus escalation equal to one-half of any salary increase granted, during his retirement, to the rank he previously occupied.	(1) Eligible for retirement benefit if member suffers a permanent disability from any cause resulting in permanent incapability to perform regular duties. (2) No age requirement. (3) 5 years service if injury is non-service related; none if service related. (4) Award; calculated using % of FAS member would have received had he remained active until age 65 multiplied by his FAS computed before he left service. (5) % limited to FAS unless service is over 20 years in which case increased by 1% for each year above 20.	Differentiation between occupational and total disability and for on-job and off-job disability; offsets included for workmen's compensation (1/2) and earnings ($1 for $4 earned); Social Security benefits offset $ for $ if benefit is from same employment. Total disability = 35% of FAS for single; 15% add for spouse; 15% add for children (65% maximum). Occupational disability = 30% of FAS for single; 10% add for spouse and 10% add for children (50% maximum).	(1) Eligible for retirement benefit if member suffers a permanent disability from any cause resulting in permanent incapability to perform regular duties. (2) No age requirement. (3) 5 years service if injury is non-service related; none if service related. (4) Award; calculated using % of FAS member would have received had he remained active until age 65 multiplied by his FAS computed before he left service. (5) % limited to FAS unless service is over 20 years in which case increased by 1% for each year above 20.
Heart and Lung Disease	See disability above.	Firemen -- heart and lung coverage; Policemen -- heart coverage.	Not recommended.	Not included.

POLICEMEN'S AND FIREMEN'S
PENSION REFORM COMMISSION

BILL 29

A BILL FOR AN ACT

1 CONCERNING A BENEFIT PLAN FOR COLORADO FIREMEN AND POLICEMEN.

Bill Summary

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

Establishes a benefit plan for policemen and firemen in this state which is actuarially sound and fundable to replace existing plans. Specifies benefits for retirement and disability as well as survivor benefits and provides for a board to manage the plan and the fund.

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

3 SECTION 1. Article 30 of title 31, Colorado Revised
4 Statutes 1973, 1977 Repl. Vol., as amended, is amended BY THE
5 ADDITION OF A NEW PART to read:

6 PART 10

7 MEMBERS' BENEFITS

8 31-30-1001. Legislative declaration. The general assembly
9 hereby declares that the establishment of policemen's and
10 firemen's pension plans in this state is a matter of statewide
11 concern which affects the public safety and general welfare, that
12 the ability of pension funds to pay earned benefits to present

1 and future members is a necessary corollary to the establishment
2 of pension plans, and that a statewide pension plan which
3 establishes pension benefits which can be fully funded will
4 permit the continuation of pension plans for policemen and
5 firemen in this state. In addition the general assembly declares
6 that any local pension plan must be actuarially sound in order to
7 assure the security of the pension system and that this part 10
8 is enacted to provide for the stability and security of
9 policemen's and firemen's pension plans in this state.

10 31-30-1002. Definitions. As used in this part 10, unless
11 the context otherwise requires:

12 (1) "Board" means the board of directors established as the
13 governing body of the fire and police pension association as
14 provided in section 31-30-1004 (2).

15 (2) "Dependent child" means an unmarried child under the
16 age of nineteen or, if such child is enrolled as a full-time
17 student at an accredited institution of higher education, under
18 the age of twenty-three and includes, if the board so determines,
19 any child of whatever age who is so mentally or physically
20 incapacitated that he cannot provide for himself.

21 (3) "Employer" means any municipality or fire protection
22 district employing one or more members.

23 (4) "Member" means an active employee who is a full-time
24 salaried employee of a municipality or fire protection district
25 serving at least one thousand six hundred hours in any calendar
26 year and whose duties are directly involved with the provision of

police or fire protection, as certified by his employer. The term also includes any former employee who is retired, is disabled, or is eligible for a benefit as provided in section 31-30-1011 (2), but the term does not include clerical or other personnel whose services are auxiliary to police or fire protection.

(5) "Occupational disability" means a disability from any cause resulting in permanent incapacity to perform assigned duties.

(6) "Total disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a period of not less than twelve months.

31-30-1003. Applicability of plan. (1) Except as provided in subsection (2) of this section, every employer in this state shall provide the pension benefits of the plan established by this part 10 for members hired on or after April 6, 1978.

(2) (a) Any employer which covers members under the federal "Social Security Act" or which had established a pension plan in accordance with section 31-30-325, 31-30-417, 31-30-522, or 31-30-621 on January 1, 1980, shall be exempt from the provisions of this part 10.

(b) (I) Any employer employing more than fifty members may withdraw from the association, and any employer may subsequently reenter the association, by filing with the board a resolution

1 adopted by the employer pursuant to subparagraph (III) of this
2 paragraph (b), no less than twelve months prior to the effective
3 date of withdrawal or reentry unless a shorter waiting period is
4 approved by the board. The effective date of withdrawal or
5 reentry shall be January 1 of the year following the waiting
6 period, but no withdrawal or reentry may become effective after
7 January 1, 1985.
8 (II) An employer that withdraws from the association as
9 provided in this paragraph (b) shall establish a locally
10 administered and financed alternative pension plan subject to the
11 following:
12 (A) Such plan shall be financed on an actuarily sound basis
13 as determined by the board; and
14 (B) Such plan shall be subject to the provisions of
15 sections 31-30-1007 and 31-30-1008.
16 (III) Any reentry or both the withdrawal and the
17 alternative pension plan, together with any amendments thereto,
18 shall be approved by at least sixty-five percent of all members.
19 (IV) This paragraph (b) shall not apply to any employer
20 first established after January 1, 1980.
21 (3) Any member hired prior to April 6, 1978, or any member
22 whose employer has elected to establish an alternative pension
23 plan pursuant to paragraph (b) of subsection (2) of this section
24 may elect to be covered by the provisions of this part 10
25 pursuant to rules and regulations established by the board. The
26 board shall determine, by rule, how any applicable service of a

1 member shall be used in determining eligibility for and computing
2 benefits pursuant to this part 10.
3 31-30-1004. Association - creation - board - organization.
4 (1) There is hereby created an independent public body corporate
5 and politic to be known as the fire and police pension
6 association. Said association is constituted as a public
7 instrumentality, and its exercise of the powers conferred by this
8 part 10 shall be deemed to be the performance of an essential
9 public function. The association shall be a body corporate and a
10 political subdivision of the state and shall not be an agency of
11 state government and shall not be subject to administrative
12 direction by any department, commission, board, or agency of the
13 state.
14 (2) (a) The governing body of the association shall be a
15 board of directors consisting of eleven members who shall be
16 appointed by the governor in the following manner and shall be
17 confirmed by the senate:
18 (I) Four members shall represent the Colorado municipal
19 employers;
20 (II) Two members shall represent professional policemen's
21 organizations;
22 (III) Two members shall represent professional firemen's
23 organizations;
24 (IV) One member shall represent special districts providing
25 fire protection;
26 (V) One member shall be appointed from a list prepared by

1 the members appointed pursuant to subparagraph (I) of this
2 paragraph (a);
3 (VI) One member shall be appointed from a list prepared by
4 the members appointed pursuant to subparagraphs (II) and (III) of
5 this paragraph (a).
6 (b) Of the members first appointed, three shall be
7 appointed for terms of one year, three shall be appointed for
8 terms of two years, three shall be appointed for terms of three
9 years, and two shall be appointed for terms of four years.
10 Thereafter members shall be appointed for terms of four years.
11 (c) Appointments may be made without confirmation of the
12 senate when the senate is not in session, but such appointments
13 shall be confirmed within thirty days of the next meeting of the
14 senate in regular session or they shall be void.
15 (d) Seven members of the board shall constitute a quorum,
16 and no action shall be taken by the board unless two-thirds of
17 the members voting approve.
18 (3) (a) The members of the board shall serve without
19 compensation but shall be reimbursed for any necessary
20 expenditures and shall suffer no loss of salary or wages through
21 service on such board.
22 (b) The board shall elect a chairman and a vice-chairman,
23 shall appoint a secretary or such other employees as may be
24 necessary, and shall fix the compensation for said appointees.
25 (4) Neither the members of the board nor any person
26 authorized by the board to act in an official capacity shall be

1 held personally liable for any act undertaken pursuant to the
2 provisions of this part 10.

3 31-30-1005. Powers and duties of the board. (1) The board
4 shall:

5 (a) Establish standards for determining the actuarial
6 soundness of:

7 (I) The fund, in accordance with section 31-30-1012; and

8 (II) Alternative pension plans established pursuant to
9 section 31-30-1003 (2)(b). Based upon such standards, the board
10 shall conduct biennial actuarial reviews of such plans with the
11 cost of said reviews to be paid by employers having established
12 such plans.

13 (b) Establish criteria for the determination of disability
14 to administer the provisions of section 31-30-1007;

15 (c) Promulgate rules and regulations relating to standards
16 for disclosure of all ramifications of and procedures for
17 obtaining the member approval provided for in section 31-30-1003
18 (2)(b);

19 (d) Enter into agreements with employers relating to the
20 transfer of accumulated contributions attributable to members who
21 either change employers or who elect to be covered by this part
22 10 in accordance with section 31-30-1003 (3);

23 (e) Administer or provide for the administration and, in
24 accordance with the provisions of section 31-30-1012 (2), the
25 investment of the fire and police members' benefit fund and, at
26 the request of any local employer, may handle such employer's

1 pension funds for investment;

2 (f) Review or initiate proposed legislation affecting or
3 related to the provisions of this part 10.

4 (2) The board has the sole power to determine eligibility
5 for retirement for disability, whether total or occupational, for
6 any policeman or fireman in this state whether or not such member
7 is covered by the provisions of this part 10.

8 (3) Under the direction of the board, each employer,
9 including employers not covered by this part 10 in accordance
10 with the provisions of section 31-30-1003 (2), shall furnish such
11 information and shall keep such records as the board may require
12 for the discharge of its duties. The final power to determine
13 the status of any individual is vested in the board, but each
14 employer shall determine whether positions are available for
15 disabled members and shall make such appointments to said
16 positions as it deems necessary.

17 31-30-1006. Normal retirement. (1) Any member who has
18 completed at least twenty-five years of active service and has
19 attained the age of fifty-five years may be retired from further
20 service and shall be eligible for a normal retirement pension.
21 The annual normal retirement pension shall be two percent of the
22 average of the member's highest three years' salary multiplied by
23 the member's years, not to exceed twenty-five, of service prior
24 to age sixty-five.

25 (2) Any member retiring and eligible for a normal
26 retirement pension as provided by subsection (1) of this section

1 may elect to defer receipt of such pension until attaining the
2 age of sixty-five years. In the case of such election the annual
3 deferred retirement pension shall be the actuarial equivalent of
4 the normal retirement pension.
5 (3) Any member who has completed at least twenty years of
6 active service or has attained the age of fifty years may elect
7 to retire from active service and shall be eligible for an early
8 retirement pension. The annual early retirement pension for a
9 member shall be the normal retirement pension provided by
10 subsection (1) of this section reduced by one-half of one percent
11 per month for each month or portion thereof that such member is
12 less than age fifty-five at the time of such election.
13 (4) (a) A member eligible for a normal or early retirement
14 pension may elect to receive one of the following pension
15 options:
16 (I) Option 1. A reduced pension payable to the member and
17 upon his death all of such reduced pension to be paid to his
18 designated beneficiary for life.
19 (II) Option 2. A reduced pension payable to the member and
20 upon his death one-half of such reduced pension to be paid to his
21 designated beneficiary for life.
22 (III) Option 3. A reduced pension payable jointly to the
23 member and his designated beneficiary and, upon the death of
24 either, one-half of such reduced pension to be paid to the
25 survivor for life.
26 (b) A member shall be considered to have elected option 1

1 and retired on the day before his death if he is eligible for a
2 normal or early retirement pension and dies:
3 (I) Before making an election as provided in paragraph (a)
4 of this subsection (4); and
5 (II) Before receiving his first pension check or sixty days
6 from the date of issuance of such check, whichever occurs first;
7 and
8 (III) Is survived by a spouse or a dependent child.
9 (c) After an election has been made of any of the options
10 provided in paragraph (a) of this subsection (4) and the member
11 has cashed the first pension check, or sixty days from date of
12 issuance of said check have elapsed, whichever occurs first, the
13 election shall be irrevocable.
14 (d) The joint pension benefits provided by this subsection
15 (4) shall be calculated as the actuarial equivalent of the normal
16 or early retirement pension otherwise payable as provided in
17 subsections (1) through (3) of this section.
18 (5) If the total amount of pension benefits paid as
19 provided in this section is less than the amount of the member's
20 accumulated contributions at his death, the difference shall be
21 paid to:
22 (a) The member's estate if no pension payment was made
23 pursuant to subsection (4) of this section; or
24 (b) The survivor's estate if pension payments were made
25 pursuant to subsection (4) of this section.
26 (6) All service of a member who is employed by successive

1 employers shall be aggregated for determining eligibility and
2 benefits provided by this section if the service for each
3 employer was rendered while the employer covered its members
4 under the plan established by this part 10. The service of a
5 member who is employed by successive employers shall be
6 aggregated for determining eligibility and benefits provided by
7 this part 10 if the service for any employer was rendered while
8 the employer did not cover its members under the plan established
9 by this part 10 only on the basis of the agreements made with the
10 board as provided in section 31-30-1005 (1)(d).
11 31-30-1007. Retirement for disability. (1) Any member who
12 becomes totally disabled shall be retired from active service for
13 disability and shall be eligible to receive the disability
14 benefit provided by this subsection (1). The disability benefit
15 for total disability for such member shall be thirty-five percent
16 of the annual base salary paid to such member immediately
17 preceding retirement for disability, which shall be increased by:
18 (a) Fifteen percent of said annual base salary if such
19 member had a spouse at the time of becoming totally disabled, for
20 so long as such spouse survives and is married to such member or
21 legally entitled to maintenance from such member;
22 (b) Fifteen percent of said annual base salary if such
23 member has any dependent children.
24 (2) (a) Any member who becomes occupationally disabled
25 shall be retired from active service for such time as said
26 occupational disability continues and shall be eligible to

1 receive the disability benefit provided by this subsection (2).
2 The disability benefit for occupational disability for such
3 member shall be thirty percent of the annual base salary paid to
4 such member immediately preceding retirement for disability,
5 which shall be increased by:
6 (I) Ten percent of said annual base salary if such member
7 had a spouse at the time of becoming occupationally disabled, for
8 so long as such spouse survives and is married to such member or
9 is legally entitled to maintenance from such member;
10 (II) Ten percent of said annual base salary if such member
11 has any dependent children.
12 (b) At any time that an occupational disability ceases to
13 exist, a member retired for such disability may be restored to
14 active service and the benefits provided by this subsection (2)
15 shall be discontinued.
16 (3) (a) Any disability benefit provided pursuant to
17 subsection (1) or subsection (2) of this section shall be reduced
18 in accordance with the following provisions:
19 (I) If the member has received an award under the
20 "Workmen's Compensation Act of Colorado", the disability benefit
21 shall be reduced by one-half of the award made pursuant to said
22 act. If such award was made in a lump sum amount, the reduction
23 shall be made according to rules adopted by the board.
24 (II) If the member has earned any income other than that
25 provided by the disability benefit and, if applicable, a
26 workmen's compensation award, the disability benefit shall be

1 reduced by twenty-five percent of the additional earned income.
2 (b) Any provision of paragraph (a) of this subsection (3)
3 to the contrary notwithstanding, any disability benefit provided
4 pursuant to subsection (1) or subsection (2) of this section
5 shall be reduced by the pro rata amount of any social security
6 benefit received by the member attributable to the member's
7 quarters of social security coverage derived from employment as a
8 member.
9 (c) Any member receiving a disability benefit pursuant to
10 subsection (1) or subsection (2) of this section shall file an
11 annual report concerning income from any workmen's compensation
12 award or any additional income. If such member knowingly fails
13 to file such report or files a fraudulent report, the disability
14 benefit shall be discontinued.
15 (4) The determination of disability, whether occupational
16 or total, shall be made by the board, and the board shall
17 consider a report to be made by a panel of five physicians
18 employed by state agencies or institutions with which the board
19 has contracted for the services of such physicians. The board
20 shall not make a determination of disability unless three of the
21 five physicians examining the applicant agree that a disability
22 exists, but the board shall not be bound by the physicians'
23 determination that a disability exists. No determination of
24 occupational disability shall be made unless the employer
25 employing the member applying for disability certifies that no
26 position exists within the employer's department for which said

1 member is able to carry out assigned duties.

2 31-30-1008. Death of member - survivor benefit. (1) If a
3 member who is not eligible for the retirement pension described
4 in section 31-30-1006 dies while in active service and leaves a
5 surviving spouse or dependent children, or both, one of the
6 following survivor benefits shall be paid:

7 (a) When there is a surviving spouse and no dependent
8 children, the benefit shall be twenty-five percent of the monthly
9 base salary paid to such member immediately preceding death plus
10 one-half of one percent of such salary for each year of the
11 member's active service in excess of twenty-five years, but such
12 benefit shall not exceed thirty-five percent of such salary.

13 (b) When there is a surviving spouse and one dependent
14 child, the benefit shall be forty percent of the monthly base
15 salary paid to such member immediately preceding death.

16 (c) When there is a surviving spouse and two or more
17 dependent children, the benefit shall be fifty percent of the
18 monthly base salary paid to such member immediately preceding
19 death.

20 (d) When there is no surviving spouse and three or more
21 dependent children, the benefit shall be fifty percent of the
22 monthly base salary paid to such member immediately preceding
23 death.

24 (e) When there is no surviving spouse and two dependent
25 children, the benefit shall be forty percent of the monthly base
26 salary paid to such member immediately preceding death.

1 (f) When there is no surviving spouse and one dependent
2 child, the benefit shall be twenty-five percent of the monthly
3 base salary paid to such member immediately preceding death.
4 31-30-1009. Termination of benefits. Any benefit provided
5 in accordance with this part 10 to a surviving spouse or
6 dependent child shall terminate upon the death or remarriage of
7 the surviving spouse and upon the death, marriage, or termination
8 of dependency of any dependent child.
9 31-30-1010. Adjustment of benefits. (1) Benefits payable
10 under this part 10 shall be redetermined effective October 1 each
11 year, and such redetermined amount shall be payable for the
12 following twelve months. To be eligible for redetermination,
13 such benefits shall have been paid for at least twelve calendar
14 months prior to the effective date of redetermination.
15 (2) Subject to the limitations contained in subsection (3)
16 of this section, the redetermination of benefits payable under
17 subsection (1) of this section shall be computed as follows: The
18 amount of the benefit on the effective date of the benefit shall
19 be increased by no more than three percent for each full year
20 contained in the period commencing with the effective date of the
21 benefit and ending with the effective date of the
22 redetermination.
23 (3) (a) In no event shall the redetermined amount provided
24 for in subsection (2) of this section be:
25 (I) Less than the amount of the benefit on the effective
26 date of the benefit; or

1 (II) More than the amount of the benefit on the effective
2 date of the benefit multiplied by a fraction, the numerator of
3 which shall be the average of the consumer price index for the
4 twelve months in the calendar year immediately preceding the
5 effective date of the redetermination, and the denominator of
6 which shall be the average of the consumer price index for the
7 twelve months in the calendar year immediately preceding the
8 effective date of the benefit. In no event shall the numerator
9 of said fraction be less than the denominator.
10 (b) As used in paragraph (a) of this subsection (3), the
11 term "consumer price index" means the national consumer price
12 index for urban wage earners and clerical workers prepared by the
13 United States department of labor. Such consumer price index
14 shall be deemed to have such base period as is in effect January
15 1, 1969.
16 (4) The cost of the adjustment of benefits provided by this
17 section shall be funded in the same manner as other benefits
18 established by this part 10.
19 31-30-1011. Return or transfer of contributions.
20 (1) (a) Any member terminating his service may elect to have his
21 accumulated contributions together with interest earned thereon
22 at five percent per annum refunded to him in a lump sum and shall
23 sign a statement to be filed with his employer evidencing such
24 election. The contributions refunded pursuant to this subsection
25 (1) shall not include contributions other than those required to
26 be made by the member, and the return of contributions shall be

1 made within one hundred twenty days.

2 (b) If the member who terminated his service subsequently
3 returns to service as an active member, his prior service credit
4 shall be restored when he returns his refunded contributions,
5 with interest to the date of refund. If the member fails to
6 return such contributions and interest, he shall be treated as a
7 new member and his prior service shall not be recognized in
8 determining pension eligiblity or pension benefits.

9 (2) In lieu of having his contributions returned as
10 provided in paragraph (a) of subsection (1) of this section, a
11 member who has at least ten years of credited service may leave
12 his contributions with the appropriate fund. When the inactive
13 member attains age sixty-five, he shall be eligible to receive an
14 annual vested benefit equal to two percent of his average highest
15 three years' salary multiplied by his years, not to exceed
16 twenty-five, of active service.

17 31-30-1012. <u>Fund - creation - management</u>. (1) There is
18 hereby created the fire and police members' benefit fund, which
19 shall consist of moneys of fire and police benefit plans,
20 including member, employer, and any state contributions, fees
21 collected, gifts received, unclaimed deposits, and investment
22 income, of those employers electing to have the moneys of their
23 funds managed by the board. The board shall keep an accurate
24 account of each individual department's fund and shall disburse
25 moneys in accordance with the provisions of this part 10.

26 (2) The board shall be the trustee of the fund and shall

1 have full and unrestricted discretionary power and authority to
2 invest and reinvest such portions of the fund as in its judgment
3 may not be immediately required for the payment of refunds or
4 pension benefits. In exercising its discretionary authority with
5 respect to the acquisition or disposition of any investments, the
6 board shall be governed by the standard for investments
7 prescribed in section 15-1-304, C.R.S. 1973, except as provided
8 in subsection (5) of this section.

9 (3) The board shall designate a financial institution as
10 custodian of the fund. All moneys paid or transmitted to the
11 custodian shall be credited to appropriate accounts in the
12 retirement fund and the custodian shall maintain a current
13 inventory of all investments of the fund.

14 (4) Disbursements from the retirement fund shall be made,
15 subject to the approval of the board, only for payment of the
16 expenses of the association, refunds to the members, pension
17 benefits, and investment purposes.

18 (5) The board may invest all or any part of the fund in
19 obligations of the United States government and in obligations
20 fully guaranteed as to principal and interest by the United
21 States government, in state and municipal bonds, in railroad
22 equipment trust certificates, in real property and in loans
23 secured by first mortgages or deeds of trust on real property, in
24 participation guarantee agreements with life insurance companies,
25 and in other types of investment agreements, and the foregoing
26 investments may be made without limitation as to the percentage

1 of the book value of the assets of the retirement fund so
2 invested. Investments may also be made in either common or
3 preferred corporate stocks, but the aggregate amount of moneys
4 invested in corporate stocks or corporate bonds, notes, or
5 debentures which are convertible into corporate stock, or in
6 investment trust shares, shall not exceed thirty percent of the
7 then book value of the assets of the fund. In no event shall any
8 investment be made in the common or preferred stock, or both, of
9 any single corporation in an amount in excess of five percent of
10 the then book value of the assets of the fund nor shall more than
11 seven percent of the outstanding stock or bonds of any single
12 corporation be acquired for the fund.
13 (6) The board shall purchase and acquire and hold for the
14 benefit of the fund such investments in such amounts as may from
15 time to time be directed by the board in writing. Any such
16 investments shall be disposed of by the board when it determines
17 such disposition to be necessary to provide money for payment of
18 refunds or pension benefits or in order to reinvest the proceeds
19 of such disposition in other investments determined by the board
20 to be in the best interests of the fund.
21 (7) All transactions involving the purchase and sale of
22 investments authorized in this section shall be effected on
23 behalf of the association. To facilitate sale and exchange
24 transactions, securities belonging to the association may be
25 registered in the name of a nominee, which nominee shall be a
26 nominal partnership composed of such officers and employees of

1 the association as the board, by appropriate resolution, may
2 designate from time to time. All members of any nominal
3 partnership created in this subsection (7) shall be bonded in
4 such amounts as may be determined to be advisable by the board.

5 31-30-1013. Employer and member contributions. (1) On and
6 after January 1, 1980, every member covered under the plan
7 established by this part 10 shall pay into the fund __________
8 percent of salary paid. The payment shall be made by the
9 employer by deduction from the salary paid such member. Payment
10 shall be made by one voucher for the aggregate amount deducted.
11 All such payments shall be credited to the fund.

12 (2) On and after January 1, 1980, every employer employing
13 members who are covered by the plan established by this part 10
14 shall pay into the fund __________ percent of the salary paid to
15 such member. All such payments shall be credited to the fund.

16 (3) It is declared to be the intent of the general assembly
17 in establishing the rates of employee and employer contributions
18 in this section to provide adequate funding of retirement benefit
19 liabilities accrued under this part 10, and to this end the board
20 shall submit an annual actuarial valuation report to the
21 legislative audit committee and the joint budget committee of the
22 general assembly, together with any recommendations concerning
23 such liabilities as accrued. Amortization of such liability over
24 a forty-year period shall be deemed adequate to maintain
25 actuarial stability. If the actual financial experience of the
26 fund is found to be more or less favorable than the assumed

1 experience during the two-year period from January 1, 1980, and
2 each biennium thereafter, adjustments may be made by the general
3 assembly in the employee and employer contributions as may be
4 deemed feasible and advisable upon recommendation of the board.
5 (4) The payments required by this part 10 are subject to
6 penalties if not submitted when due. Payments are due no later
7 than ten days following the date of payment of salary to the
8 member, unless the salary is paid more than once monthly, in
9 which event such payments are due no later than the tenth day of
10 the month following the month the salary is paid to the member.
11 An interest charge of one-half of one percent per month shall be
12 levied against any unpaid amount and added to the employer
13 payments required pursuant to this section.
14 31-30-1014. State contribution. In lieu of any moneys
15 contributed by the state to local fire and police pension plans
16 prior to January 1, 1980, the state shall appropriate annually
17 not more than thirty million dollars to assist local fire and
18 police pension funds in funding their unfunded liability as
19 determined in 1978. The appropriation shall be made to the state
20 treasurer to be credited to such local funds in accordance with a
21 distribution formula determined by the board, based on the
22 unfunded liabilities as determined pursuant to the provisions of
23 part 8 of this article.
24 31-30-1015. Fund not subject to levy. No portion of the
25 fund created pursuant to section 31-30-1012, before or after its
26 order for distribution by the board to the persons entitled

1 thereto, shall be held, seized, taken, subjected to, detained, or
2 levied upon by virtue of any attachment, execution, injunction,
3 writ, interlocutory or other order or decree, or process or
4 proceeding whatever issued out of or by any court of this state
5 for the payment or satisfaction, in whole or in part, of any
6 debt, damage, claim, demand, or judgment against the beneficiary
7 of said fund. Said fund shall be held and distributed for the
8 purposes of this part 10 and for no other purpose whatever.
9 SECTION 2. 32-5-316, Colorado Revised Statutes 1973, is
10 amended to read:
11 32-5-316. Power to tax. For the purpose of providing
12 revenue for such districts, the board has power and authority to
13 levy and collect ad valorem taxes on and against all taxable
14 property within the district. ~~including-the-right-to-levy-the-tax~~
15 ~~authorized-by-section-31-30-405-(2);-C.R.S.-1973;-but-in-no-event~~
16 ~~shall-such-total-levy-exceed-the-limitation-prescribed-in-section~~
17 ~~32-5-317.~~
18 SECTION 3. 32-5-317 (1), Colorado Revised Statutes 1973, as
19 amended, is amended to read:
20 32-5-317. Levy and collection of taxes. (1) The board
21 shall determine the amount of money necessary to be raised by a
22 levy on the taxable property in the district and shall fix a rate
23 of levy ~~not-to-exceed-eight-mills;~~ which, when levied upon every
24 dollar of valuation for assessment of taxable property within the
25 district, will raise the amount required by the district during
26 the ensuing fiscal year to supply funds for paying expenses of

1 organization and the costs of acquiring, operating, and
2 maintaining the works and equipment of the district and promptly
3 to pay in full, when due, all interest on and principal of bonds
4 and other obligations of the district. ~~but--the--limitation--of~~
5 ~~eight--mills--imposed-in-this-section-on-the-amount-of-levy-shall~~
6 ~~not-apply-to-levies-made-for-the-purpose-of-paying-the--principal~~
7 ~~of--and--the--interest--on-the-bonds-and-other-obligations-of-the~~
8 ~~district-issued-after-June-14,--1973.~~ In accordance with the
9 schedule prescribed by section 39-5-128, C.R.S. 1973, the board
10 shall certify to the board of county commissioners of each county
11 within the district, or having a portion of its territory within
12 the district, the rate so fixed in order that, at the time and in
13 the manner required by law for the levying of taxes, such board
14 of county commissioners shall levy such tax upon the valuation
15 for assessment of all taxable property within the district. When
16 necessary, a district shall, with respect to an increased mill
17 levy, comply with the requirements of part 3 of article 1 of
18 title 29, C.R.S. 1973.
19 SECTION 4. Repeal. 31-30-303 and 31-30-404 (1), Colorado
20 Revised Statutes 1973, 1977 Repl. Vol., as amended, and 32-5-317
21 (2), Colorado Revised Statutes 1973, as amended, are repealed.
22 SECTION 5. Effective date. This act shall take effect
23 January 1, 1980.
24 SECTION 6. Safety clause. The general assembly hereby
25 finds, determines, and declares that this act is necessary for
26 the immediate preservation of the public peace, health, and
27 safety.

POLICEMEN'S AND FIREMEN'S
PENSION REFORM COMMISSION

BILL 30

A BILL FOR AN ACT

1 CONCERNING FUNDING FOR FIRE AND POLICE DEATH AND DISABILITY
2 BENEFITS.

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 death and disability benefits for every policeman and fireman in this state will be paid from the fire and police members' benefit fund.

---

3 Be it enacted by the General Assembly of the State of Colorado:
4 SECTION 1. Part 10 of article 30 of title 31, Colorado
5 Revised Statutes 1973, as enacted by Senate Bill No. ____,
6 enacted at the First Regular Session of the Fifty-second General
7 Assembly and approved by the Governor on _________, is amended
8 BY THE ADDITION OF A NEW SECTION to read:
9 31-30-1013. State funding of death and disability. Every
10 department in this state, whether or not such department has
11 established an alternative plan pursuant to section 31-30-1003
12 (2), shall be governed by the provisions of this section. The
13 death and disability benefits provided to any member of a

1 department pursuant to this part 10 or part 3, 4, 5, or 6 of this
2 article shall be paid for by state appropriations to the fund
3 created by section 31-30-1011. The appropriations shall be based
4 on the statewide experience of claims for death and disability
5 benefits, and moneys so appropriated shall not be used for any
6 purpose other than the payment of said death and disability
7 benefits.
8 SECTION 2. Effective date. This act shall take effect
9 January 1, 1980.
10 SECTION 3. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

POLICEMEN'S AND FIREMEN'S
PENSION REFORM COMMISSION

BILL 31

A BILL FOR AN ACT

1 MAKING AN APPROPRIATION TO THE FIRE AND POLICE MEMBERS' BENEFIT
2 FUND.

Bill Summary

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

As authorized by section 31-30-1012, appropriates $30 million to the fire and police members' benefit fund to fund death and disability claims of firemen and policemen in this state and to assist in funding the present fire and police pension funds' unfunded liability.

---

3 Be it enacted by the General Assembly of the State of Colorado:
4 SECTION 1. There is hereby appropriated, out of any moneys
5 in the state treasury not otherwise appropriated,to the fire and
6 police members' benefit fund created by section 31-30-1011,
7 C.R.S. 1973, the sum of thirty million dollars ($30,000,000), or
8 so much thereof as may be necessary, to fund death and disability
9 benefits and the unfunded liabilities payable out of said fund.
10 SECTION 2. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

Dissenting Comments Upon and An Alternative Proposal Outline to the Policemen's and Firemen's Pension Reform Commission Proposal

Much of the attention of the commission, in its recent meetings, has been focused upon the design of a benefit plan for new hires; upon developing a sound and affordable program of death and disability; and, upon establishing retirement benefits for new employees. Conceptually, the commission's current thinking as expressed in the bill recommended to the Legislative Council is, in my opinion, defective from several points of view:

1. It assumes no change in benefits for present employees, including continuance of the financially ruinous rank escalator provisions in municipalities over 100,000 in population;

2. It proposes that somehow the state meet the estimated $430 million unfunded liability costs by annually appropriating up to $30 million additional (a suggestion I believe to be utterly futile in the foreseeable future);

3. It effectively removes any vestige of local option and local control over pension programs and effectively stops any benefit agreements being developed with bargaining groups on behalf of employees or, through employers, on behalf of citizens wishing to secure a youthful and stable work force.

4. It fails to address the horrendous costs Denver will have to bear as its contributions increase as per S.B. 46.

5. It makes no clear provision for the economies of central administration of existing trust funds on behalf of the smaller districts and municipalities, who may elect to withdraw from the state system.

I believe there are mutually acceptable alternatives to the commission's majority recommendations.

My suggestion represents a conscious attempt to meet in full the spirit and mandate of S.B. 46 and to address what I believe appear to be major defects in the commission proposal. It requires an extra effort by all concerned: State dollars, employer dollars, and a decrease in mandated benefits for the future service of all employees. The design of this alternative proposal follows:

<u>1. Death and Disability</u> -- A state plan, fully state funded and administered, the basic benefits of which would be the same as those proposed by the commission. These benefits resulted from the Auditor's Pension Advisory Committee recommendation. A very rough verbal estimate of the Martin E. Segal Company suggests this could release $4-6 million which local

entities have been putting into death and disability plans and would allow such moneys to go directly into local retirement pension funding.

2. Age of Service Pensions -- For all future service by all employees a new benefit formula would apply:

a) At age 55 with 25 years of service the benefit would be 60% final average salary -- final average salary would be the average of the highest three years salary. The pension would be deferred and commence at age 65, but there would be an unlimited option available for earlier retirement at a pension based upon the actuarial equivalent of 60% at 65 -- estimates suggest that 60% at age 65 is actuarily equivalent to 24% at age 50.

b) The plan would include provisions for a cost of living adjustment up to 3% after age 55. An employee may continue to work after age 55 if the employer agrees, but no further pension contribution would be made nor would additional benefits accrue.

c) Vesting: 100% of contribution in first 5 years;
50% of deferred pension after 5 years
increasing to 100% of deferred pension
after 10 years.

Preliminary estimates made by the Segal Company suggest that this benefit package for pensions would cost about 12% of payroll. It will probably be necessary and fair to allow employees who are at present age 50 or have 15 years service to continue to accrue benefits in accordance with their present benefit plans.

3. State Contributions -- The state currently contributes about $6 million which appears to be about 6% of covered payroll. Instead of a per person distribution, or a distribution based upon assessed value as under the current system, the State's contribution would be changed to 6% of payroll but in no case more than the amount contributed by the employer. Combining our present per capita and assessed value methods with high turnover means that in many districts the State is currently paying the full pension program costs -- hardly what we intended.

4. The State Board for Police and Fire Pensions would be as follows:

The basic structure would be the same as recommended by the commission.

As under the commission's proposal the board would administer the death and disability plan for all covered personnel statewide.

The board would be authorized to offer to any district or municipality the services of administering pension trust funds and providing certain reporting services. This should provide better investment practice and returns thereon as well as providing efficient and low cost administration and simplified reporting. The board would have monitoring responsibility for the actuarial soundness of all local pension plans and for establishing common actuarial assumptions.

5. Local Option and Control -- Although this plan provides a statutory minimum pension benefit, it is believed that funding for this benefit and for all future service as well as for the payment of the unfunded liability is within the grasp of every local district and municipality.

When a district or municipality is fully financing its minimum standard benefit and its unfunded liability (on at least a 40 year basis) it may enrich its pension program in any manner it sees fit, so long as the additional benefits are likewise fully funded on an actuarially sound basis.

It is my contention that, in place of an essentially bankrupt set of pension benefits, this plan will provide a fully funded program within 2 or 3 years. It should be noted that for the employee there are important trade-offs -- the deferral of pension commencement to age 65 in return for:

1. Benefit equal to 60% of final average salary;
2. Full vesting;
3. State administered death and disability plan;
4. Security of fully funded benefits; and
5. State contributions as a percent of salary.

Under this plan the district or municipality benefit by the lower state mandate and the full state funding of death and disability, thereby, making the unfunded liability problem manageable and attainable. Local flexibility is retained for enriching benefits. Investment management and administration by the state is also available to local units. Huge property tax increases are avoided.

For the state, we "crack the pension nut" by doing centrally what we must and what is economical to do, and we allow local option to continue to reflect local need and desire. We double our present outlay to $12 million, but that is substantially less than the $36 million alternative and may well be possible in the eyes of the General Assembly.

Respectfully submitted,

/s/ Representative John McElderry

APPENDIX A

Membership -- Auditor's Pension Advisory Committee

Co-chairmen

Kenneth Harris
Denver Police Department --
Denver Police Protective Association

Jerry Kempf
Manager of Revenue,
City and County of Denver

Members

Captain Robert B. Bendixen
Denver Fire Department --
State Professional Firefighter's Association

Robert Broom
Finance Director, City of Aurora --
Municipal Finance Officer's Association

Captain Loren K. Coates
Pueblo Police Department --
Colorado Police Protective Association

Kent Cooper
Assistant City,Manager, City of Greeley --
Colorado City Management Association

Chief John Franks
Cherry Hills Fire Protection District --
Colorado Fire Chiefs Association

Susan K. Griffiths
Attorney, Colorado Municipal League

Chief Robert Holmes
Englewood Police Department --
Colorado Chief's of Police Association

Edward H. Menges, Jr.
Personnel Director, City of Lakewood --
Personnel Director's Association

Chief Kenneth Neville
Denver Fire Department --
Command Officer's Association

Darrell Pinckney
  Bancroft Fire Protection District --
  Special District Association

Clarence Sanders
  Assistant City Manager,
  City of Fort Morgan

Dean W. Smith
  Manager, Arvada Fire Protection District,
  Colorado State Firefighter's Association
  and Volunteer Firemen

Jack W. Smith
  Deputy City Attorney,
  City of Colorado Springs

Stan Sponsel
  Denver Fire Department,
  Pension Board

Alternates

Dick Brown
  Colorado Municipal League

Lester Dawson
  Colorado Springs Fire Department (Retired) --
  State Professional Firefighter's Association

Nick Patete
  Louisville Fire District --
  Colorado State Firefighter's Association

Chief Earl Stonehocker
  West Adams County Fire Protection District --
  Colorado Fire Chief's Association

Secretary to the Advisory Committee

John A. Meininger
  Attorney --
  Pension Study Consultant to the State Auditor

LEGISLATIVE COUNCIL

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Earl Thaxton
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Senior Research Assistant

* Representative Gorsuch (Vice Chairman) presided over those meetings dealing with Classification of Felonies.

COMMITTEE ON JUDICIARY - INHERITANCE AND GIFT TAX

The Interim Committee on Judiciary was established by the Legislative Council to conduct two studies pursuant to Senate Joint Resolution 29:

I) a study of the revision of the state's estate and gift tax law, including the conforming of such laws to the revised federal estate and gift tax laws; and

II) an examination of the felony classification system and those procedures which have an impact upon the terms of sentence.

The Committee on Judiciary held seven meetings throughout the interim. Two of the meetings were devoted to consideration of the inheritance and gift tax laws and five meetings were devoted to consideration of sentencing legislation and the felony classification system. Included in this report is a description of committee activity with respect to the study of inheritance and gift taxes. A separate report concerning committee activity with respect to the study of sentencing legislation is submitted in Research Publication No. 240.

The committee makes no recommendations concerning the inheritance and gift tax subject. For the information of the General Assembly, this report includes a description of the study procedure utilized by the committee, background on the proposals submitted to the committee and a summary of those proposals, and a summary of the conclusions of the committee.

Background. In 1976, at the direction of the Board of Governors of the Colorado Bar Association, the Probate and Trust Section took up the matter of revision of the state's estate and gift tax laws. Three different alternatives were considered by the Bar Association Committee. These were: (1) to do nothing and to make such periodic changes as were or might become necessary from time to time; (2) to adopt an estate tax in lieu of the present inheritance tax and to conform that estate tax as nearly as possible to the federal rules while retaining for Colorado the opportunity to administer the tax independent of the federal government; and (3) to literally piggy-back federal law with a state tax determined as a percentage of the federal tax. It was determined that the second alternative, that of adopting an estate tax for Colorado patterned closely after the federal tax and following the federal rules with respect to the taxation of lifetime gifts, was the best approach.

Several Bar Association subcommittees were formed to consider the constitutional aspects of the proposal, to draft the proposed legislation, and to deal with the revenue considerations. A bill was drafted in 1976 which incorporated the changes to the federal law and was submitted to the Board of Governors of the Colorado Bar Associa-

tion in August, 1977, where it received approval of the board. The Bar Association then met with the Statutory Revision Committee of the General Assembly and the bill was recommended for introduction in the 1978 Legislative Session. The bill was introduced as House Bill 1132. Because the subject of estate and gift tax was not on the Governor's Call to the General Assembly, the bill did not receive consideration during the 1978 Session. However, the subject of estate and gift taxes was assigned to this committee for study and recommendations.

Committee procedure. The committee utilized House Bill 1132 as a starting point for discussion of the need to revise the state's estate and gift tax laws. The committee met with representatives of the Bar Association's Probate and Trust Section and reviewed the provisions of the bill so that the members would understand the nature and extent of the changes proposed. An outline of the major changes to Colorado law proposed in the bill is included in this report.

The committee also heard testimony from representatives of the Division of Inheritance Tax concerning the revenue impact of the bill. Although some provisions of the bill do have a plus or minus revenue effect, the bill is intended to be revenue neutral. In addition, the committee received testimony from attorneys and other interested parties who are opposed to adoption of the bill. At the last meeting devoted to the subject, an alternative proposal was submitted for committee consideration by Representative Carl Gustafson. This proposal would essentially abolish the state inheritance tax except for amounts which would otherwise go to the federal government; in other words, the gap tax would be continued. The committee also briefly discussed and reviewed the approach adopted by several other states wherein the state estate tax is determined as a percentage of the federal tax.

Committee recommendations. At the final committee hearing on estate and gift taxes, a motion was made to the effect that the committee should favorably recommend adoption of House Bill 1132 to the Legislative Council. Committee discussion focused on whether the proposed bill would simplify estate tax preparation, what the impact of the proposal would be on joint tenancy, whether the proposal would substantially increase estate taxes in certain areas, the impact of the proposal on agriculture property, and what tax shift may result if the proposal were to be adopted. By a 6 to 3 vote, the committee voted not to approve the motion for favorable recommendation. Thus, the committee makes no recommendation to the General Assembly concerning House Bill 1132.

At the same meeting, a motion was made to approve the proposed Gustafson bill, and to favorably recommend it to the Legislative Council. Following committee discussion concerning the revenue impact of the bill, constitutional problems relating to the OAP fund, and the approaches adopted by several other states, the committee voted, 6 to 3, not to approve the motion for favorable recommendation. Thus, the committee makes no recommendation to the General Assembly concerning the proposed Gustafson bill.

Inheritance and Gift Taxes

Colorado Inheritance Tax

Since 1927, Colorado has imposed an inheritance tax on property passing at death. The federal government's death tax is an estate tax and has been in effect since 1916. An inheritance tax is generally described as a tax on the right to receive property and an estate tax is a tax on the right to transmit property. The rate of inheritance tax depends usually on the relationship of the beneficiary to the decedent while the estate tax is assessed against the taxable estate without regard to relationship of the beneficiaries. House Bill 1132 adopts the estate tax approach in an attempt to simplify and reduce the expense of preparation, filing, negotiation, and determination of state death taxes.

The following categories are some of the more important proposed changes to the Colorado inheritance tax law as contained in House Bill 1132:

Net estate exemption. One of the most significant variations between House Bill 1132 and the current law is the proposed $60,000 net estate exemption ($3,500 unified credit). This was designed so that Colorado could maintain the present level of revenue received from estate taxes.

Marital deduction. House Bill 1132 provides for a marital deduction of the greater of $250,000 or one-half the value of the adjusted gross estate. In order to qualify for the marital deduction, the property must pass outright to the surviving spouse or the surviving spouse must receive all of the income from the property and have a general power of appointment at death. The marital deduction will be reduced by any taxes imposed against the property or any encumbrances against the property. In addition, the amount of the maximum marital deduction allowable is to be reduced by the amount by which the gift tax marital deduction allowed under the gift tax laws exceeds one-half the value of the total gifts to the spouse. Present law provides a $75,000 exemption for gift to a spouse.

Proceeds of life insurance. House Bill 1132 provides for the inclusion in the estate of the proceeds of life insurance to the extent of the amount receivable by the personal representative under policies on the life of the decedent, and to the extent of the amount receivable by all other beneficiaries under policies with respect to which the decedent possessed at the time of his death any incident of ownership. This provision of the bill eliminates the present $75,000 insurance exemption in Colorado law.

Valuation of certain real property. House Bill 1132 provides an optional valuation method for real estate used in a farm, ranch, or closely held business. It allows such real estate to be valued based on its actual use rather than its highest and best use. The provision is similar to a provision enacted by the legislature in 1977, but with

a capitalization rate based on Federal Land Bank interest rates, rather than a straight 11 1/2 percent, and the proposed law has different tests, extends to businesses other than agriculture, and is more detailed. The decrease in value is not to exceed $500,000. The proposal establishes as requirements for qualification that the farm or business interest equal or exceed 50 percent of the adjusted value of the gross estate, and that the real property itself equal or exceed 25 percent of the adjusted value of the gross estate. The bill requires that the decedent or his family have been involved in the operation of the farm or business and that the family continue after the decedent's death to be involved in the operation of the farm or business. The disposition of the property or failure to use the property for the qualified use will result in the imposition of an additional tax to the extent of the tax saved by the original discount. All heirs who have an interest in the property must sign an agreement that they will be liable for the tax if there is a cessation of use or disposition of the property. As an alternative, a bond may be posted by the heirs in the amount of the tax that was saved through the election of the optional valuation. Restrictions on cessation or disposition extend for 15 years, after which time the heirs can use or dispose of the property as they wish. The purpose of this section of the bill is to avoid the imposition of tax on businesses, farms, and ranches based on values for uses other than that to which the property is being put at the time of death. It is intended, through the reduction of valuation and the tax, to reduce liquidity needs of the estate and prevent the forced sale of farms, ranches, and small businesses for the purpose of raising money to pay death taxes.

Generation-skipping transfer tax. Under provisions of the federal 1976 Tax Reform Act, a tax is now imposed -- subject to certain transitional rules -- on transfer described as "generation-skipping transfers". If, for example, a father during his lifetime or by his will, transfers $400,000 to a trust for his daughter for her lifetime and to her children on her death, the transfer would be a generation-skipping transfer and prior to the Tax Reform Act the trust property would not have been included in the daughter's estate for federal tax purposes at her death. Under the federal law and the proposed bill, the first $250,000 of property would still be exempt from the tax, provided it vests in grandchildren at the daughter's death.

Gross estate. The Colorado gross estate is defined as the value of the interest of the decedent in all property, real or personal, tangible or intangible, at the time of his death. The value of all real property and all tangible personal property having an actual situs outside the state at the date of death of the decedent is excluded from the gross estate as under present law. If the decedent is a non-domiciliary, all tangible personal property owned by him shall be excluded from the estate.

Adjustments for gifts made within three years of death. All property transferred by gift by the decedent within three years of death, except gifts of $3,000 or less at the time of the gift, is included in the estate. Present law includes such gifts only if made

within two years of death and in contemplation of death. Any gift taxes paid on gifts within three years of death are added back to the gross estate for purposes of determining the gross estate.

Transfers with retained life estate. Property which has been transferred by the decedent in his lifetime, in which he retained the right to the income from, or the possession or enjoyment of the property, or the right to designate the persons who would receive or enjoy the income from the property, is included in the gross estate.

Transfers taking effect at death. Transfers of property by the decedent where he retained the power to dispose of the property, or retained a reversionary interest in the property, or possession or enjoyment of the property can be obtained only by surviving the decedent, are included in the gross estate.

Revocable transfers. Transfers of property by the decedent where the enjoyment of the property at the time of the decedent's death is subject to any change through the exercise of a power by the decedent, alone or in conjunction with any other person, to alter, amend, revoke or terminate such enjoyment, are included in the estate.

Annuities. An annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement, if, under such contract or agreement, an annuity or other payment was payable to the decedent or the decedent possessed the right to receive such annuity or payment, is included in the estate. The includable portion is defined to be that part of the value of the annuity which is attributable to the purchase price paid by or attributable to the decedent. Excluded from the estate is the value of an annuity or any other payment, other than a lump sum distribution, from an employee's qualified pension or profit-sharing plan or retirement contract or other arrangement (commonly known as "qualified plan"). Also excluded from the estate are payments made under individual retirement accounts and self-employed retirement plans, other than when paid in lump sums. Present Colorado law excludes benefits from annuity contracts and pension and profit-sharing plans when paid over the beneficiary's lifetime. Lump sum payments are now subject to a $75,000 exemption.

Joint interests. Included in the estate is a decedent's interest in joint tenancy property to the extent of the contribution by the decedent. If the other joint tenant is the decedent's spouse, the proposal provides that only one-half of the joint tenancy property will be included in the decedent's estate, notwithstanding the decedent's actual contribution, if the original transfer into joint tenancy constituted a completed gift and an election was made to treat the transfer as a gift. Present Colorado law is different in that it taxes one-half of spousal joint tenancies in the first estate, ignoring actual contribution.

Powers of appointment. Property in which the decedent had a general power of appointment is included in the estate under the pro-

posal. A general power of appointment is defined as a power exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that, a power to consume, invade, or appropriate property for the benefit of the decedent, which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent, shall not be deemed a general power of appointment. In addition, if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, which is adverse to the exercise of the power in favor of the decedent, such power shall not be considered a general power of appointment. The lapse of a general power of appointment during the life of the individual possessing the power is considered a release of such power, but only to the extent that the value of the property subject to the power exceeds the greater of $5,000 or five percent of the aggregate value, at the time of the lapse of the power, of the assets subject to the power.

Transfers for insufficient consideration. If any of the transfers previously enumerated as taxable were made for inadequate consideration, the proposal provides that there shall be included in the estate only the excess of the fair market value of the property over the consideration received. A relinquishment of a statutory or other marital right shall not be considered to any extent a consideration in money or money's worth.

Disclaimers. If a person makes a qualified disclaimer with respect to any interest in property, the property will be treated as if the interest had never been transferred to such person. A qualified disclaimer is defined as one which qualified under the Colorado Probate Code.

Definition of taxable estate. The proposed House Bill 1132 provides that, for purposes of determining the taxable estate, the gross estate, previously discussed, shall be reduced by the deductions discussed below. The marital deduction was discussed earlier in this report.

Expenses, indebtedness and taxes. Under House Bill 1132, for purposes of determining the taxable estate, the value of the gross estate is reduced by funeral expenses, administration expenses, claims and mortgages on property included in the estate. No deduction is allowed for expenses related to property which is excluded from the gross estate. Death taxes and taxes incurred after death are not deductible.

Losses. Under House Bill 1132, casualty and theft losses incurred during the settlement of the estate to the extent that the losses occurred to items of property included in the estate, are deducted from the gross estate.

Transfers for public, charitable, and religious purposes. Transfers for charitable, public and religious purposes are deductible from the estate.

Devises to certain minor children. Devises to an orphan child of the decedent is deductible. The deduction is limited to $5,000 for each year the child is under twenty-one. Present law provides an exemption of $37,500 to children under eighteen, and $25,000 to children eighteen and older.

Credits for gift tax. In addition to the unified credit discussed above, the proposal provides that there shall be credited against the estate tax the amount of any gift tax imposed by the gift tax law in effect prior to the date of the new law. This avoids double taxation of property which was subject to gift tax at the time of gift and is subject to the estate tax at the time of death. This is similar to present Colorado law.

Credit for tax on prior transfers. If the present decedent received property from a prior decedent who was subject to Colorado inheritance tax, the present decedent's estate will receive a credit for the lesser of the tax imposed upon the property in the first or second estate. There is a 100 percent credit for property which is taxed in two estates within two years; eight percent if within the third or fourth years preceding the present decedent's death; 60 percent if within the fifth or sixth years; 40 percent if within the seventh and eighth years; and 20 percent if within the ninth or tenth years. There is no tracing requirement. Present law provides for a similar credit, limited to three years, with tracing of the property required.

Procedure for determining estate taxation. The following diagram illustrates the procedure for determining the net tax on an estate:

Assets
- Deductions
NET ESTATE

Basic Tax on Net Estate
- Credits
NET TAX

Assets include certain types of property, lifetime transfers, annuities, joint property interests, powers of appointment, and life insurance. The proposed method for computing assets under House Bill 1132 would include the following:

1) Allow agriculture property or a closely held business to be valued based on their actual use rather than the fair market value (the decrease in value is not to exceed $500,000).

2) Exempt qualified benefit plans and limited powers of appointment.

3) Include as an asset the decedent's interest in a joint tenancy property (not one-half of the property as is presently the case).

4) Eliminate the present $75,000 life insurance exemption. The life insurance exemption would be eliminated because of the substantial "marital deduction" allowed in the proposed bill.

The provisions of House Bill 1132 would allow the following deductions for the purpose of reducing the gross estate:

1) Costs of expenses, administration, and losses.

2) Transfers for charitable purposes.

3) Marital deductions -- the greater of $250,000 or one-half the value of the net estate (present law provides a $75,000 exemption).

4) Orphaned children deductions -- this deduction is limited to $5,000 for each year the child is under twenty-one (present law provides an exemption of $37,500 to children under eighteen, and $25,000 to children eighteen and over).

Tax rate. The proposed tax rate on the net estate would range from four percent to nineteen percent of the taxable estate. This tax would then be reduced by a $3,500 unified credit which is equivalent to a $60,000 net estate exemption. Unlike present law which taxes inheritances based on the relationship of the recipient to the decedent, the proposed tax is based on the amount of the taxable estate: Assets less deductions. Appendix A includes the proposed tax rate schedule.

Payment of the estate tax. Payment of the tax under the proposal would be due nine months after date of death, the same as present Colorado inheritance and Federal estate tax law. The current provision of Colorado law affording a five percent discount for temporary payments made within six months is eliminated. Under the provisions of House Bill 1132, tax not paid when due bears interest at the legal rate (currently 8 percent). For reasonable cause shown, the tax may be paid in installments for over a period of up to ten years. In addition, the estate has a right to elect installment payments when a certain percentage of the estate consists of interests in a closely held business.

Gap tax. The proposal imposes a "gap tax", similar to present Colorado law, to allow the state to pick up an additional tax to the extent that the federal credit for state death taxes exceeds the tax imposed under the proposal.

Releases and summary statement. The "release" provisions of the present Colorado law are retained essentially intact under the proposal. The following items may not be distributed to estate beneficiaries without a release from the state: Colorado real estate, regardless of value; registered securities exceeding $5,000 in value; deposits in any one bank exceeding $5,000, and safe deposit boxes. For all estates requiring the filing of a Colorado estate tax return,

procedures for obtaining releases will generally remain the same as under present law, including those procedures providing for the issuance of "accelerated" releases prior to the completion of an audit. However, there will be many estates which do not exceed the return filing requirement but which include assets requiring a release. These estates will need to file a short "summary statement" setting forth the assets requiring release. Release in these cases will be issued in an expeditious and perfunctory manner.

Penalties. Under the proposal, there would be a five percent per month penalty (up to a maximum of 25 percent of the tax) imposed for failure to file the return. There is also a one-half percent per month penalty (up to a maximum of 25 percent of the tax) for failure to pay the tax on time. In addition, there are civil and criminal penalties for fraudulently failing to file or otherwise evading the tax.

Audit and assessment. Under the proposal, the state would retain the right and responsibility for an independent audit and assessment of the tax much in the same manner as under present law.

Colorado Gift Tax

Colorado has imposed a tax on transfers by gift since 1937. Like the present inheritance tax statute, the gift tax depends upon the relationship of the donor to the donee: annual exclusions and lifetime exemptions vary with the donor-donee relationship.

Present Colorado law bears little resemblance to the better known provisions of the federal law. A Colorado donor, aware that under federal law a gift of $3,000 or less to any one person in any calendar year is not a taxable event, may not be aware that a gift of $3,000 to his daughter or son-in-law, brother or sister, niece or nephew, is a taxable event in Colorado and, if repeated, subjects the unsuspecting donor to gift tax, interest, and penalties.

The gift tax has not been an important source of revenue for Colorado. Receipts for the four-year period from 1973 to 1976 averaged about $1,750,000 per year. Receipts in 1977 of $4,700,000 were stimulated by gifts made for federal purposes in the last quarter of 1976 following passage of the Tax Reform Act by Congress.

The Tax Reform Act of 1976 significantly reduced the federal tax advantages of lifetime giving and it seems likely that revenues from Colorado gift tax after 1977 will be substantially decreased, whether or not House Bill 1132 is enacted.

Although the present Colorado gift tax law is based upon the relationship of the donor to the donee, personal relationships would not make any difference under the provisions of House Bill 1132.

Other important changes contained in House Bill 1132 are outlined in the following sections.

Imposition of the tax. In substance, the bill follows present Colorado law but now refers to calendar quarters rather than calendar years to adopt the federal filing requirements. The proposal varies from federal law only because it is necessary to distinguish taxable gifts by Colorado domiciliaries from non-domiciliaries. In following federal law, the proposal makes it clear that transfers to a political organization, defined by reference to the Internal Revenue Code, are not gifts subject to tax. This provision is new to Colorado law.

Filing procedure. A gift tax return is required to be filed on February 15 following any calendar year in which there was made a gift to any one person exceeding $3,000 in value. Quarterly returns are required when more than $25,000 is gifted during a year.

Taxable gifts. The proposal allows an annual exclusion from taxable gifts of $3,000 for a gift (other than a gift of a future interest) to any person. Present Colorado law allows $3,000 only for gifts to a spouse, descendent or parent, and gifts to all others -- daughters-in-law, nephews, sisters -- are allowed a lesser exclusion. In allowing the $3,000 annual exclusion for "future interest" gifts to persons under 21, the proposal follows present Colorado law.

Valuation of gifts. The requirement that the executive director inform the donor of the basis for his determination of the value of property transferred is a new provision in both federal and Colorado law. Taxing the value of property given and taxing transfers which are part sale and part gift is not.

Deductions. The proposal provides that the deduction for gifts to a charity or a spouse is limited to the extent such gifts are included in the amount of gifts against which such deductions are applied. For example, if a gift of $5,000 is made to one's spouse, the gift after the $3,000 annual exclusion is $2,000 and the marital deduction would be limited to $2,000 rather than $2,500. The effect is to prevent a part of the marital deduction from offsetting gifts to others.

Gift to spouse. Since the Tax Reform Act of 1976, federal law has allowed a deduction from taxable gifts for the first $100,000 of property transferred to the donor's spouse. Under present Colorado law, a transfer of $100,000 to a spouse (assuming no prior gifts other than a gift of $3,000 earlier in the year) would incur gift tax of $2,250. Because many estate planning advisors are now recommending, in appropriate circumstances, gifts to one's spouse, adoption of this provision may have a diminishing effect on revenues.

Gift by husband or wife to a third party. Under the proposal, a gift made by one spouse may be treated as made one-half by such spouse and one-half by the other. The provision is new to Colorado law but has been in effect under federal law since 1937 and allows

married persons, using the property of one of them, to make annual gifts of $6,000 rather than $3,000.

Property settlements. The proposal, new to Colorado law, makes it clear that property transferred in connection with a marriage dissolution is not a gift. Colorado has not attempted to tax such transfers in the past.

Unified credit against the gift tax. The proposal, new to Colorado law, allows lifetime transfers the same credit against the gift tax as is allowed for transfers at death. It replaces the present set of exemptions based on the relationship between donor and donee.

Powers of appointment. The proposal makes the transfer of property by exercise or release of a general power of appointment created after October 21, 1942, subject to the gift tax law. It follows the federal provision in all important respects. Under present Colorado gift tax law, release or non-exercise of a general power, or a special power, is not a taxable transfer but exercise of either a general power or special power is taxable. If the proposal were to become law, release as well as exercise of a post-October 1942 general power will be subject to tax; exercise of a special power will not be subject to tax. The federal law and the proposed House Bill 1132 provide an exception for the release (or lapse) of a general power limited to the greater of $5,000 or 5 percent of the property from which the exercise of the power could be satisfied.

Certain annuities under qualified plans. Most retirement plans allow an employee the right to elect joint and survivor benefits as opposed to payments for the employee's lifetime only. Since the election is usually irrevocable, it could be treated as a taxable gift but for a section of the federal law. Colorado does not now have a similar provision but, again, has not attempted to tax such an election as a gift. To the extent the annuity payment represents the employee's contributions to the retirement plan, an irrevocable joint and survivor election would constitute a taxable gift under the proposal.

Disclaimers. Colorado law now provides for disclaiming succession and the references in the Colorado Probate Code incorporate existing provisions of the Colorado law. Although these provisions differ from federal law - by allowing, for example, the time period to run from the date of actual knowledge of the existence of the interest - the differences are not considered significant.

Charitable and similar gifts. Colorado now allows a deduction for gifts to charity and the proposal, although presented in more detail, does not vary in substance with Colorado's present law.

Appendix A
Recommended Rate Schedule

If the amount with respect to which the tentative tax is computed is:	The tentative tax is:
Not over $10,000	4% of such amount.
over $10,000 but not over $20,000	$400, plus 5 percent of the excess of such amount over $10,000.
over $20,000 but not over $40,000	$900, plus 6 percent of the excess of such amount over $20,000.
over $40,000 but not over $60,000	$2,100, plus 7 percent of the excess of such amount over $40,000.
over $60,000 but not over $80,000	$3,500, plus 8 percent of the excess of such amount over $60,000.
over $80,000 but not over $100,000	$5,100, plus 9 percent of the excess of such amount over $80,000.
over $100,000 but not over $150,000	$6,900, plus 10 percent of the excess of such amount over $100,000.
over $150,000 but not over $250,000	$11,900, plus 11 percent of the excess of such amount over $150,000.
over $250,000 but not over $500,000	$22,900, plus 12 percent of the excess of such amount over $250,000.
over $500,000 but not over $750,000	$52,900, plus 13 percent of the excess of such amount over $500,000.
over $750,000 but not over $1,000,000	$85,400, plus 14 percent of the excess of such amount over $750,000.
over $1,000,000 but not over $1,250,000	$120,400, plus 16 percent of the excess of such amount over $1,000,000.
over $1,250,000 but not over $1,500,000	$160,400, plus 17 percent of the excess of such amount over $1,250,000.
over $1,500,000 but not over $2,000,000	$202,900, plus 18 percent of the excess of such amount over $1,500,000.
over $2,000,000	$292,900, plus 19 percent of the excess of such amount over $2,000,000.

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